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State of Delaware

Title 17

Highways

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Chapter 1
GENERAL PROVISIONS

Subchapter I

Definitions

§ 101 Definitions.

(a) As used in this title, unless the context indicates a different intent:

(1) "Construction" means the first complete building or rebuilding of a highway after it has been converted into a state highway upon a modern engineering design with a permanent foundation of cement, concrete or other equally hard and permanent material and a top dressing of suitable material to economically withstand the wear of the particular traffic to which such highway will probably be subject with an adequate drainage system so that such highway, with reasonable maintenance, can reasonably be expected to endure for upwards of 40 years.

(2) A "Delaware byway" is a transportation route which is adjacent to or runs along or next to an area that has particular intrinsic scenic, historic, recreational, cultural or archaeological qualities and for which such transportation route is managed in order to protect such characteristics and to encourage development of tourism and recreational resources.

(3) "Department" means the Department of Transportation.

(4) "Express highway" means a state highway especially designed for through traffic over which owners of abutting property shall have no easement or right of direct access, light or air, by reason of the fact that this property abuts on such highway, and it shall have only such public entrances or exits as shall be designated by the Department and may be with or without service roads in the discretion of the Department.

(5) "Maintenance," as applied to constructed or reconstructed highways, is the upkeep and support thereof with true surfaces in a hard, smooth condition as when such highways were constructed or reconstructed and with proper and adequate drainage systems; as applied to state highways not constructed or reconstructed, is the upkeep and support thereof in as high a condition of perfection as is consistent with the character of such unconstructed or unreconstructed highway and shall include the keeping of the right-of-way of all state highways clear of underbrush and debris which might interfere with the drainage or injure the foundation of such highways and the setting out and preserving of trees where desirable along such right-of-way.

(6) "Public carrier" includes every individual, partnership, association, corporation, joint stock company, agency or department of this State, or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees, or receivers appointed by any court whatsoever, that now operates or hereafter may operate, within this State, any railroad, street railway, traction railway, motor bus or electric trackless trolley coach service, system, plant or equipment for public use.

(7) "Railroad" means a road, the cars, carriages and coaches on which are propelled by steam power, electricity, cable, motor or any improved motive power.

(8) "Reconstruction" is the first extensive repairing of an improved road converted into a state highway, and before the Department has constructed such highway, as in the opinion of the Department and the Secretary of Transportation, will result in a state highway of such permanency that there will be a net saving of reconstruction.

(9) "Road" and "highway" include any public way or road or portion thereof and any sewer, drain or drainage system connected therewith and any bridge, culvert, viaduct or other construction or artificial way used in connection therewith and anything which is accessory to any of the same or to the use thereof.

(10) "Secretary" means the Secretary of Transportation.

(11) "State highway" includes any road or highway or portion thereof which the Department has constructed or of which the Department has taken or assumed control or jurisdiction.

(b) As used in this title, "construct" and "constructed" shall be defined in accordance with the definition of "construction"; "reconstruct" and "reconstructed" shall be defined in accordance with the definition of "reconstruction"; "maintain" and "maintained" shall be defined in accordance with the definition of "maintenance."

(29 Del. Laws, c. 63, § 1; Code 1935, § 5720; 47 Del. Laws, c. 406, § 2; 17 Del. C. 1953, § 101; 53 Del. Laws, c. 255; 57 Del. Laws, c. 671, §§ 1A-1C; 59 Del. Laws, c. 393, § 3; 60 Del. Laws, c. 503, §§ 18, 19; 72 Del. Laws, c. 444, § 1; 77 Del. Laws, c. 367, § 2.)

Subchapter II

Organization and Administration of Department

§ 111 Secretary of Transportation; powers and duties; Chief Engineer.

(a) The Secretary of Transportation shall, immediately upon assuming the duties of office and from time to time, recommend to the Department a program for the improvement of state highways and for the inclusion of additional roads or portions of roads in the state highway system, the probable cost of the construction or reconstruction of such roads or portions of roads and the roads or portions of roads which should first be improved and the probable amount of construction which could be undertaken.

(b) The Secretary shall employ, promote and discharge all persons hired by the Department, including a Chief Engineer, for the performance of work for which the Secretary is responsible. All such employment, promotion and discharge shall comply with the laws applicable to the Department.

(c) The Chief Engineer shall be not less than 30 years of age; the Chief Engineer shall be a civil engineer registered or eligible for registration as such in Delaware and shall have been in active practice of the profession for at least 10 years; the Chief Engineer shall have had responsible charge of road engineering work for at least 5 years; and the Chief Engineer shall be qualified to design as well as direct road engineering work. Graduation from a school of engineering of recognized reputation shall be considered as equivalent to 2 years of active practice. The total compensation to be paid to the Chief Engineer and the allocation thereof between the Department and any other public agency or office for services performed for the Department and any other public agency shall be determined by the Department.

(17 Del. C. 1953, § 116; 53 Del. Laws, c. 39, § 3; 57 Del. Laws, c. 671, §§ 1B, 1D; 60 Del. Laws, c. 503, § 19; 70 Del. Laws, c. 186, § 1.)

§ 112 Liability insurance for Department employees.

The Department shall enter into a contract with a reliable insurance company or companies doing business in this State to insure the employees of the Department against injury or death incurred while performing their duties as employees of the Department. The Department shall be the sole judge of the kind of insurance and the amount thereof which will best execute such purpose.

(17 Del. C. 1953, § 118; 53 Del. Laws, c. 39, § 1.)

§ 113 Appointment and powers of notaries public.

In addition to the notaries public now provided by law in the several counties, the Governor shall appoint 4 employees of the Department, 1 residing in New Castle County, 1 residing in Kent County and 2 residing in Sussex County, notaries public to hold office not exceeding 2 years. Such notaries public may not exercise their office or take affidavits or acknowledgments except on documents and papers for the benefit of the Department, and for which they shall make no charge. Whenever any such person appointed notary public ceases to be an employee of the Department, the notary public's authority as such notary public shall cease, and thereupon the Governor may appoint another employee of the Department a notary public in the person's place. The Governor may appoint additional employees of the Department as notaries public as may be deemed necessary, to which the requirements of this section shall apply.

(17 Del. C. 1953, § 119; 53 Del. Laws, c. 39, § 3; 65 Del. Laws, c. 38, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter III

Jurisdiction, Powers and Duties of Department

§ 131 General jurisdiction.

(a) All the public roads, causeways, highways and bridges in this State which have been or may hereafter be constructed, acquired or accepted by the Department of Transportation shall be under the absolute care, management and control of the Department.

(b) All roads and streets situate in unincorporated suburban communities throughout the State which were built or created between July 1, 1935, and July 1, 1951, whether paved or unpaved, shall henceforth be under the absolute care, management and control of the Department and shall be maintained, repaired and reconstructed by the said Department.

(c) The Department shall immediately commence the necessary preliminary work in order to bring these roads up to proper standards as soon as possible with due consideration for the immediate needs of certain areas.

(d) The general jurisdiction conferred upon the Department by this section shall be exercised by it by the establishment and supervision of any and all policies which may be necessary or appropriate to implement such jurisdiction.

(e) All roads and streets not dedicated to the public use and intended to be private, as indicated on the filing plan, situated in an unincorporated suburban community within the State, shall be constructed in accordance with rules and regulations adopted by the county in which such road or street is located. Such rules and regulations for construction of private subdivision streets and roads shall, in addition to specifying standards for the design and construction of such private streets and roads, establish a mechanism to provide for the perpetual maintenance of such private streets and roads, but in no event shall the State or county be responsible for such maintenance. In addition, the following provisions shall apply to all such streets and roads:

(1) In the event that the county has not adopted rules and regulations for construction of private subdivisions, streets and roads or such rules and regulations have been established and there is no mechanism contained therein to provide for the perpetual maintenance of private subdivision streets or roads, all such roads or streets shall be constructed in accordance with standards set forth by the Department of Transportation, Division of Highways, for streets and roads dedicated to public use.

(2) Private roads or streets shall not be accepted for maintenance by the State until:

a. The right-of-way for the streets and roads has been dedicated to the public use, accepted by the State and the streets and roads constructed or reconstructed at the expense of the property owners in accordance with the standards established by the Department of Transportation, Division of Highways, for streets and roads dedicated to public use in accordance with Chapter 5 of Title 9; and

b. The Department's Division Engineer, Maintenance Engineer and Subdivision Engineer, if applicable, for the division in which the roads are situated have each certified that the roads to be accepted by the State have been constructed or reconstructed in accordance with the construction plans approved by the Department; and

c. Copies of such certifications have been forwarded to the members of the General Assembly in whose districts the roads to be accepted are situated.

(3) In the event any real property with road frontage or a private road or street, constructed or reconstructed pursuant to this section, which road or street is not to be maintained by the State, is conveyed subsequent to such construction or reconstruction, the deed conveying such real property shall contain a statement that such private street or road is not maintained by the State.

(4) Any private road, street or thoroughfare in the State shall be constructed either in accordance with state standards and pursuant to department rules and regulations or pursuant to rules and regulations established by the county. In either event, a mechanism for perpetual maintenance must be established. The State and county shall have concurrent jurisdiction to enforce the requirements of this section by legal or equitable means. The county shall withhold the issuance of building or occupancy permits for any structure abutting such road, street or thoroughfare to insure compliance with the requirements of this section.

(f) The Department of Transportation, Division of Highways, is hereby authorized to inspect all suburban community street construction and to establish and collect fees for the inspection of said street construction in amounts deemed necessary to defray costs of administering this section. All fees collected shall be placed to the credit of the Department of Transportation, Division of Highways.

(g) All roads and streets situated in unincorporated suburban communities throughout the State which were built between July 1, 1951, and July 1, 1975, whether paved or unpaved, shall, upon dedication of a right-of-way to public use, henceforth be under the absolute care, management and control of the Department of Transportation, Division of Highways, and shall be maintained, repaired and reconstructed by the said Department of Transportation, Division of Highways. Said right-of-way shall be determined by the Department of Transportation, Division of Highways, in accordance with physical conditions, but in no case shall be less than 30 feet in width. Dedication of the right-of-way must occur prior to June 30, 1978, to qualify for the aforementioned responsibilities under the auspices of this section.

(h) The Department of Transportation, Division of Highways, is hereby authorized and directed to immediately inventory all streets which may fall within this category and upon completion begin the necessary maintenance. Work to bring these roads up to proper standards, with due consideration for the immediate needs of certain areas, shall be undertaken as time and funds permit.

(i) In connection with the Department's review of subdivision proposals affecting the transportation system, it is authorized to collect fees for the costs of administering the subdivision approval process. The fees for such purposes shall be as follows:

Initial stage fee:

1. Plan review, residential subdivisions of 5 lots or more: $400 plus $10 per lot;

2. Plan review, nonresidential property: $500 plus $20 per lot or $20 per 1,000 square feet of gross floor area, whichever is greater.

Construction stage fee:

1. Residential subdivisions of 5 lots or more: 125% of initial stage fee;

2. Nonresidential property: 150% of initial stage fee.

For review of residential subdivisions of 4 lots or less, in lieu of the staged fees set forth above, there shall be a single fee of $100. If all or a portion of the property subject to this fee is re-subdivided within 10 years of the payment of this fee, that subdivision shall be treated for fee purposes as if planned for 5 lots or more. All fees collected shall be deposited to the credit of the Transportation Trust Fund, established in Title 2.

(40 Del. Laws, c. 107, §§ 1, 2; Code 1935, § 1645; 17 Del. C. 1953, § 131; 50 Del. Laws, c. 380, § 1; 53 Del. Laws, c. 39, § 4; 57 Del. Laws, c. 671, § 1C; 60 Del. Laws, c. 185, § 1; 60 Del. Laws, c. 450, § 1; 60 Del. Laws, c. 503, § 18; 63 Del. Laws, c. 130, § 1; 64 Del. Laws, c. 312, § 1; 71 Del. Laws, c. 150, § 82; 71 Del. Laws, c. 378, §§ 87, 88; 76 Del. Laws, c. 328, § 1.)

§ 132 General powers and duties.

(a) The Department shall acquire full information concerning the roads of this State, the nature and improvement thereof, the needs thereof and the character and amount of traffic thereon and such other details as may be necessary or desirable for the Department to have in the performance of its duty of determining upon and laying out, without regard to any personal advantage or disadvantage or bias toward any person or persons, community or political party or organization, consistent and congruous route or routes of state highways with a view to establishing such a consistent, congruous, comprehensive and permanent system of state highways along the route or routes of travel as will accommodate the greatest needs of the people of this State.

(b) The Department shall:

(1) Determine upon, lay out, construct or reconstruct state highways so as to make roads which, with reasonable maintenance, shall be permanent;

(2) Maintain all state highways under its jurisdiction;

(3) Maintain a system of accounting adequate to give in detail the expenditures of the Department and the costs of its works;

(4) Keep full and accurate minutes of all meetings and records of all proceedings of the Department, which minutes and records shall

be public records;

(5) Reimburse the owner thereof for the expense (as hereinafter defined) of the relocation of public utility facilities necessitated by any project where the State is to be reimbursed by at least 90% of the cost of such project from federal funds or by the federal government or any agency thereof, such expense to be the amount paid by such owner properly attributable to such relocation after deducting therefrom any increase in the value of the new facilities and any salvage value derived from the old facilities;

(6) Install on state land the tile necessary, in the opinion of the Department, to provide adequate entrances and exits to and from the property of adjoining landowners provided:

a. The tile is supplied by the adjoining landowners;

b. The tile conforms to the specifications established from time to time by the Department; and

c. The property is a single residential lot occupied or to be occupied by the land owners and intended for residential use only; or

d. The property is agricultural use land. "Agricultural use land" shall mean land devoted to the production for sale of plants and animals useful to humans, including but not limited to: Forages and sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to soil conversation program under an agreement with an agency of the federal government.

Nothing contained in this subsection shall relieve the Department from the responsibility for replacing tile originally installed by the Department or any governmental agency and subsequently damaged by operations of the Department;

(7) Maintain the Van Buren Street Bridge over the Brandywine Creek;

(8) Provide relocation assistance to persons displaced as a result of the acquisition for highway purposes of real property upon which they live or conduct a business or farm operation in accordance with Chapter 91 of Title 29.

(c) To these ends the Department may do the following:

(1) Determine upon and lay out a system of state highways.

(2) Take over and convert into state highways any public road by whatever name such road or part thereof, or under whatever authority or control such road or part thereof, may have theretofore existed.

(3) Lay out, open, widen, straighten, grade, extend, construct, reconstruct, and maintain any state highway or proposed state highway for the purpose of the improvement of state highways.

(4) Acquire by condemnation or otherwise any land, easement, franchise, material, or property, which, in the judgment of the Department, shall be necessary therefor, provided that the Department may not reconstruct a highway unless there will result a net saving or reconstruction, further provided that § 145 of this title may not be deemed to be inconsistent with the provisions under this paragraph (c)(4).

(5) Have access to and make copies of maps, surveys, data, or information which any state agency may possess concerning any road in the State.

(6) Employ and discharge professional or technical experts, surveyors, agents, assistants, clerks, employees and laborers, skilled and unskilled, and also such advisers and consultants as may be required to accomplish the purposes of the chapter and the other responsibilities of the Department. In the event that the size of the Capital Transportation Program requires overtime to administer in a timely manner, or in the event that: (i) The federal government makes available additional funding for transportation projects which are part of the Department's Capital Transportation Program; and (ii) use of these funds in a particular federal fiscal year is required to access these funds; and (iii) overtime is required to administer the program within that federal fiscal year to assure the use of these funds, then for these purposes the Department may pay overtime moneys to those employed under this subsection, any relevant Delaware law, rule, or regulation to the contrary notwithstanding.

(7) Secure and furnish offices and quarters for the Department.

(8) Exclusively grant franchises and licenses to public service corporations or to corporations furnishing gasoline or petroleum products to the air field installation operated by the federal government in Kent County, to use the state highways, in whole or in part, for a term not exceeding 50 years; provided, however, that any franchise or license granted to any such corporation furnishing gasoline or petroleum products to said air field installation shall restrict the use of said state highways to the transmission of gasoline or petroleum products to said air field installation. Any franchise or license owned by any public service corporation on April 2, 1917, is not be affected by this chapter.

(9) Make and enter into any and all contracts, agreements or stipulations for the execution of the purposes of this chapter.

(10) Purchase all machinery, tools, supplies, material, and instrumentalities whatsoever which may be necessary for the full performance of its duties.

(11) Call upon the Attorney General for the Attorney General's opinion or advice touching its duties or powers.

(12) Accept lands by easement or lease in the name of the State in areas where it is deemed necessary to establish dumping areas for the use of the public, supervise and control all areas so accepted and provide suitable passageways to the dumping areas and further, police the areas in order to prevent the spread of pests and disease and make such other regulations and rules as shall be deemed necessary for the purpose of carrying out the intent and purpose of this paragraph.

(13) Enter upon the lands or waters of any person for the purpose of surveys, repairs, reconstruction, and operation of publicly financed improvements but subject at all times to responsibility for all and any damages which shall be done to the property of any such person or persons. Water levels to be maintained back of publicly financed sluices, water control structures, dams, and similar structures shall be at a level that will not cause damage to adjoining property, such as seepage of water into basements and wells, and that no lands may be flooded without the owners' full consent.

(14) Place vending machines or other items that will enable drivers to be more rested and refreshed in safety roadside rest areas, unless prohibited by federal laws, rules, or regulations. Any profits derived from such items must be credited to the Department of Transportation Safety Roadside Rest Area Fund.

a. There is hereby created within the State Treasury a special fund to be designated as the Department of Transportation Safety Roadside Rest Area Fund which must be used in the operation and maintenance of the roadside rest areas under the jurisdiction of the Department.

b. Any profits realized by the Department from items available at existing roadside rest areas that are for the purpose of enabling drivers to be more rested and refreshed must be deposited in the State Treasury to the credit of said Department of Transportation Safety Roadside Rest Area Fund. Such profits must be used by the Department for the operation and maintenance of the safety roadside rest area facilities within its jurisdiction.

(d) The Department may also do whatever is incidental and germane to the scope of the duties and powers conferred on it by law.

(e) The general powers and duties conferred upon the Department by this section shall be exercised by it by the establishment and supervision of any and all policies pursuant to which such powers and duties shall be carried out.

(f) Whenever the Department of Transportation widens, constructs or reconstructs any major arterial, minor arterial, collector road or proposed road in an urbanized area of this State, the Department shall incorporate within such plans, layout, widening, construction or reconstruction the construction of sidewalks, provided there is a need for sidewalks or that it can be reasonably anticipated that the need for sidewalks will exist. The Department shall have the responsibility for determining whether such need for sidewalks does or will exist for all or any part of any such project and, before arriving at a decision as to the need of such sidewalk construction, shall consult with the county department of planning, the State Planning Office, the Department of Education and the local school district in which the proposed new road construction or road widening construction is to take place. The cost of such sidewalk construction shall be included in the total cost of the new road construction or road widening project. This subsection shall apply only to projects funded pursuant to acts authorizing the State to borrow money and issue bonds and notes for capital improvements, enacted after January 1, 1973.

(g) The Department shall have exclusive original supervision and regulation of all public carriers and also over their property, property rights, equipment, facilities, franchises, rates, fares, tariffs, regulations, practices, measurements and services.

(h) The Department may work in conjunction with any political subdivision of the State and with any private organization to plan and construct such bicycle and pedestrian transportation facilities as may be appropriate. In carrying out this portion of its overall program, the Department may take into consideration in scheduling its projects those in which the affected local community is willing to contribute a matching share (whether in cash, rights of way, or other in-kind services) in order to accomplish the project.

(i) (1) The Department shall deploy, operate, and maintain technological systems for the automated monitoring, analysis, and management of transportation infrastructure and traffic operations, including the continued operation of the Delaware Public Crash Database.

(2) The technological systems required under paragraph (i)(1) of this section may include intelligent transportation systems, automated traffic monitoring devices, roadway condition sensors, digital imaging systems, artificial intelligence-based analytical tools, and other technologies designed to improve the efficiency, safety, and performance of the transportation network.

(29 Del. Laws, c. 63, § 5; Code 1935, § 5722; 17 Del. C. 1953, § 132; 49 Del. Laws, c. 262; 51 Del. Laws, c. 141, § 1; 51 Del. Laws, c. 328; 52 Del. Laws, c. 295; 53 Del. Laws, c. 39, §§ 5, 6, 13; 54 Del. Laws, c. 251; 55 Del. Laws, c. 14; 56 Del. Laws, c. 101; 57 Del. Laws, c. 327, § 1; 57 Del. Laws, c. 671, § 1F; 57 Del. Laws, c. 754, § 2; 58 Del. Laws, c. 585; 59 Del. Laws, c. 393, § 4; 60 Del. Laws, c. 386, § 1; 60 Del. Laws, c. 503, § 18; 62 Del. Laws, c. 384, § 1; 68 Del. Laws, c. 98, § 1; 68 Del. Laws, c. 156, § 47; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 65, § 19; 73 Del. Laws, c. 351, § 1; 75 Del. Laws, c. 98, § 95; 83 Del. Laws, c. 37, § 33; 85 Del. Laws, c. 344, § 9.)

§ 133 Road improvements; additions to state system.

With respect to roads or portions thereof, the Department shall determine which if any, shall be improved and which, if any, shall be added to the state highway system.

(29 Del. Laws, c. 63; 34 Del. Laws, c. 81; Code 1935, § 5724; 17 Del. C. 1953, § 133; 53 Del. Laws, c. 39, § 7; 57 Del. Laws, c. 671, § 1G.)

§ 134 Authority in incorporated towns and cities; construction and maintenance of highways; local authority.

(a) The Department shall have no power, authority or jurisdiction of the streets of any incorporated city or town, except as otherwise provided in this section, unless such power, authority and jurisdiction shall be voluntarily given and surrendered by such city or town to the Department and then only upon such terms as the Department shall prescribe.

(b) When in the judgment of the Department the route for the construction or reconstruction of any state highway should continue through any incorporated city or town, the Department shall construct and maintain the highway through such incorporated city or town,

such construction and maintenance to be at the sole expense of the Department. Whenever the Department shall construct a state highway through any incorporated city or town, it shall not change the widths of the streets of the city or town, except with the consent of the duly constituted governing body of the city or town.

(c) Whenever the Department shall construct a state highway through an incorporated city or town, it shall have the whole and sole control over such construction and over the maintenance of the highway through the city or town, and such highway shall not be undermined, broken open or anywise torn up for any purpose, except by the permit in writing of the Department.

(d) With respect to state highways within their corporate limits, incorporated cities and towns in the State may erect and maintain such traffic control signals as shall be authorized by proper ordinance of the city or town and by the Department.

(e) Local authorities, on the basis of an engineering study and traffic investigation within their respective jurisdictions, may prohibit the operation of trucks or other commercial vehicles or impose limitations as to the weight thereof on designated highways which prohibitions and limitations shall be posted as set forth in § 4505 of Title 21; except that the alteration of weights or the prohibitions of trucks or other commercial vehicles shall not be effective on any state-maintained highway until such alteration has been approved by the Department.

(f) Local authorities, within their respective jurisdictions, may create "historic districts" which encompass 1 or more state-maintained roads, and the standards for traffic signs and traffic markings on any such road may be altered by the Department of Transportation to be more compatible with the time period of the historic district, unless:

(1) The posted speed limit on the road is above 25 miles per hour;

(2) There are more than 2 through-travel lanes on the road;

(3) The road is a U.S. or Delaware route; or

(4) The road has no reasonable alternative route which can adequately handle the traffic.

Any traffic signs or traffic markings that are proposed under this subsection must be approved by the Department of Transportation.

(g) Each rule and regulation adopted pursuant to this section shall be in the form of a resolution signed by the Secretary or the Secretary's designee. A permanent record of these shall be kept by the Department and at the time of adoption a copy of each shall be forwarded to the Department of Safety and Homeland Security, to the New Castle County Police, if within their jurisdiction, and to the incorporated city or town in which the highway lies.

(h) Pursuant to this section, the Department is authorized to perform all engineering studies and traffic investigations necessary to implement this section and Chapter 41 of Title 21, and to install, maintain, operate and remove all traffic-control devices necessary to comply with this section and Chapter 41 of Title 21. Where concurrent authority is granted, the incorporated town or city shall have the responsibility for traffic-control devices.

(i) Nothing in this section shall be construed as granting to the Department or to the local jurisdiction the right to make any rules and regulations respecting the use of highways in incorporated areas contrary to the Code.

(29 Del. Laws, c. 63, § 5; 30 Del. Laws, c. 69; 32 Del. Laws, c. 53; Code 1935, §§ 5722, 5728; 17 Del. C. 1953, § 134; 60 Del. Laws, c. 701, § 1; 66 Del. Laws, c. 127, §§ 1, 2; 74 Del. Laws, c. 110, § 138; 84 Del. Laws, c. 85, § 1.)

§ 135 Authority to construct dual and express highways.

(a) The Department may divide or separate any state highway into separate roadways wherever there is particular danger to the travelling public of collision between vehicles proceeding in opposite directions or from cross traffic, by constructing curbs, central dividing parkways or other physical separations, or by signs, marks or other devices, in or on the roadway, appropriate to designate the dividing line.

(b) The Department may designate as express highways, and control public or private access thereto, the westerly approach or approaches to the Delaware Memorial Bridge and any road or roads heretofore or hereafter constructed by the Department for the purpose of connecting such Bridge or its westerly approach or approaches with any existing highway in this State.

(34 Del. Laws, c. 78; Code 1935, § 5758; 45 Del. Laws, c. 270; 46 Del. Laws, c. 127; 47 Del. Laws, c. 406, §§ 1, 3; 17 Del. C. 1953, § 135.)

§ 135A Authority to construct low-speed local streets and local roads.

(a) The Department may plan, designate, construct, operate, and maintain low-speed local streets or roads to improve safety in accordance with a safe system approach by implementing proven safety countermeasures, including the following:

(1) Implementing roadway reconfigurations.

(2) Narrowing travel lanes or edge line striping.

(3) Constructing raised medians, pinch points, chicanes, speed humps, speed tables, roundabouts, traffic circles, or diverters.

(4) Implementing corridor access management.

(5) Reducing clear zone conflicts.

(6) Altering the operation of signals.

(7) Other means found appropriate by the Department.

(b) The Department shall design such designated low-speed streets or roads so that they have no more than 2 through-travel lanes for motor vehicles and with a goal that the free-flowing eighty-fifth percentile motor vehicle traffic speeds are 25 miles per hour or less in municipalities and 35 miles per hour or less in unincorporated areas. Such designated local streets and local roads shall be especially designed for local traffic to safely access abutting properties at low speed. In addition, the Department shall develop and implement design

standards for low-speed streets or roads in accordance with a safe system approach to meet the goals of this section, including traffic calming, diversion of motor vehicle through traffic, and the protection of vulnerable users to reduce or eliminate safety risks on designated low-speed local streets and roads.

(c) The Department shall publish annually county specific maps and lists identifying locations of fatal and serious injury crashes in all primary emphasis areas included in the Strategic Highway Safety Plan.

(d) As used in this title, "safe system approach" means working in a comprehensive way and in cooperation with other Delaware state agencies, county, and local governments to improve all aspects of roadway safety through the following 5 initiatives:

(1) *Safe road users. —*

Providing education and training programs to improve behavior for all users of the road.

(2) *Safe vehicles. —*

In addition to the requirements under Title 21, implementing technologies in the roadway infrastructure that can prevent crashes or lessen their severity.

(3) *Safe speeds. —*

Setting and enforcing speed limits based on what the road and surrounding environment can safely accommodate for all roadway users.

(4) *Safe roads. —*

Designing and maintaining all elements of the State's roadway infrastructure to be forgiving of user mistakes and minimize the impact of crashes on human life.

(5) *Post-crash care. —*

Implementing emergency response systems on the State's roadway network and technology infrastructure to enable efficient delivery of critical care to those involved in crashes.

(84 Del. Laws, c. 515, § 1.)

§ 136 Improvements of roads leading to institutions.

The Department may widen, straighten, grade, reconstruct and otherwise improve and maintain any road, lane or entrance leading from any public road to any institution which is owned or controlled in whole or in part by the State. The Department shall have the same rights, powers and privileges for the purpose of performing and carrying out the duty hereby imposed as it has for the purpose of constructing state highways in general.

(29 Del. Laws, c. 63, § 5B; 37 Del. Laws, c. 75; Code 1935, § 5729; 17 Del. C. 1953, § 136; 53 Del. Laws, c. 39, § 8; 57 Del. Laws, c. 671, § 1H.)

§ 137 Acquisition and sale of real property.

(a) (1) The Department, in the name of the State, is authorized by law to acquire property and property rights, including rights to access, air, view, and light, for the purposes set forth in this section and within its jurisdiction. The Department may only acquire private or public property and property rights needed for the purposes listed in paragraph (a)(1)a. of this section and through the means listed in paragraph (a)(1)b. of this section. Property rights so acquired must be in fee simple absolute or such lesser interest as the Department may deem appropriate. Except as provided in paragraph (a)(2) of this section, no acquisition of real property or property rights may be made without Department approved final right-of-way plans by parcel depicting the proposed acquisitions and that approval coming only after the project has been developed and plans prepared in accordance with all applicable governing laws, rules and regulations pertaining to the development of transportation projects.

a. The Department, in the name of the State, may only acquire private or public property and property rights needed for the following purposes:

1. To provide public throughfares such as pathways, roads, streets, or highways.

2. To preserve the traffic capacity in existing thoroughfares in accordance with § 145(d) of this title.

3. For sidewalks, bus shelters, parking areas in support of public transit, maintenance yards, and similar public transportation related facilities.

b. The Department, in the name of the State, may acquire private or public property rights through any of the following means:

1. By gift.

2. By devise.

3. By purchase.

4. By the exercise of the power of eminent domain where the private or public property and property rights may be acquired by condemnation by proceeding in the manner prescribed in Chapter 61 of Title 10.

5. Be authorized by law to acquire such property or property rights for the purposes set forth in this section and within its jurisdiction.

(2) The acquisition of real property by the Department in advance of final right-of-way plan approval, shall be reviewed by a committee consisting of the Secretary of the Department of Natural Resources and Environmental Control, the Secretary of the Department of Transportation, the Secretary of the Department of Agriculture, the Director of the Division of Small Business, the Governor's Chief of Staff, a member of the Senate designated by the President Pro Tempore of the Senate, a member of the House of

Representatives designated by the Speaker of the House of Representatives, a member of the public designated by the President Pro Tempore of the Senate and a member of the public designated by the Speaker of the House of Representatives to determine the consistency of such action with the State's overall goals for land use planning. If it determines that the acquisition will be inconsistent with State planning goals, the committee may disapprove the acquisition.

(3) The Department shall provide to the Governor and General Assembly, on or before December 31 of each year, a report identifying all properties acquired in the preceding 12 month period in connection with acquisitions made pursuant to paragraph (a)(2) of this section.

(4) For the purposes of acquiring real property for pathways that go through dedicated open space in a recorded residential subdivision, where the proposed pathway is not adjacent to the existing right of way, the Department is not authorized to exercise its eminent domain power to acquire land for such pathway, unless a majority of the residents of the recorded residential subdivision vote to approve within 90 days of notice of its intent to exercise its eminent domain power by the Department. There will be 1 ballot per residence and the ballot may be cast by paper ballot, by proxy, by signing a petition, or electronically from a confirmed valid email address for a resident.

(b) When any property heretofore or hereafter acquired by the Department by gift, devise, purchase or condemnation is no longer needed for transportation purposes the Department shall attempt to dispose of the property as follows:

(1) If at the time of the Department's determination to dispose of the property, the property is subject to a revenue producing lease agreement which has been in force for a period of at least 5 years, the Department shall, in writing, notify the tenant that the property is no longer needed for transportation purposes. Such notice shall inform the tenant of the Department's desire to sell the property, and include a copy of the Department's approved appraisal and a purchase agreement containing the terms and conditions for sale to the tenant. The sale price shall not be less than the approved appraised value. If the tenant elects to purchase the property, the tenant shall execute and return the purchase agreement to the Department within 30 days of such notice. Such notice is not required if the tenant has, in writing, waived any desire to purchase the property, or if the property is subject to multiple leases. Failure of the tenant to respond to the notice within 30 days shall constitute a waiver of the tenant's rights hereunder.

(3) If the provisions of paragraphs (b)(1) and (2) of this section have been satisfied without sale, the Department shall determine if the property has independent utility and in such cases shall offer the property for sale to the general public at a public auction sale. The Department shall notify the public of the sale by posting a "Notice of Sale" on the property at least 2 weeks before the sale and by publishing a "Notice of Sale" for at least 1 day a week for 2 consecutive weeks in a newspaper having general circulation in the county where the property is located. The "Notice of Sale" shall describe the property to be sold, state the date, time, location of the sale, terms and conditions, and amount of the minimum acceptable bid. The public sale may be conducted by Department personnel or the Department may retain an outside contractor to handle the sale. At the conclusion of the sale, the Department's representative shall announce the name of the highest bidder and the amount of the bid. The Department's representative shall record the results of the sale including the name and amount of the next highest bid. The Department shall have the authority to accept or reject the highest bid as long as such bid is equal to or greater than 85 percent of the approved appraised value. The Department shall offer the property for sale at a price not less than 85 percent of the approved appraised value and shall reject any bid of a lesser amount. The Department may reject any bid for due cause. If the sale is confirmed and the highest bidder defaults, the Department may proceed to the next highest acceptable bidder. In the event that the Department does not receive an acceptable bid, the public sale shall be deemed concluded. The Department may proceed to dispose of the property through absolute auction for whatever price can be obtained, subject, however, to unanimous written approval of the selling price from the Controller General and the Director of the Office of Management and Budget.

(5) Notwithstanding any other provisions of this section, the Department may convey property by direct sale or trade to an owner of other property which is being acquired for transportation purposes. Such sale shall not abridge the provisions of paragraphs (b)(1) and (2) of this section. The Department shall receive in return a price and/or compensatory property valued at not less than the approved appraised value.

(6) Notwithstanding any other provisions of this section, the Department may convey property by direct sale to a public utility company when such property is needed for public utility purposes, provided the Department receives in return a price not less than the approved appraised value.

(7) a. Notwithstanding any other provisions of this section, the Department may convey property to other governmental entities for public purposes, on terms acceptable to the Department and other agency.

b. Notwithstanding any other provisions of this section or Chapter 9 of Title 3, the Department may convey property to the Delaware Agricultural Lands Preservation Foundation on terms acceptable to the Department and the Foundation.

c. Notwithstanding any other provisions of this section or Chapter 75 of Title 7, the Department may convey property to the Delaware Open Space Council on terms acceptable to the Department and the Council.

(2) If the provisions of paragraph (b)(1) of this section do not apply, or were forfeited through lack of response, or were waived by the tenant, or the tenant fails to comply with the terms and conditions of the purchase agreement, the Department shall, in writing, notify the owner from whom the property was acquired, if the property had been acquired within the immediately preceding 5 years, that the property is no longer needed for transportation purposes. In the event that the previous owner is deceased, the Department may proceed with the provisions for sale identified in paragraph (b)(3) of this section. Such notice shall inform the prior owner of the Department's

desire to sell the property at the approved appraised value, and shall include a copy of the Department's approved appraisal and a purchase agreement containing the terms and conditions for the sale to the prior owner. The sale price shall not be less than the approved appraised value. If the prior owner elects to purchase the property, the prior owner shall execute and return the purchase agreement to the Department within 30 days of such notice. Such notice is not required if the prior owner has, in writing, waived his/her right to repurchase the property. Failure of the prior owner to respond to the notice within 30 days shall constitute a waiver of their rights hereunder.

(4) Notwithstanding any other provisions of this section, the Department may determine that the property has minimal independent utility for reasons such as, but not limited to, lack of access, irregular shape, poor topography or hydrology, small size and nominal value (less than $25,000, or current approved threshold determined by the Federal Highway Administration, in the opinion of the Department's Chief Review Appraiser or qualified independent appraiser). In such event the Department may, without having to perform an appraisal of the property, sell or otherwise convey such property to an adjoining property owner or an organized community civic association or maintenance association for use as community open space at a price to be negotiated by the parties. The Department shall notify all adjoining property owners in writing of the property availability and provide 2 weeks for adjoining property owners to express interest in purchasing the property. In cases where more than 1 adjoining property owner indicates an interest in purchasing the property, the Department may elect to offer the property for sale via sealed bid to the highest bidder, or to divide the property to accommodate the interests of all interested owners.

(8) As used in this subsection, "approved appraised value" means:

a. When the estimated value of the property is not more than $25,000, as determined by the Department's Chief Review Appraiser or qualified independent appraiser.

b. When the estimated value of the property exceeds $25,000, as determined by a qualified independent appraiser, reviewed and approved by a qualified Department review appraiser.

(9) Property rights disposed of pursuant to this section may be in fee simple absolute or such lesser interest as the Department may deem appropriate.

(10) "Notice," as required in paragraphs (b)(1) and (2) of this section, shall be sent by certified mail, return receipt requested, addressed to the tenant or previous owner at the last known postal address obtained after diligent inquiry. If after diligent inquiry a postal address cannot be found, the Department shall publish a notice for at least 1 day a week for 2 consecutive weeks in a newspaper having general circulation in the county in which the property is located. Such published notice shall set forth the name or names of the tenant or previous owner to whom it is directed, that the Department desires to sell the property, a brief description of the property to be sold and the date by which the Department must receive a response. The return receipt of the notice, whether signed, refused or unclaimed, or a copy of the published newspaper notice shall be held and considered to be prima facie evidence of the service of the notice.

(11) The Department shall provide to the Governor and the General Assembly on or before December 31 of each year, a report identifying by size and location all properties being held for projects, properties deemed surplus or excess properties, dates of acquisition, purchase price, previous owner, date the property was determined to be excess or surplus, dates and nature of actions undertaken to dispose of such surplus or excess properties, and approximate fair market value of each. If properties are deemed nonmarketable they must be identified as such. The report must further identify all properties disposed of during the previous year by size and location, date of disposition, appraised value if appraised, amount received from disposition and name of the purchaser, purchasers or owners, including equitable owners.

(36 Del. Laws, c. 106; Code 1935, §§ 5759, 5759A; 43 Del. Laws, c. 264, § 1; 47 Del. Laws, c. 406, § 3; 17 Del. C. 1953, § 137; 58 Del. Laws, c. 256, § 1; 60 Del. Laws, c. 550, § 1; 63 Del. Laws, c. 103, § 1; 65 Del. Laws, c. 75, § 1; 69 Del. Laws, c. 138, § 1; 70 Del. Laws, c. 166, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 257, § 1; 71 Del. Laws, c. 226, § 3; 71 Del. Laws, c. 235, §§ 1-3; 75 Del. Laws, c. 88, §§ 21(9), 33; 80 Del. Laws, c. 246, § 1; 81 Del. Laws, c. 49, § 14; 81 Del. Laws, c. 225, § 1; 81 Del. Laws, c. 374, § 43; 83 Del. Laws, c. 470, § 1; 84 Del. Laws, c. 42, § 1; 85 Del. Laws, c. 406, § 1.)

§ 138 Acquisition of uneconomic remnants of land along right-of-way.

In addition to the powers now vested in the Department for the acquisition of lands or rights therein by virtue of any statute, the Department may, in its discretion, acquire by gift, devise, purchase or in the exercise of the power of eminent domain, acquire by condemnation by proceeding in the manner prescribed in Chapter 61, Title 10, an entire lot, block or tract of land, if by so doing the interest of the public will be best served even though said entire lot, block or tract is not needed for the right-of-way proper, but only if the portion outside the normal right-of-way is landlocked or is so situated so as to give rise to claims or litigation concerning severance or other damage, the cost of acquisition to the State will be practically equivalent to the total value of the whole parcel of land and the parcel remaining is of little value to the owner.

(29 Del. Laws, c. 63, § 11; Code 1935, § 5730; 43 Del. Laws, c. 264, § 2; 47 Del. Laws, c. 406, § 3; 17 Del. C. 1953, § 138; 58 Del. Laws, c. 256, § 2.)

§ 139 Notice to landowners; written claim for damages.

After the Department has determined upon the road or roads which shall be maintained as state highways, it shall cause notice thereof to be sent by mail, a record of which shall be preserved, to all persons owning property abutting upon or contiguous to such road or roads, and

any such owner or the legal representative of any such owner, who after such notice has been given shall construct any building within 60 feet of the center line of any such road, shall be allowed no compensation for such building, upon the condemnation thereof, or the land upon which it is situated, unless such owner shall serve written notice upon the Department within 3 months from the time that the owner receives such notice that the owner claims damages.

(29 Del. Laws, c. 63, § 11; Code 1935, § 5730; 17 Del. C. 1953, § 139; 70 Del. Laws, c. 186, § 1.)

§ 140 Educational and safety campaigns.

(a) The Department may conduct throughout the State an educational campaign on street and highway safety.

(b) Such campaign shall be conducted by the Department in the manner which it deems most beneficial to accomplish the purpose thereof, and the Department may use and employ the facilities of the Delaware Safety Council, Delaware Automobile Association and any similar organization.

(38 Del. Laws, c. 55, §§ 1, 2; Code 1935, §§ 5762, 5763; 42 Del. Laws, c. 77, § 1; 44 Del. Laws, c. 197; 17 Del. C. 1953, § 140.)

§ 141 Regulation of traffic; exceptions.

(a) The Department shall have jurisdiction and control of all state highways of this State outside of the limits of incorporated cities and towns for the purpose of regulating traffic and for the use and operation of all vehicles thereover, and may adopt any and all rules and regulations respecting the use of such highways and the operation of all vehicles upon the same.

(b) Each rule and regulation adopted pursuant to this section shall be in the form of a resolution signed by the Secretary or the Secretary's designee. A permanent record of these shall be kept by the Department and at the time of adoption a copy of each shall be forwarded to the Department of Safety and Homeland Security and to the New Castle County police, if within their jurisdiction.

(c) (1) Under this section, the Department may perform all engineering studies and traffic investigations necessary to implement this section and Chapter 41 of Title 21, and to install, maintain, operate, and remove all traffic control devices necessary to implement Chapter 41 of Title 21 and regulations adopted under Chapter 41 of Title 21.

(2) An engineering study or traffic investigation conducted by the Department under paragraph (c)(1) of this section may include automated or continuous data collection systems, remote sensing technologies, digital imaging, algorithmic analysis of traffic patterns, and other technological methods used to evaluate roadway safety, traffic operations, and infrastructure conditions.

(d) The Department, on the basis of engineering studies and traffic investigations, may prohibit the operation of trucks or other commercial vehicles or impose limitations as to the weight thereof on designated highways which prohibitions and limitations shall be posted as set forth in § 4505 of Title 21.

(e) Nothing in this section shall be construed as granting the Department the power to make any rules and regulations respecting the use of highways contrary to Delaware law.

(29 Del. Laws, c. 63; 34 Del. Laws, c. 78; Code 1935, § 5758; 45 Del. Laws, c. 270; 17 Del. C. 1953, § 141; 60 Del. Laws, c. 701, § 2; 66 Del. Laws, c. 407, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 138; 85 Del. Laws, c. 344, § 10.)

§ 142 Automobile for use of Governor.

The Department shall provide an automobile to the Governor of the State, suitable and befitting the office of Governor, for the use of the Governor. The Department shall provide a new automobile for such use during each biennium beginning with the biennium beginning July 1, 1959. The Department shall dispose of any automobiles replaced pursuant to this section in the same manner as are disposed other Department vehicles.

(17 Del. C. 1953, § 144; 52 Del. Laws, c. 55.)

§ 143 Expenses of alteration or relocation of facilities or structures of public utilities.

(a) As used in this section:

(1) "Facility" includes, but is not limited to, structures and appliances and their appurtenances, poles, wires, conductors, transformers, substations, manholes, vaults, valves, conduits, sewer pipes, gas mains, regulator stations, water pipes, water distribution facilities, and service lines;

(2) "Public utility" means a utility defined in § 102(4) and (10) of Title 26.

(b) If required by reason of the construction, reconstruction, relocation, repair, or maintenance of a public highway, the Department of Transportation shall, at its sole expense, make any necessary alteration or relocation of the facilities owned and/or operated by a public utility of a municipality or of any governmental body or political subdivision of the State.

(c) The Department may enter into an agreement with a nonmunicipal or other nongovernmental public utility to reimburse it for up to 50 percent of the cost of the public utility facility's alteration or relocation as part of a highway construction, reconstruction, relocation, repair, or maintenance project if:

(1) The existing public utility facility is located within a highway or public right-of-way by grant of franchise; and

(2) The alteration or relocation is necessitated by special circumstances, including, but not limited to:

a. A major economic development project in which the public utility's cooperation is critical to accomplishing the project in a timely manner;

b. Recovery from natural disasters such as storms or floods; or

c. Compelling benefit to the traveling public.

(d) The determination of whether special circumstances exist under paragraph (c)(2) of this section vests solely with the Secretary. The Secretary shall make written findings detailing the nature of the special circumstances and the costs and benefits to the State in altering or relocating a public utility facility. The determination of the Secretary is a public record. The Secretary shall forward a copy of the determination to the Public Service Commission for filing with the public records of the Commission.

(e) If construction specifications for the alteration or relocation of a nonmunicipal or other nongovernmental public utility facility, authorized by the Department as part of a highway construction, reconstruction, relocation, repair, or maintenance project, require the use of unique materials or supplies, the Department may enter into an agreement with the public utility for the use of the unique materials or supplies in advance of the construction contract. If the public utility is required to store the unique materials or supplies for more than 60 days prior to their incorporation into the construction work, the Department shall enter into an agreement with the public utility to reimburse the public utility for all or a portion of the actual cost incurred for the storage of the unique materials or supplies.

(f) If the Department determines that it is beneficial to enter into an agreement with a nonmunicipal or other nongovernmental public utility for the alteration or relocation of its facilities in advance of the commencement of a highway construction, reconstruction, relocation, repair, or maintenance project, the agreement may include provisions for the Department to reimburse the public utility for increased expenses incurred as a result of the advanced move, including, but not limited to, expenses for the maintenance of traffic, tree and vegetation removal, grubbing, grading, test holes, and surveying.

(g) (1) The Department shall reimburse a nonmunicipal or other nongovernmental public utility for the cost of altering or relocating its facility due to a highway construction, reconstruction, relocation, repair, or maintenance project under each of the following circumstances:

a. The Department requires a second alteration or relocation of the same public utility facility within 10 years from the date of completion of the initial alteration or relocation;

b. The Department alters its plan of construction for the project at any time before its completion, in a manner that requires the public utility to alter or relocate its facility that has already been fully or partially altered or relocated in connection with the project;

c. The Department cancels or does not commence a highway construction, reconstruction, relocation, repair, or maintenance project within a period of 2 years from the date of authorization;

d. The Department requests a temporary alteration or relocation of the public utility facility.

(2) The amount of reimbursement to be paid to a public utility under this subsection is the entire cost of alteration or relocation minus any increase in the value of the altered or new facility and any salvage value derived from the old facility.

(h) The Department and a nonmunicipal or other nongovernmental public utility may agree to include in a construction contract between the Department and the Department's contractor or subcontractor a provision to identify specific facility alteration or relocation construction items which will be performed by the Department's contractor or subcontractor instead of by the public utility. The construction items may include, but are not limited to, adjusting manholes and installing conduits, valve boxes, and concrete pads. As part of the agreement, the public utility must agree to reimburse the Department or the Department's contractor or subcontractor for the construction items.

(i) The Secretary may enter into an agreement with a nonmunicipal or other nongovernmental public utility that owns or maintains poles in public rights-of-way to attach Department road signs to the poles under such terms and conditions as the public utility considers necessary in order to provide for the safety of the public utility's employees and contractors and to avoid interference with the public utility's operations. The authority given to the Department in this subsection does not alter the public utility's right to refuse access to its poles if it believes that such access would create a safety hazard or interfere with its operations. If the Department attaches a sign to a pole owned or maintained by a public utility, a person alleging injury to person or property as a result of the attachment has no cause of action against the public utility.

(j) The Department may enter into an agreement with a nonmunicipal or other nongovernmental public utility regarding the alteration or relocation of the public utility's facilities to reimburse the public utility for the public utility's additional expenses incurred due to the enhancement of the public utility's facilities or of its equipment design, location, placement, or specification, if, in the judgment of the Department, the enhancement will result in net cost savings to the Department, will expedite the project, or will otherwise result in increased public benefit and convenience.

(17 Del. C. 1953, § 145; 53 Del. Laws, c. 321; 74 Del. Laws, c. 297, § 1; 85 Del. Laws, c. 315, § 1.)

§ 144 Millsboro Pond Dam; construction and maintenance.

The Department may construct, reconstruct, maintain and repair a dam across the Millsboro Pond at the site of a presently existing dam adjacent to the Indian River.

(17 Del. C. 1953, § 146; 53 Del. Laws, c. 338, § 1.)

§ 145 Corridor capacity preservation.

(a) *Application.* — This section is applicable only to transportation routes categorized as corridor capacity preservation projects as described herein.

(b) *Definitions.* — As used in this section:

(1) "Comprehensive development plan" means a comprehensive land use plan, master plan or comprehensive plan as provided in Title 9, 22, or 29.

(2) “Corridor” means a particular route of 1 or more highways of this State, serving predominantly statewide and/or regional travel at a high level of service at the time of the analysis conducted under subsection (d) of this section.

(3) “Corridor capacity” means the ability of a corridor to sustain its level of service for a period of at least 10 years and for up to 20 years.

(4) “Department” means the Department of Transportation.

(5) “Preservation” means to maintain corridor capacity.

(c) *Findings.* — (1) Pursuant to federal and state law, the Department is required to develop long-range plans and principles to consider the various appropriate means of meeting the transportation needs of the State. This work is coordinated with the planning efforts of metropolitan planning organizations pursuant to 23 U.S.C. § 134 et seq. As part of these long-range plans and principles, the Department may identify transportation routes requiring corridor capacity preservation in order to:

a. Focus development toward existing locations;

b. Reduce the need for expansion of the transportation system; and

c. Otherwise advance the quality of life of Delawareans and the development policies adopted by the Cabinet Committee on State Planning Issues.

(2) Pursuant to the Quality of Life Act of 1988, Chapters 26, 49, and 69 of Title 9, as well as the Land Use Planning Act, Chapter 92 of Title 29, each county of this State is required to adopt a comprehensive development plan to guide and control future development. Each plan, which is to have the force and effect of law, includes among its purposes the facilitation of the adequate and efficient provision of transportation. These plans are reviewed by the Cabinet Committee on State Planning Issues to determine their compliance with the State’s development policies, including the Department’s long-range plans and principles. The State is under no obligation to provide infrastructure improvements to support land use or development actions where a county’s comprehensive plans are inconsistent with the State’s policies. In addition, pursuant to Chapter 3 of Title 22, municipalities are also required to develop comprehensive development plans, with relief of congestion constituting one of the goals of such plans. As part of this coordinated process, therefore, the comprehensive development plans adopted by the counties and municipalities should incorporate the Department’s designation of transportation routes requiring corridor capacity preservation.

(3) This legislation is intended to facilitate the acquisition of property interests sufficient to provide corridor capacity preservation in keeping with these comprehensive development plans and the Department’s long-range plans.

(d) *Implementation.* — On or before October 1, 1996, and every 3 years thereafter, under 23 U.S.C. § 134 et seq., the Department’s long-range plans shall propose transportation routes requiring corridor capacity preservation, if any. The determination of these routes shall be based upon the following criteria: Level of service analysis; input and comment from the counties and municipalities to the need within growth areas; development trends; traffic growth; additional threats to roadway integrity; safety; support for long range planning goals of the Department and any relevant metropolitan planning organization; deliverability; economic impacts; social or environmental impacts; and air quality. The location of these routes shall be submitted to the local government bodies of the counties and municipalities for review and then presented to the public at a public hearing. The local governing bodies shall have 90 days to review the locations and respond to the Department. The Department shall, after considering public comments and the responses of the local governing bodies of the municipalities and counties, determine those routes requiring corridor capacity preservation. Each county and municipality shall incorporate these determinations into their comprehensive development plans or amendments thereto. Any subsequent Departmental corridor capacity preservation projects shall be subject to the same approval process as other capital projects. When approved by the Council on Transportation and adopted by the General Assembly, the Department may then proceed to pursue these projects as set forth each year in the Department’s Capital Transportation Program. Property interests acquired for these projects under this section shall be in fee simple absolute or such lesser interest as the Department may deem appropriate. Acquisition of such property interests may be obtained by gift, devise, purchase, or in the exercise of the power of eminent domain, by condemnation in the manner prescribed in Chapter 61 of Title 10, subject to the provisions of Chapter 95 of Title 29.

(e) *Effect on other powers.* — The powers conveyed to the Department by this section are in addition to and not in derogation of any other powers it may have related to corridor capacity preservation, including but not limited to the power to seek voluntary compliance with its policies, to regulate subdivision streets intended for state maintenance, and the power to regulate access to and from state-maintained highways.

(17 Del. C. 1953, § 147; 57 Del. Laws, c. 754, § 1; 70 Del. Laws, c. 523, § 1; 83 Del. Laws, c. 37, § 34.)

§ 146 Access to state-maintained highways.

(a) (1) Subject to paragraph (a)(2) of this section, the Department shall adopt standards, regulations, and fees for the location, design, construction, reconstruction, maintenance, use, and control of vehicular and pedestrian access to and from any state-maintained highway in order to protect public safety, to maintain smooth traffic flow, to maintain highway right-of-way drainage, to regulate drainage from property leading into or carried by the highway drainage system, and any other public purpose, as determined by the Department.

(2) The standards and regulations adopted by the Department under paragraph (a)(1) of this section must include the following:

a. That the Department’s threshold for determining if a traffic impact study is required for a proposed land use change or development, or new access for an existing land use, with access to and from any state-maintained highway, must be based on peak-hour trips, not vehicle trips per day, and must at least meet the following:

1. For a residential development, 500 peak-hour trips.

2. For all other development, 500 peak-hour trips, excluding pass-by trips.

b. That if a proposed land use change or development, or new access for an existing land use, with access to and from any state-maintained highway requires a traffic impact study under standards and regulations adopted by the Department, any required off-site improvement must be credited against the transportation impact fee required under § 507(b) of this title.

c. That a traffic impact study is not required for a proposed land use change or development, or new access for an existing land use, with access to and from any state-maintained highway in a "Downtown Development District" or "Downtown Development Corridor," as defined under § 1902 of Title 22.

(b) No person, firm, or corporation shall construct, open, reconstruct, maintain, modify or use any crossing or entrance onto a state-maintained highway, street or road, including any drainage modifications leading into or carried by the highway drainage system, without first having complied with standards and regulations adopted by the Department and having obtained a permit issued by the Department.

(c) Any person, firm, or corporation who constructs, opens, reconstructs, maintains, uses or modifies an entrance onto or an exit from a state-maintained highway, street or road without first having complied with standards and regulations adopted by the Department and having obtained a permit from the Department for such entrance or exit shall be punished by a fine of not less than $100 nor more than $1,000 for each offense, and a further sum in an amount equal to the amount fined for the initial offense for each and every day such violation exists.

(d) For purposes of this section, whenever the use to which a property is being put is changed such that there will be a significant alteration in the character, flow or volume of traffic, as determined within the sole discretion of the Department, a new permit shall be required.

(e) The Justice of the Peace Courts shall have jurisdiction over violations of subsections (b), (c), and (d) of this section.

(f) In addition to whatever legal or equitable remedies are available, the Department may install barricades across or remove any entrance or exit constructed, opened, reconstructed, maintained, modified or used in violation of this section and the standards or regulations adopted pursuant thereto, at the expense of the property owner.

(g) (1) An applicant who has submitted an accepted entrance plan for review and obtained an erosion and sediment control permit may request, and the Department must issue within 10 business days, a temporary entrance permit to perform on-site permitted construction activities for any commercial or economic development project. An applicant who obtains such a temporary entrance permit and performs such on-site permitted construction activities does so at its own risk and the State, including all of its agencies, shall not be responsible for any harm to the applicant including denial of the project, required modifications to plans or work, and permits not being issued. No certificate of occupancy shall be issued prior to entrance plan approval and entrance construction being substantially complete.

(2) For purposes of this subsection, "economic development project" means a development project creating full-time jobs, that is consistent with an adopted local government comprehensive plan and local land development and zoning ordinances.

(h) (1) Any residential subdivision defined as a Level I or Level II project by the Department in the most recent version of the DelDOT Development Coordination Manual from which access is provided to a state-maintained highway shall be eligible to receive a credit for construction of off-premises improvements to a state-maintained highway. The credited amount shall be a percentage of the cost of the improvements equal to the percentage of the affordable housing lots that are set aside for affordable housing. The developer shall be relieved of the requirement to provide improvements consistent with the credited percentage. The Department shall administer this section and may promulgate regulations for that purpose.

(2) For purposes of this subsection, "affordable housing lots" means a lot on which a residential dwelling is intended to be constructed for a household whose income does not exceed 100% of the median income for the area as defined by the United States Department of Housing and Urban Development.

(i) Along existing highways, the Department may exercise its authority under § 137 of this title to acquire property rights for consolidating commercial entrances or to create new commercial interconnections, when the Department determines such consolidation or interconnection would likely improve safety in accordance with a "safe system approach," as defined in § 135A of this title. Private properties made nonconforming under local zoning codes as a result of Delaware state acquisitions to consolidate entrances for traffic safety reasons are exempt from variance requirements under any county or municipal zoning code.

(60 Del. Laws, c. 620, § 1; 63 Del. Laws, c. 163, § 1; 84 Del. Laws, c. 46, § 1; 84 Del. Laws, c. 458, § 1; 84 Del. Laws, c. 515, § 2; 85 Del. Laws, c. 344, § 1.)

§ 147 Authority to establish standards for traffic-control devices.

(a) The Department shall adopt a uniform standard for each type of traffic-control device to be used on all highways open to the public in this State. Such standard shall correlate with, and so far as practical, conform to the standards used in other states, except that the Department is authorized to adopt different standards and types of devices or applications if the Department determines that, based on engineering judgment, different standards or types of devices or applications are needed in order to reduce fatal or serious injury crashes or improve safety in accordance with a "safe system approach," as defined under § 135A of this title. For purposes of this subsection, "standards" includes publications, policies, guidelines, or memoranda.

(b) The standards shall be recorded in a manual to be known as the Delaware Manual on Uniform Traffic-Control Devices for Streets and Highways. The manual shall have separate chapters setting individual standards for signs, signals and markings.

(c) Any traffic-control device erected in violation of the manual, except experimental devices erected by the Department, shall be unofficial, unauthorized and unenforceable.

(d) A person or corporation shall not sell or offer for sale in this State any traffic-control device or other device intended to regulate, warn or guide traffic unless it conforms with the state manual and specifications adopted under this section.

(60 Del. Laws, c. 701, § 3; 84 Del. Laws, c. 515, § 3.)

§ 148 Trust fund.

All moneys received pursuant to this title as proceeds from the sale, lease or rental of land with or without improvements, regardless of the source of funding for the original purchase of the aforesaid land or improvements, shall be credited to a special fund established by the State Treasurer and transferred quarterly to the Transportation Trust Fund. Such revenues shall be utilized by the Department to carry out the general purposes of this title. Moneys received pursuant to this section that originate from federal funding will be credited to the proper projects/accounts in accordance with established federal guidelines.

(62 Del. Laws, c. 51, § 1; 71 Del. Laws, c. 354, § 272.)

§ 149 Authority to adopt regulations governing state land.

(a) The Department shall have the authority to adopt rules, regulations or restrictions governing the use of or the conduct on those lands owned, controlled or in the custody of the Department. Such rules, regulations or restrictions adopted pursuant hereto may be adopted to control such behavior as, but not limited to, loud and tumultuous behavior, the sale or consumption of alcoholic beverages, or sales of goods or services for profit or vending operations of any kind without a permit issued by the Department. The Department shall also have the authority to issue rules and regulations to meet its requirements under federal, state and local environmental laws, including but not limited to the National Pollutant Discharge Elimination System (NPDES) permits required by the Clean Water Act [33 U.S.C. § 1342 et seq.].

(b) Any violation of any rule, regulation or restriction adopted pursuant hereto by the Department shall constitute a class B misdemeanor as defined in Title 11 and any person found to be in violation thereof shall receive a penalty in accordance therewith.

(c) (1) *Legislative findings.* — The General Assembly finds that the proliferation of sporting and recreational activity taking place in and adjacent to the State's public rights-of-way is growing along with the State's population, and further finds that such mixed-use activity threatens the safety of the recreants as well as members of the motoring public.

(2) In keeping with the General Assembly's legislative findings herein, and in order to promote safe neighborhood recreation, the Department shall make every effort to remove from public rights-of-way devices such as basketball hoops, hockey goals, shuffleboards and the like. The Department is further authorized and directed to establish such regulations as may be necessary and appropriate to enforce this activity. The regulations may include provisions for recreational use agreements with public agencies or other responsible entities for State property under Department control, that the Department may determine as suitable for these activities. Notwithstanding any other provision of state law to the contrary, any repeat offender found in violation of the regulations adopted pursuant to this subsection shall pay a fine of $25 per incident.

(66 Del. Laws, c. 181, § 1; 72 Del. Laws, 1st Sp. Sess., c. 258,, §§ 114, 115; 72 Del. Laws, c. 282, § 1; 75 Del. Laws, c. 98, § 110; 75 Del. Laws, c. 230, § 12.)

§ 150 Lead paint on outdoor structures.

All provisions of this title must comply with Chapter 30M of Title 16.

(81 Del. Laws, c. 396, § 6.)

§ 150A Utilities Coordination Council.

The General Assembly creates a permanent Utilities Coordination Council.

(1) The council shall consist of the following members, or a designee appointed by the member serving by virtue of position:

a. A Representative appointed by the Speaker of the House Representatives.

b. A Senator appointed by the President Pro Tempore of the Senate.

c. The Secretary of the Department of Transportation.

d. A Department of Transportation Utilities Engineer.

e. One representative from Delmarva Power Corporation.

f. One representative from Delaware Electric Cooperative.

g. One representative from Verizon Delaware LLC.

h. One representative from Chesapeake Utilities Corporation.

i. One representative from Artesian Water Company.

j. One representative from Comcast Corporation.

k. One representative from the Delaware Municipal Electric Corporation.

l. One representative from the Delaware Chapter of the National Association of Water Companies.

m. One representative from the American Council of Engineering Companies of Delaware.

(2) The Council shall:

a. Recommend and review best practices to shorten the total time to coordinate and implement utility relocations on transportation

projects on Delaware's highways.

b. Consider all reasonable options for improvement and recommend any combination of proposed agreements, regulations, or legislation for consideration by the General Assembly.

c. Ensure that recommendations are implemented and hold the Department and utility companies accountable.

d. Resolve issues on specific projects that have or are experiencing utility delays.

(3) Meetings; quorum; officers; committees; procedure.

a. The Council must meet by December 30, 2021, and thereafter must meet at least 4 times each year. A majority of members present shall constitute a quorum.

b. The Secretary of the Department of Transportation will convene the initial meeting of the Council.

c. At the initial meeting of the Council, a Chairperson and Vice Chairperson are to be elected by the Council members. Thereafter, the Council will elect a Chairperson and Vice Chairperson biennially at the first meeting of the calendar year to serve a 2-year term. The Chairperson has the duty to convene and preside over meetings of the Council. The Vice Chairperson's duty is to act as chairperson in the absence of the Chairperson.

d. The Council may establish committees composed of Council members and other knowledgeable individuals as deemed advisable to assist in achieving the purposes of the Council.

e. The Council must submit a written report of its activities and recommendations to the Governor and General Assembly within 1 year of establishment of the Council and at least once every year thereafter.

(83 Del. Laws, c. 229, § 1.)

Subchapter IV

Award of Contracts

§ 151 Procedure for procurement of materials, equipment or supplies and award of contracts for performance of work.

The Department shall not purchase any materials, equipment or supplies, nor enter into any contract for the performance of any work except in accordance with Chapter 69 of Title 29, except that said Chapter 69 of Title 29 shall not apply, when in the best interests of the State, as determined by the Secretary and approved by the Budget Commission, the Department enters into agreements with other states, counties, municipalities, other governmental agencies or private entities to have such work or services supplied pursuant to contracts entered into by such other public authorities or private entities.

(17 Del. C. 1953, § 151; 54 Del. Laws, c. 106, § 1; 63 Del. Laws, c. 171, § 1.)

§ 152 Supervision by Secretary of Transportation.

The execution and performance of all contracts awarded by the Department shall be under the charge of the Secretary of Transportation, and the Secretary's decision shall be final in all matters concerning the performance of the work and compliance with the terms of the contract.

(17 Del. C. 1953, § 152; 54 Del. Laws, c. 106, § 1; 57 Del. Laws, c. 671, § 1B; 60 Del. Laws, c. 503, § 19; 70 Del. Laws, c. 186, § 1.)

§ 153 Border crossing agreements.

(a) The General Assembly finds as follows:

(1) There are over 150 locations at which public roads cross Delaware's border with either Maryland or Pennsylvania.

(2) Several of these roads include portions that cross into Maryland or Pennsylvania from Delaware with no intersections with such roads from within the other state.

(3) Some public roads move back and forth across the state border, while others continue from 1 state to the other.

(4) These border crossings raise several difficult issues concerning potential liability, appropriate continuity of pavement maintenance policies and practices, snow removal responsibilities, and oversight of subdivision development and entrance permit regulations applicable to each jurisdiction.

(5) Therefore, it is appropriate to direct the Department of Transportation to enter into such border crossing agreements as it deems fitting and proper, to obtain cooperation with the responsible jurisdictions in other states to deal with the issues caused by the interplay of the state's borders with the public road transportation network.

(b) The Department of Transportation is authorized and directed to enter into border crossing agreements with counties, townships, other states, and such other government agencies as are responsible for those public roads that cross between, intersect with, or are adjacent to the Delaware border with Maryland or Pennsylvania, and which are connected to the road system for which the Department is responsible under this chapter. Such agreements may include provisions for pavement reconstruction and maintenance, sharing of snow removal and other responsibilities, joint subdivision review and entrance permit approval processes, adoption of uniform traffic control policies, road segment responsibility designations, reimbursement provisions for expenditures made on these roads, and for other purposes as the Department may deem fitting and proper. Chapter 69 of Title 29 shall not apply to such agreements or to the purchase of materials,

equipment, supplies, or the performance of any work on the road segments included within these agreements, except that the provisions of § 6960 of Title 29, thereof shall apply to any work contracted for performance within Delaware.

(c) The provisions of this section shall be limited to those public roads located within 1/2 mile of the Delaware border, measured perpendicularly from the border.

(75 Del. Laws, c. 98, § 117.)

Subchapter V

Controlled-Access Highways

§ 171 Declaration of policy.

The General Assembly finds, determines and declares that this subchapter is necessary for the immediate preservation of the public peace, health and safety and for the promotion of the general welfare.

(17 Del. C. 1953, § 171; 50 Del. Laws, c. 603, § 1.)

§ 172 Definition of a controlled-access facility.

For the purposes of this subchapter, a controlled-access facility is defined as a highway especially designed for through motor vehicle traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason. Such highways may be freeways open to use by all customary forms of highway traffic, or they may be parkways from which trucks, buses and other commercial vehicles shall be excluded, or they may be multi-modal corridors where the absence or restriction of turning vehicle movements enables safer movement of people and goods via multiple modes of travel.

(17 Del. C. 1953, § 172; 50 Del. Laws, c. 603, § 1; 84 Del. Laws, c. 515, § 4.)

§ 173 Authority to establish controlled-access facilities.

The Department, acting alone or in cooperation with any other governmental agency or political subdivision of this State or with any federal, state or local agency of any other state having authority to participate in the construction and maintenance of highways, may plan, designate, establish, regulate, vacate, alter, improve, maintain and provide controlled-access facilities for public use wherever the Department is of the opinion that traffic conditions, present or future, will justify such special facilities, provided that within cities and towns such authority shall be subject to such municipal consent as may be provided by law. The Department, in addition to the specific powers granted in this subchapter, shall also have and may exercise, relative to controlled-access facilities, any and all additional authority now or after June 22, 1956, vested in it relative to highways or streets within its jurisdiction. The Department may regulate, restrict or prohibit the use of such controlled-access facilities by the various classes of vehicles or traffic in a manner consistent with § 172 of this title.

(17 Del. C. 1953, § 173; 50 Del. Laws, c. 603, § 1.)

§ 174 Design of controlled-access facility.

The Department may so design any controlled-access facility and so regulate, restrict or prohibit access as to best serve the traffic for which such facility is intended. In this connection the Department may divide and separate any controlled-access facility into separate roadways by the construction of raised curbings, central dividing sections or other physical separations or by designating such separate roadways by signs, markers, stripes and the proper lane for such traffic by appropriate signs, markers, stripes and other devices. No person shall have any right of ingress or egress to, from or across controlled-access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time.

(17 Del. C. 1953, § 174; 50 Del. Laws, c. 603, § 1.)

§ 175 Acquisition of property and property rights.

For the purpose of this subchapter, the Department may acquire private or public property and property rights for controlled-access facilities and service roads, including rights of access, air, view and light, by gift, devise, purchase or condemnation in the same manner as such units are now or may, after June 22, 1956, be authorized by law to acquire such property or property rights in connection with highways and streets within its jurisdiction. All property rights acquired under this subchapter shall be in fee simple. In connection with the acquisition of property or property rights for any controlled-access facility or portion thereof or service road in connection therewith, the Department may, in its discretion, acquire an entire lot, block or tract of land, if, by so doing, the interest of the public will be best served, even though said entire lot, block or tract is not immediately needed for the right-of-way proper.

(17 Del. C. 1953, § 175; 50 Del. Laws, c. 603, § 1.)

§ 176 New and existing facilities; grade-crossing eliminations.

The Department may designate and establish controlled-access highways as new and additional facilities or may designate and establish an existing highway as a controlled-access facility. The State or any of its subdivisions shall have authority to provide for the elimination

of intersections at grade of controlled-access facilities with existing state roads by grade separation or service road or by closing off such roads and streets at the right-of-way boundary line of such controlled-access facility; and after the establishment of any controlled-access facility, no highway or street which is not part of said facility shall intersect the same at grade, except as a temporary expedient, for which a separate resolution for each individual location shall be approved by a duly executed resolution of the Department. No city or town street, state highway, or other public way shall be opened into or connected with any such controlled-access facility without the consent and previous approval of the Department. Such consent and approval shall be given only if the public interest shall be served thereby.

(17 Del. C. 1953, § 176; 50 Del. Laws, c. 603, § 1; 84 Del. Laws, c. 515, § 5.)

§ 177 Authority of local units to consent.

The Department may enter into agreements with other states, counties, towns or with the federal government respecting financing, planning, establishment, improvement, maintenance, use, regulation or vacation of controlled-access facilities or other public ways in its jurisdiction to facilitate the purposes of this subchapter.

(17 Del. C. 1953, § 177; 50 Del. Laws, c. 603, § 1.)

§ 178 Local service roads.

In connection with the development of any controlled-access facility, the Department may plan, designate, establish, use, regulate, alter, improve, maintain and vacate local service roads and streets or may designate as local service roads and streets any existing road or street and may exercise jurisdiction over service roads in the same manner as is authorized over controlled-access facilities under the terms of this subchapter, if, in their opinion, such local service roads and streets are necessary or desirable. Such local service roads or streets shall be of appropriate design, and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable by the proper authority.

(17 Del. C. 1953, § 178; 50 Del. Laws, c. 603, § 1.)

§ 179 Restrictions on use of controlled-access facilities.

The Department may prohibit the use of specific classes of motor-driven vehicles or of other vehicles on controlled-access highways either all the time or during such times as necessary for safety. Notice of such prohibition shall be posted on traffic-control devices at the entrance to the controlled-access facilities.

(17 Del. C. 1953, § 179; 50 Del. Laws, c. 603, § 1; 60 Del. Laws, c. 701, § 4.)

§ 180 Certain commercial establishment prohibited.

No automotive service station or other commercial establishment for serving motor vehicle users, except telephone facilities, shall be constructed or located within the right-of-way of, or on publicly owned or publicly leased land acquired or used for, or in connection with a controlled-access facility.

(17 Del. C. 1953, § 181; 52 Del. Laws, c. 38.)

Subchapter VI

Delaware Byways Program

§ 190 Statement of intent.

The General Assembly finds that certain portions of the state highway system are notable for their scenic, historic, recreational, cultural or archaeological value and worthy of designation as Delaware byways to provide special consideration of their unique features and special role in the highway system.

The General Assembly further finds that the public interest would be served by the formation of a coordinated scenic highway program to enhance recreational, cultural and archaeological resources, encourage development through tourism, and educate residents and visitors on the history, culture and natural beauty of this State.

(72 Del. Laws, c. 444, § 2; 77 Del. Laws, c. 367, § 1.)

§ 191 Delaware Byways Program.

The Secretary shall establish within the Department a program to be known as the Delaware Byways Program (hereinafter referred to as "byways program," or "program") to encourage and coordinate state actions and the activities of others which relate to the development, protection, promotion, operation and management of byways. In order to carry out the purposes of the program, the Secretary is authorized to:

(1) Plan, design and develop the Delaware byways system and to designate such highways as the Department may deem appropriate as "Delaware Byways." The process for such designation shall ensure that Delaware byways are selected and managed through a process that balances equity for property owners with the desire of the community to have a specific highway designated under this program;

(2) Ensure to the extent possible that all byway designations are continuous;

(3) Make safety improvements to a highway designated as a byway under this article to the extent such improvements are necessary to accommodate increased or reduced traffic as well as any changes necessary as a result of the types of vehicles using the highway due to such designation;

(4) Construct along such byways such improvements as may be necessary for the use and enjoyment of motorists, pedestrians and bicyclists;

(5) Improve the highway to enhance access to areas utilized for the purpose of recreation, including but not limited to youth-related activities and water-related recreation;

(6) Protect scenic, historical, natural, archaeological and cultural resources in areas adjacent to the highway;

(7) Develop and provide tourist information to the public, including interpretive information about the byway;

(8) Apply for funding from any appropriate source to further the purposes of the program, including but not limited to federal grants or private contributions; and

(9) Enter into contracts with qualified and responsible not-for-profit organizations involved in byway activities for services relating to the development of the byways program or services relating to the operation, development or promotion of a specific byway.

(72 Del. Laws, c. 444, § 2; 77 Del. Laws, c. 367, §§ 3-11.)

§ 192 Regulations.

The Secretary is authorized to promulgate such regulations as may be necessary or desirable to implement the Delaware Byways program, consistent with departmental policy and this subchapter. Such regulations may also:

(1) Encourage counties, towns and municipalities to work with the Department to designate Delaware byways within their jurisdictions and to petition for the inclusions of these highways into the byways program. Such inclusion shall enable the municipality to participate in federal funding that may be available under the National Scenic Byways Program of the Transportation Equity Act of the 21st Century of 1998 (23 U.S.C. § 162).

(2) Develop criteria for Delaware byway designation based upon its scenic, historic, natural, recreational, cultural or archeological qualities;

(3) Encourage and assist in fostering public awareness, understanding and participation in the objectives and functions of the Delaware Byways Program;

(4) Provide participants with tools and ideas for enhancement and protection of designated byways;

(5) Provide operation and management standards for highways designated as Delaware byways, including strategies for maintaining or improving the qualities for which a byway is so designated, for protecting and enhancing the landscape and scenic view and for minimizing traffic congestion as much as possible on such byways;

(6) Provide standards for byway-related signs, including those which identify Delaware byways;

(7) Develop and implement a byways corridor management plan that specifies the actions, procedures, controls, operational practices and administrative strategies to maintain the scenic, historic, cultural, recreational, archaeological and natural qualities of the byway; and

(8) Develop planning and design standards for development of official byways.

(72 Del. Laws, c. 444, § 2; 77 Del. Laws, c. 367, §§ 12-20.)

§ 193 Delaware Byway Advisory Board [Repealed].

72 Del. Laws, c. 444, § 2; 77 Del. Laws, c. 367, § 21; 81 Del. Laws, c. 49, § 15; 81 Del. Laws, c. 374, § 44; repealed by 84 Del. Laws, c. 87, § 1, effective June 30, 2023.

§ 194 Outdoor advertising exemptions.

(a) Nothing in this subchapter shall authorize any removal or restriction on outdoor advertising erected or approved by the appropriate governmental authority to be erected before July 18, 2000.

(b) Outdoor advertising signs, displays, and devices to be erected along a designated Delaware byway or within the 660 ft. control zone of a designated Delaware byway, provided they are in accordance with the provisions listed in Chapter 11 of this title, shall be limited to the following:

(1) Directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions as authorized or required by the laws of this State;

(2) Signs, displays and devices advertising the sale or lease of the real property upon which they are located;

(3) Signs, displays and devices advertising activities conducted on the real property upon which they are located;

(4) Gateway signs as defined by § 1102 of this title;

(5) Beautification/landscape planting sponsorship signs located within the right-of-way of a Delaware byway;

(c) For the purposes of this section “outdoor advertising” has the same meaning as defined by § 1102 of this title.

(72 Del. Laws, c. 444, § 2; 79 Del. Laws, c. 320, § 1; 82 Del. Laws, c. 15, § 1.)

Subchapter VII

Projects Requiring Landscape and Reforestation Activities

Part I

General Provisions

§ 201 Legislative intent.

It is declared that increases in forested land in the State, together with landscape features such as trees, shrubs and ground covers other than or in addition to grass, not only improve the aesthetic value of our State, but carry with them valuable benefits to the health and welfare of our citizens and our environment. It is likewise declared that the Department of Transportation is a leader in replacing forestlands that are required to be cleared for such projects and in providing travelers throughout the State with scenic vistas along its roadways while maintaining safe design and construction standards.

Therefore, this subchapter is intended to more precisely reflect a policy requiring the incorporation of landscaping and reforestation in the projects developed by the Department of Transportation for road construction and improvements in the State. This subchapter is intended to provide minimum standards for the volume of landscaping or reforestation that must take place, for how those activities must be planned, and for how much must be allocated to ensure those activities can take place. The Department of Transportation bears the responsibility for providing specific standards that are needed through regulations developed pursuant to this subchapter.

(73 Del. Laws, c. 351, § 2.)

§ 202 Definitions.

For the purposes of this subchapter:

(1) "An acre of trees" means a contiguous acre of land on which there are situated at least 50 trees or woody plants with a trunk measuring at least 4 inches in diameter at 4 feet above the ground. Partial acres and individual parcels will be added together to determine the total acreage within the project scope.

(2) "Canopy tree" means any tree or other woody plant that when fully grown will provide shade and/or shelter for the land beneath while allowing passage of people, animals and/or vehicles upon the land beneath. Canopy trees are classified in 1 of 3 categories:

a. *"Lower canopy." —*

"Lower canopy trees" include all species of trees and woody plants that when fully grown reach an average height of not more than 30 feet when measured vertically in a straight line from the uppermost branches to the ground immediately below.

b. *"Medium canopy." —*

"Medium canopy trees" include all species of trees and woody plants that when fully grown reach an average heights of not less than 30 feet nor more than 50 feet when measured vertically in a straight line from the uppermost branches to the ground immediately below.

c. *"Upper canopy." —*

"Upper canopy trees" include all species of trees and woody plants that when fully grown reach an average height of not less than 50 feet when measured vertically in a straight line from the uppermost branches to the ground immediately below.

(3) "Construction project" means any activity undertaken, authorized or required by the Department of Transportation through which any expressway, arterial or collector road is:

a. Constructed on a new alignment; or

b. Widened by adding 1 or more through travel lanes.

(4) "Forest" means a biological community dominated by trees covering a contiguous area of land and includes any definition thereof developed by the Department of Agriculture Forest Service. A "forest" may be identified by the diversity of the tree species composing it or by its type. A "forest type" is a forest composed of associations of tree species that have similar ecological requirements.

(5) "Landscape improvements" means living trees and shrubs planted for the purpose of enhancing the aesthetic value or wildlife habitat of the land, including, but no limited to, organized or planned arrangements of living plants as well as naturally occurring or wild growth of living plants. These improvements shall be made in a manner prescribed by the Department of Transportation's landscape policies, as amended from to time. In establishing and modifying these policies, the Department of Transportation shall seek the advice of the Department of Agriculture and the Department of Natural Resources and Environmental Control and such other public or private agencies as may be deemed appropriate by the Department.

(6) "Landscaping and planting activities" means the placement of landscape improvements. Landscaping and planting activities do not include the erection of fences, structures or other nonliving barriers or borders.

(7) "Reforestation activities" means landscaping and planting activities according to advice provided by the Department of Agriculture Forest Service on lands within rights-of-way owned or controlled by the Department of Transportation on which no forest currently exists, or on which a forest exists that is less dense than recommended by the Department of Agriculture Forest Service, to a density that will reasonably ensure the establishment of a mature forest of a particular type once fully grown.

(73 Del. Laws, c. 351, § 2; 77 Del. Laws, c. 361, § 1.)

§ 203 Duty to incorporate cost of landscaping, planting and reforestation activities.

Whenever the Department of Transportation undertakes any construction project in this State covered by this subchapter, it shall

incorporate into the cost of such project sufficient funds to complete all landscaping, planting and/or reforestation activities required by this subchapter.

If upon the completion of all landscaping, planting and/or reforestation activities required by this subchapter, and upon the completion of any funds transfers authorized by this subchapter, there remain funds in the budget of a construction project that had been designated specifically for landscaping, planting and/or reforestation activities, the Department shall use the remaining unobligated funds to perform or pay for other landscaping, planting and/or reforestation activities in the State.

(73 Del. Laws, c. 351, § 2.)

§ 204 Reclamation of dedicated funds.

If upon the completion of all landscaping, planting and/or reforestation activities required by this subchapter, and upon the completion of any funds transfers authorized by this subchapter, there remain funds in the budget of a construction project that had been designated specifically for landscaping, planting and/or reforestation activities, the Department shall use the remaining unobligated funds to perform or pay for other landscaping, planting and/or reforestation activities in the State.

(73 Del. Laws, c. 351, § 2.)

§ 205 Duty to minimize removal, cutting or clearing of landscape improvements.

Whenever the Department of Transportation undertakes any construction project in this State, it shall make every reasonable effort to preserve large, mature trees. Additionally, it shall make every reasonable effort to remove, cut or clear only the minimum number of trees and shrubs that are necessary to complete the project and remain consistent with safe design practices.

(73 Del. Laws, c. 351, § 2.)

§ 206 Duty to complete landscaping, planting and reforestation activities; modification of project plans.

(a) The Department of Transportation shall complete all landscaping, planting and reforestation activities required by this subchapter, or cause the same to be completed, and shall complete all funds transfers authorized by this subchapter within 1 year of the expiration of any guarantee or warranty period.

(b) Wherever practicable, the Department of Transportation shall modify or alter construction projects and plans to include landscaping, planting or reforestation activities within median areas and along roadside affected thereby. This includes but is not limited to modifications resulting in the increased use of earthen berms or, if necessary, metal or cement roadside barriers without compromising safety.

(73 Del. Laws, c. 351, § 2.)

§ 207 Lands held for duration of construction project and thereafter; limitation upon transfer and development.

(a) Any other provision of law not withstanding, all lands, and all rights therein, on which landscaping, planting or reforestation activities take place pursuant to this subchapter shall remain in the possession and control of the Department of Transportation for the duration of the construction project and shall remain so thereafter until such time as the Department of Transportation determines that such lands no longer meet its existing or projected needs. At such time, the Department of Transportation may transfer any or all of said lands to any agency, instrumentality or political subdivision of the State for the purposes of preserving them for the public good.

(b) At no time may the Department of Transportation, or any other agency, instrumentality or political subdivision of the State transfer any right in or to lands on which reforestation activities take place that would in any way change the nature of the lands from forestland or that would permit development of any kind on said lands other than for the purposes of establishing or expanding a local, state or federal park, natural area, or preserve.

(c) The Department of Transportation may perform maintenance activities such as pruning or the selective removal of diseased or dead trees as it deems necessary for the safe operation of the transportation system.

(73 Del. Laws, c. 351, § 2.)

§ 208 Regulations.

(a) The Department of Transportation shall promulgate such rules and regulations as it deems necessary for implementing this subchapter.

(b) All policies, standards and general specification relating to landscaping, planting and reforestation activities, as well as the planting and placement of trees, shrubs, groundcover, sod and grass, must appear within the Department of Transportation’s design standards and/or regulations and must be developed in conjunction with the Department of Agriculture and the Department of Natural Resources and Environmental Control or such other public or private agencies as may be deemed appropriate by the Department.

(c) All rules and regulations promulgated pursuant to this section shall meet the requirements of the Administrative Procedures Act (Chapter 101 of Title 29).

(73 Del. Laws, c. 351, § 2.)

Part II

Mitigation Needs Analysis And Planting Or Reforestation Activities

§ 209 Mitigation needs analysis.

(a) Before the Department of Transportation removes, cuts or clears any landscape improvement, tree or forest from the site of a construction project, it shall conduct an analysis, or cause the same to be conducted, to determine the total area of landscape improvements, individual trees up to 50, or if more than 50, the total acres of trees that will be removed, cut or cleared in order to complete the project.

(b) Whenever the Department of Transportation constructs or widens any major arterial, interstate connector, minor arterial, collector road or proposed road in an urbanized area of this State, the Department shall incorporate in the plans therefore provision for all costs incurred in replacing, wherever possible, shade trees to be removed in order to execute the plan. Replacement shade trees shall be a minimum height of 16 feet, balled and burlapped nursery-grown stock, and all planting work shall be done in accordance with § 728 of the Delaware Department of Transportation Standard Specifications (January 1, 1974, or latest revised edition). The place of planting trees shall be in compliance with federal law and regulations relating to the distance such trees must be planted from the edge of the roadway.

(c) If the Department of Transportation determines that it will not remove, cut or clear any trees in order to complete the construction project, it shall incorporate into the construction plans landscape improvements to improve the rights of way within the project area only, in accordance with the Department's standards as set forth herein.

(d) If the Department of Transportation determines that it will remove, cut or clear landscape improvements of 10 or fewer trees in order to complete the construction project, it shall incorporate into the construction plans requirements for landscape mitigation through the performance of landscaping and planting activities to improve the rights-of-way within the project area at a ratio of at least 1 new tree or shrub for every tree or shrub removed.

(e) If the Department of Transportation determines that it will remove more than 10 but fewer than 50 trees in order to complete the construction project, regardless of the number of acres on which those tree are situated, it shall incorporate into the construction plans requirements for landscaping and planting activities in Part II of this subchapter that will result in the planting of at least 2 trees for every tree to be removed, cut or cleared in order to complete the construction project.

(f) If the Department of Transportation determines that it will remove 50 or more trees in order to complete the construction project, it shall incorporate into the construction plans requirements for activities that will result in the reforestation of at least 1 acre of land for every acre of trees to be removed, cut or cleared in order to complete the construction project. The ratio of land on which reforestation activities occur to land from which 50 or more trees have been removed, cut or cleared shall apply equally to complete acres as well as fractions thereof.

(g) The Department of Transportation shall itself undertake the reforestation activities required pursuant to this section or shall cause the same to be undertaken.

(73 Del. Laws, c. 351, § 2; 77 Del. Laws, c. 361, §§ 2, 3.)

§ 210 Inability to meet minimum requirements; alternate landscaping and planting activities.

(a) If the Department of Transportation is unable to meet the minimum requirements for landscaping and planting activities set forth in Part II within the rights-of-way of the construction project with which the landscaping and planting activities are associated, it must first complete the balance of those landscaping and planting activities within other:

(1) State-owned rights-of-way which are along the same road and geographically closest to the construction project requiring landscaping and planting activities and thereafter moving outward in all directions until it has met the minimum requirements for landscaping and planting activities set forth in this part; or

(2) Within conservation easements approved and maintained by the Department of Natural Resources and Environmental Control that are within the same or an adjacent watershed.

(b) If, thereafter, the Department of Transportation remains unable to meet the minimum requirements for landscaping and planting activities set forth above within any rights-of-way it owns or controls in the State, it shall determine the number of acres of landscaping and planting activities it has been unable to mitigate and:

(1) Perform landscaping and planting activities in the State (or cause the same to be performed) at locations recommended by the Department of Agriculture Forest Service or the Department of Natural Resources and Environmental Control; or

(2) If the Department of Agriculture or the Department of Natural Resources and Environmental Control are unable to identify any locations in the State for the performance of landscaping and planting activities, transfer to either the Department of Agriculture Forest Service or the Department of Natural Resources and Environmental Control an amount equal to the dollar value per square yard necessary to plant seedlings in the area it has been unable to mitigate to be used by either Department for conducting landscaping and planting activities in the State under programs administered by those Departments.

(73 Del. Laws, c. 351, § 2; 77 Del. Laws, c. 361, § 4.)

§ 211 Planting standards.

(a) All landscaping and planting activities undertaken as part of the Department of Transportation's obligation to mitigate the removal, cutting or clearing of landscape improvements pursuant to this part must be conducted pursuant to a landscape plan prepared by the Delaware licensed and registered landscape design professional or by the Delaware Department of Transportation, and must be conducted:

(1) To promote transplant survival;

(2) In compliance with federal law and regulation;

(3) In compliance with any Department of Transportation design specifications relating to obstructions in the right-of-way, and the distance that landscape improvements must be planted from the travel lanes of the roadway for safety purposes and corresponding to any policies related to context sensitive design;

(4) In compliance with the Department of Transportation's landscape and reforestation policies developed in conjunction with the Department of Agriculture and the Department of Natural Resources and Environmental Control or other such public or private agencies as the Department of Transportation may deem appropriate; and

(5) To be maintainable with resources available to the Department at the time of planting, to include any permanent agreements entered into relating to maintenance.

(b) A landscape plan prepared by a Delaware-licensed and registered landscape design professional or by the Delaware Department of Transportation for use in completing the minimum landscaping and planting activities required by this part may include whatever components the Department of Transportation determines are necessary or appropriate for the area in which the activities will take place, but must at a minimum:

(1) Screen, while maintaining transportation safety standards, at least 50 percent of the frontage of industrial properties and the back sides of nonagricultural, commercial properties;

(2) Use an appropriate combination of trees, shrubs, groundcovers, and grass or sod, both within median areas and along all roads, for aesthetic and screen purposes; and

(3) Select from upper, medium and lower canopy trees, both within median areas and along all roads where space is safely available, that:

a. Are no less than 1 inch in diameter, as measured 6 inches above the established ground level when planted;

b. Are planted in sufficient quantities to achieve an aesthetically pleasing view and/or, if outside the right-of-way, wildlife habitat when fully grown.

(c) All landscaping and screening shall be in conformance with any context sensitive design and vegetative policies that are in effect at the time of the project.

(d) No landscape improvement determined to be an invasive species shall ever be knowingly planted, authorized or required by the Department of Transportation.

(73 Del. Laws, c. 351, § 2; 77 Del. Laws, c. 361, §§ 5-8.)

Subchapter VIII

Brandywine Valley National Scenic Byway

§ 220 Findings and intent.

(a) The Brandywine Valley National Scenic Byway (the "National Scenic Byway"), which includes Delaware Route 52 within the State of Delaware from Rodney Square to the Pennsylvania Line and Delaware Route 100 from its intersection with Delaware Route 52 to the Pennsylvania line, was designated in 2005 as the first National Byway in the State of Delaware. The General Assembly hereby finds that the historic, cultural and scenic qualities of National Scenic Byway are unique and worthy of special consideration.

(b) In recognition of the foregoing, it is the intent of the General Assembly to establish a permanent, interdisciplinary advisory board comprised of such individuals as provided below, to assist policymakers and other stakeholders in preserving, maintaining and enhancing the National Scenic Byway.

(78 Del. Laws, c. 402, § 1.)

§ 221 Establishment of Board.

(a) There is hereby established a Brandywine Valley National Scenic Byway Advisory Board, which shall be chaired by the Secretary or the Secretary's designee and comprised of members serving for terms of 3 years each. The following organizations shall be entitled to appoint a representative to the Board:

(1) Department of Natural Resources and Environmental Control;

(2) Department of State;

(3) Delaware Tourism Office;

(4) New Castle County;

(5) City of Wilmington and/or the Wilmington Convention and Visitors Bureau;

(6) Kennett Pike Association;

(7) Delaware Greenways;

(8) Delaware Nature Society;

(9) Centreville Civic Association;

(10) Brandywine Conservancy;

(11) Maintenance Corporation of Westover Hills;

(12) Westover Hills Woods Association; and

(13) The Harriett Tubman Underground Railroad Byway.

(b) In addition to the foregoing, the Board shall also include a representative of the hospitality industry; a representative of the Brandywine Valley museum community (including but not limited to the Hagley Museum, Longwood Gardens, Winterthur Museum and Gardens and the Brandywine River Museum); a representative of the Greenville, Centreville or Montchanin business community; and such other members as shall be nominated and appointed from time to time. Members appointed pursuant to this subsection (b) shall be nominated by a majority vote of the existing members and appointed by the Secretary.

(c) The Board shall adopt bylaws that provide for operating procedures such as election of officers, appointment of committees, designation of a quorum, conducting of meetings, and other matters that will promote the efficient operation of the Board in the performance of its duties under this chapter.

(78 Del. Laws, c. 402, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1.)

§ 222 Duties and responsibilities of Board.

The Board shall assist in and make recommendations regarding the protection, preservation, designation, development, operation, management and promotion of the National Scenic Byway. In connection with the foregoing, the responsibilities and powers of the Board shall include:

(1) In an advisory capacity, reviewing and participating in the development of regulations and laws that impact the National Scenic Byway, at all levels of government;

(2) Securing funding to operate programs that enhance and preserve the National Scenic Byway for residents and visitors;

(3) Recommending policies and standards related to the National Scenic Byway;

(4) Participating in the update and implementation of the Corridor Management Plan and any associated reports, studies and plans; and

(5) Preparing and submitting the biennial report described in § 223 of this title hereunder; and

(6) Such other responsibilities and powers consistent with the Board’s role as an advisory body as shall be determined from time to time.

(78 Del. Laws, c. 402, § 1.)

§ 223 Reports.

The Board shall prepare and submit a report of its activities and accomplishments to the General Assembly no later than June 30, 2014, and every second year thereafter.

(78 Del. Laws, c. 402, § 1.)

Chapter 3
THE DELAWARE MEMORIAL BRIDGE

§ 301 Definitions.

As used in this chapter, unless the context indicates a different intent:

(1) "Bridge" means the Delaware Memorial Bridge over the Delaware River and all approaches thereto and approach highways and all other buildings or structures connected with the Bridge and all equipment essential to the operation thereof and also all property rights, easements and franchises relating thereto and deemed necessary or convenient for the construction or operation thereof and may include any highways connecting the Bridge with a state road.

(2) "Cost of Bridge" or "cost of construction" means the cost of construction, the cost of all lands, properties, rights, easements, franchises, ferries and ferry equipment acquired, the cost of all machinery and equipment, financing charges, interest prior to and during the construction and for 1 year after such Bridge is opened for public use, cost of traffic estimates and of engineering data, engineering and legal expense, cost of plans, specifications, surveys, estimates of costs and of revenues, other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, insurance or bond premiums and such other expenses as may be necessary or incidental to the financing of the Bridge, as defined in this section, the construction thereof, the placing of the same in operation and the condemnation of property necessary for such construction and operation and any obligation or expense incurred by or on behalf of the Department or by any corporation, board or authority for traffic surveys, borings, preparation of plans and specifications and other engineering services which may be utilized by the Department in the construction of the Bridge or incurred for legal expenses in connection with the authorization of the construction or financing of the Bridge shall be regarded as a part of the cost of such Bridge.

(3) "Department" means the Department of Transportation or if the Department is abolished, any board, commission or officer succeeding to the principal functions thereof or to whom the powers given by this chapter to the Department shall be given by law.

(4) "Owner" includes all persons having any title or interest in any property, rights, easements or franchises authorized to be acquired by this chapter.

(5) "Project" includes the Bridge and all additions thereto and improvements thereof, the construction of which is authorized under this chapter.

(Code 1935, c. 166; 45 Del. Laws, c. 274, § 13; 17 Del. C. 1953, § 301; 57 Del. Laws, c. 671, § 2A; 60 Del. Laws, c. 503, § 18.)

§ 302 Operation of Bridge and construction of additions.

The Department may operate and maintain the Bridge, as defined in this chapter, and may construct, operate and maintain additions thereto and improvements thereof.

(Code 1935, § 166; 45 Del. Laws, c. 274, § 1; 17 Del. C. 1953, § 302.)

§ 303 Acquisition of data and information.

The Department shall acquire full information to enable it to maintain and operate the Bridge referred to in this chapter. It shall have access to any maps, surveys, data or information which any state agency may possess, deemed useful in the construction of the Bridge and approaches and approach highways, and the Department is empowered to acquire for such consideration and upon such terms as it may determine all data of an engineering or other character, plans, specifications, surveys, borings or other information material to the subject and deemed by the Department to be of value to it.

(Code 1935, c. 166; 45 Del. Laws, c. 274, § 2; 17 Del. C. 1953, § 303.)

§ 304 Delaware Memorial Bridge Division; Director of Division.

(a) The Department may establish within the Department a Division to be known as the "Delaware Memorial Bridge Division," and may appoint a Director of such Division and fix the Director's compensation. The Director of the Division shall supervise all activities relating to the construction of the Bridge and may call for bids for construction in connection therewith, sign vouchers and perform all such acts and duties as shall be required of the Director by the Department.

(b) Upon the completion of the Bridge and the opening of the same for public use, the Delaware Memorial Bridge Division and the office of Director thereof shall forthwith cease and terminate.

(45 Del. Laws, c. 274, § 3; 46 Del. Laws, c. 193, § 1; 17 Del. C. 1953, § 304; 70 Del. Laws, c. 186, § 1.)

§ 305 Power to contract; competitive bidding; accounting of expenses; annual report.

(a) The Department may make and enter into all contracts and agreements with any person, public body or authority of this or any other state which it may consider necessary to or advisable for the performance of its duties and the execution of its powers under this chapter. It may establish rules and regulations covering advertising for proposals for repairs or additions thereto or improvements of the Bridge and may establish standards of eligibility for prospective bidders. It may receive sealed proposals for repairs or additions or improvements or for the materials required for such repairs, additions or improvements, reserving the right to reject any or all proposals, and the proposals shall be publicly opened at the time specified in the advertisement. The contract or contracts for such work or for the materials and supplies

required therefor shall be awarded by the Department to the lowest responsible bidder, unless in the opinion of the Department the interests of the State will be better served by awarding the contract to some other bidder. The successful bidder shall promptly execute a formal contract, to be approved as to its form, terms and conditions by the Department, and shall also furnish a bond in accordance with § 6909 of Title 29, and all such provisions, as far as applicable, are incorporated herein by reference, and all of the provisions thereof applicable to bonds furnished thereunder shall be likewise applicable to bonds furnished hereunder. In the event, after advertisement referred to herein, the Department is unable to secure a satisfactory proposal for repairs, additions or improvements, it may proceed with such repairs, additions or improvements with forces employed by it for the purpose. The Department may employ engineering, architectural and construction experts and inspectors and attorneys and such other experts and employees as may be necessary in its judgment for any of the purposes herein stated and fix their compensation. All expenses incurred by the Department shall be charged by the Department to the project and the Department shall keep proper records and accounts showing each amount so charged. The amount so charged shall be paid by the Department from the funds to be supplied for the purposes of this chapter for preliminary expenses in connection with the Bridge or from funds specially appropriated for the temporary use of the Department. Any of the moneys appropriated for such temporary use of the Department prior to the furnishing of funds for the purpose of carrying out the terms of this chapter which may be used by the Department shall be repaid by the Department to the State Treasury from the funds so to be supplied. No liability or obligation shall be incurred by the Department hereunder beyond the amount of money which shall have been previously appropriated by the General Assembly or beyond the amount of the funds to be otherwise supplied for the purpose of carrying out the purposes of this chapter.

(b) The Department shall, during the month of January in each year, make a report to the Governor setting forth all of the facts necessary and pertinent to the performance by the Department of its duties under this chapter in respect to the operation and maintenance of the Bridge.

(c) The accounts of the Department in connection with the maintenance and operation of the Bridge shall be maintained separate and apart from the other accounts of the Department and shall be audited annually by the Budget Commission.

(Code 1935, c. 166; 45 Del. Laws, c. 274, § 3; 46 Del. Laws, c. 193, § 1; 17 Del. C. 1953, § 305.)

§ 306 Purchase of property for Bridge purposes.

(a) The Department may purchase within this State and within the State of New Jersey, if permitted to do so by the laws of that State, solely from funds to be provided for the purposes of this chapter, such lands, sand, earth, gravel, stone, buildings, structures, rights-of-way, franchises, easements and other interest in lands, including lands under water and riparian rights of any person, railroad or municipality or political subdivision deemed by the Department to be necessary for the construction, maintenance or operation of the Bridge and all approaches (including approach highways which, in the judgment of the Department, it may be necessary to construct or cause to be constructed to provide suitable and adequate connection with existing improved highways) upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the State or, if such property so purchased be located in the State of New Jersey, to take title thereto in the name of the Department if permitted by the laws of the State of New Jersey to do so or, in the discretion of the Department, to take such title in the name of an individual or a corporation as trustee for the Department. Whenever a price cannot be agreed upon or whenever the owner is legally incapacitated or is absent or is unable to convey valid title or is unknown, the Department may acquire by condemnation any of the above mentioned properties located within the State so deemed by the Department to be necessary for the purposes of the Department.

(b) Whenever valid title to any of the above mentioned properties which are located in the State of New Jersey cannot be acquired by the Department in its own name or in that of its trustee or nominee by amicable agreement with the owner, and the Highway Commissioner of the State of New Jersey is willing to condemn for the use of and to become a part of the highway system of the State of New Jersey any such property deemed by the Department necessary for construction, maintaining or operating that portion of the Bridge within the State of New Jersey and the eastern terminus and the approaches thereto, if reimbursed by the Department for the condemnation money or damages awarded in such condemnation and expenses thereof, the Department may enter into an agreement of reimbursement with the Highway Commissioner of the State of New Jersey for such condemnation money or damages and expenses and to secure the same by a deposit of cash or otherwise and may reimburse from the funds to be supplied for the purpose of this chapter the Highway Commissioner of the State of New Jersey or the State of New Jersey or other proper department or agency thereof for all condemnation money or damages and costs legally awarded or incurred in such condemnation. When such property is so acquired by the Highway Commissioner of the State of New Jersey as a part of the highway system of that State, the Department is authorized to construct, maintain and operate thereon or thereunder from the funds to be supplied for the purpose of this chapter any necessary part of the Bridge or the eastern approach thereto as fully as though title thereto had been acquired by the Department.

(Code 1935, c. 166; 45 Del. Laws, c. 274, § 4; 17 Del. C. 1953, § 306.)

§ 307 Title to Bridge and approaches; power to hold title to New Jersey property.

The title to the Bridge within the territorial limits of this State shall at all times be in the State of Delaware, and the title to so much of the Bridge and any approaches and appurtenances thereto which may be within the State of New Jersey shall at all times be either in the name of the Department or in the name of an individual or a corporation as trustee for the Department or otherwise held as may be permitted by the laws of the State of New Jersey, but the construction, control, operation, maintenance, repair, improvement and enlargement of the Bridge shall at all times be confined to the Department. The Department, in its own name, may take and hold title to and

make agreements for the use of any property in the State of New Jersey necessary for the purposes of the Bridge and approaches thereto, if permitted so to do by the laws of the State of New Jersey and, for the purpose of taking and holding such title and making such agreements, the Department is constituted a body corporate and politic, with all the usual powers thereof for the purposes last aforesaid only.

(Code 1935, c. 166; 45 Del. Laws, c. 274, § 14; 17 Del. C. 1953, § 307.)

§ 308 Use of lands under Delaware River.

The State consents to the use by the Department, in any manner whatsoever in the performance of its duties hereunder, of all lands lying under the waters of the Delaware River which are within the State and are deemed by the Department to be necessary for the construction and operation of the Bridge and the approaches and appurtenances thereto.

(Code 1935, c. 166; 45 Del. Laws, c. 274, § 5; 17 Del. C. 1953, § 308.)

§ 309 Regulating use of Bridge; public utilities contracts; penalties.

(a) The Department may establish regulations respecting the use of the Bridge and may contract with any person desiring the use of the Bridge, its approaches and appurtenances or any part thereof, including the approach highways, if any, for placing therein or thereon gas or oil pipelines, telephone, telegraph and electric wires or cables or for any other purpose and to fix the terms, conditions and rates of charge for such use.

(b) Whoever violates any regulation established by the Department in respect to the use of the Bridge, including regulations established by the Department regulating traffic over such Bridge and its approaches or approach highways, shall be fined not more than $100 for each such offense.

(Code 1935, c. 166; 45 Del. Laws, c. 274, § 6; 17 Del. C. 1953, § 309.)

§ 310 Insurance.

The Department shall procure and keep in force adequate insurance upon the Bridge, including adequate use and occupancy insurance as well as insurance to defray the cost of removing obstacles from the Delaware River in the event of a collapse or other injury to such Bridge.

(Code 1935, c. 166; 45 Del. Laws, c. 274, § 7; 17 Del. C. 1953, § 310.)

§ 311 Employment of general manager, guards and toll keepers.

The Department may employ a general manager for the purpose of supervising the operation of the Bridge and may appoint such number of guards and toll keepers as may be deemed advisable by it, and such officers are given the powers of a constable in the performance of their duties.

(Code 1935, c. 166; 45 Del. Laws, c. 274, § 8; 17 Del. C. 1953, § 311.)

§ 312 Duty to procure fidelity bonds.

The Department shall procure and keep in force at all times a fidelity bond or bonds issued by a bonding company qualified to do business in this State to protect the Department against loss arising from the fraudulent or dishonest conduct of any of its managers or by any of its employees with respect to funds or property of the Department or of the State within the control of the Department, and the Department may pay the costs of such bond or bonds out of any funds in its possession as a part of the cost of the maintenance or operation of the Bridge.

(Code 1935, c. 166; 45 Del. Laws, c. 274, § 9; 17 Del. C. 1953, § 312.)

§ 313 Other crossings prohibited.

So long as any bonds which may be issued in connection with the financing of the construction of the Bridge shall remain outstanding, no bridge or tunnel over or under the Delaware River for the use of the traveling public or for the transportation of goods or other property, having a terminus in this State within the distance of 10 miles north along the shore of the Delaware River and 20 miles south along such shore from the Delaware terminus of such Bridge constructed under this chapter, shall hereafter be constructed and operated by the State or by any county, municipal corporation or political subdivision of the State or by any agency or instrumentality of any thereof or by any public body or authority not created by an act of Congress of the United States or by any person, copartnership, association or corporation not created by or acting under the authority of an act of Congress of the United States.

(Code 1935, c. 166; 45 Del. Laws, c. 274, § 10; 17 Del. C. 1953, § 313.)

§ 314 Conferred powers as continuing.

The powers herein conferred upon the Department shall be deemed to be continuing powers and may be exercised from time to time and shall not be deemed to be exhausted by any particular exercise thereof.

(Code 1935, c. 166; 45 Del. Laws, c. 274, § 15; 17 Del. C. 1953, § 314.)

§ 315 Application of other powers of Department.

All of the powers conferred upon the Department by any other law are made applicable to the Department in the performance of its duties hereunder insofar as the same may be appropriate and consistent with the provisions hereof.

(Code 1935, c. 166; 45 Del. Laws, c. 274, § 16; 17 Del. C. 1953, § 315.)

§ 316 Power of Congress.

It is recognized that the Bridge and its operation are subject to the power of the Congress of the United States to regulate commerce among the several states.

(Code 1935, c. 166; 45 Del. Laws, c. 274, § 12; 17 Del. C. 1953, § 316.)

§ 317 Exemption from taxation.

The Bridge and all property acquired or used for the purposes thereof in this State shall at all times be free from all taxation within this State.

(Code 1935, c. 166; 45 Del. Laws, c. 274, § 11; 17 Del. C. 1953, § 317.)

§ 318 Authority to issue bonds.

(a) (1) The Department may provide by resolution, at 1 time or from time to time, for the issuance in the name of the State of revenue bonds of the State, not to exceed in the aggregate principal amount the sum of $49,050,000, including such bonds as were issued prior to the enactment of this Code, for the purpose of paying all or any part of the costs of construction of the Bridge, as defined in this chapter, or any additions thereto or improvements thereof.

(2) The principal and interest of such bonds shall be payable solely from the special fund provided in this chapter for such payment, and no part of the revenues of the Department from other sources shall in any manner be expended for the purpose of defraying the costs of the Bridge or any part thereof.

(3) a. The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding 4 percent per annum, payable semiannually, shall mature at such time or times and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the Department prior to the issuance of the bonds.

b. The principal and interest of such bonds may be made payable in any lawful medium.

(4) The Department shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof which may be at any bank or trust company within or without the State.

(5) a. The bonds shall be signed by the Secretary of the Department and the Great Seal of the State, or a facsimile thereof, shall be affixed thereto and shall be attested by the Secretary of State, and any coupons attached thereto shall bear the facsimile signature of the Secretary of the Department.

b. In case any officer whose signature or a facsimile thereof shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until such delivery.

(6) All revenue bonds issued under this chapter shall have, and are hereby declared to have, as between successive holders, all the qualities and incidents of negotiable instruments under the Negotiable Instruments Law of this State.

(7) Such bonds and the income therefrom shall be exempt from all taxation by the State or by any political subdivision, agency or authority thereof.

(8) The bonds may be issued in coupon or in registered form or both as the Department may determine and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest and for the reconversion of any bonds registered both as to principal and interest into coupon bonds.

(9) The Department may sell such bonds either at public or private sale in such manner and for such price as it may determine to be for the best interests of the State, but no such sale shall be made at a price so low as to require the payment of interest on money received therefor at more than 4 percent per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values.

(b) (1) The proceeds of such bonds shall be used solely for the payment of the cost of construction of the Bridge and its approaches and connections and additions thereto and improvements thereof and shall be disbursed upon requests of the Secretary of the Department under such restrictions, if any, as the resolution authorizing the issuance of such bonds or the trust indenture mentioned in this chapter may provide.

(2) The proceeds of such bonds shall at no time revert to the General Fund of the State Treasury but shall at all times remain available to the Department for the purposes herein set out.

(3) If the proceeds of such bonds, by error of estimates or otherwise, shall be less than the cost of the project, additional bonds may in like manner be issued to provide the amount of such deficit; provided that the aggregate principal amount of such additional bonds, together with the principal amount of all bonds theretofore issued, shall not exceed the sum of $49,050,000 and, unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

(4) If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds are issued, the surplus shall be paid into the fund hereinafter provided for the payment of principal and interest of such bonds.

(c) (1) Prior to the preparation of definitive bonds, the Department may, under like restrictions, issue temporary bonds, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

(2) The Department may also provide for the replacement of any bond which shall become mutilated or be destroyed or lost.

(3) Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by this chapter.

(45 Del. Laws, c. 275, § 1; 17 Del. C. 1953, § 318; 50 Del. Laws, c. 575, § 1; 52 Del. Laws, c. 206, § 1; 52 Del. Laws, c. 216, § 1; 57 Del. Laws, c. 671, § 2B.)

§ 319 Bonds as legal investments for institutions and fiduciaries.

Bonds issued by the Department to finance the construction of the Bridge are made securities in which all state and municipal officers and administrative departments, boards and commissions of the State, all banks, bankers, savings banks, trust companies, saving and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business and all administrators, executors, guardians, trustees and other fiduciaries and all other persons whatsoever authorized to invest in bonds or other obligations of the State may properly and legally invest any funds, including capital belonging to them or within their control; and such bonds are made securities which may properly and legally be deposited with and received by any state, county or municipal officer or agency of the State for any purpose for which the deposit of bonds or other obligations of the State is authorized by law.

(Code 1935, c. 166; 45 Del. Laws, c. 275, § 1; 17 Del. C. 1953, § 319.)

§ 320 Credit of State not pledged.

Revenue bonds issued under this chapter shall be payable exclusively from the funds hereinafter provided therefor from tolls and revenues. All such bonds shall contain a statement on their face that the State is not obligated to pay the same or the interest thereon except from revenues of the project for which they are issued and that the faith and credit of the State are not pledged to the payment of the principal or interest of such bonds. The issuance of revenue bonds under this chapter shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

(45 Del. Laws, c. 275, § 2; 17 Del. C. 1953, § 320.)

§ 321 Trust indenture.

In the discretion of the Department, each and any issue of such revenue bonds may be secured by a trust indenture by and between the Department and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust indenture may pledge or assign tolls and revenues to be received but shall not convey or mortgage the Bridge or any part thereof. Either the resolution providing for the issuance of revenue bonds or such trust indenture may contain such provisions specifying, defining, protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Department in relation to the acquisition, construction, improvement, maintenance, operation, repair and insurance of the Bridge, or additions thereto, and the custody, safeguarding and application of all moneys and may also provide that the Bridge shall be constructed and paid for under the supervision and approval of consulting engineers employed or designated by the Department and satisfactory to the original purchasers of the bonds issued therefor and may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other moneys be satisfactory to such purchasers. It shall be lawful for any bank or trust company incorporated under the laws of this State to act as such depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the Department. Such indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing, such trust indenture may contain such other provisions as the Department may deem reasonable and proper for the security of bondholders. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation and repairs of the Bridge to which such indenture is related.

(45 Del. Laws, c. 275, § 3; 17 Del. C. 1953, § 321.)

§ 322 Remedies of bondholders and trustees.

Any holder of revenue bonds issued to finance the construction of the Bridge or any of the coupons attached thereto, and the trustee under the trust indenture, if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may, either at law or in equity by action, mandamus or other proceedings protect and enforce any and all rights under the laws of the United States or of this State or granted hereunder or under such resolution or trust indenture and may enforce and compel performance of all duties required by this chapter, or by such resolution or trust indenture, to be performed by the Department or any officer thereof, including the fixing, charging and collecting of tolls for the use of such Bridge.

Such resolution or trust indenture may contain provisions under which any holder of such bonds or the trustee under such trust indenture shall be entitled to the appointment of a receiver in the event of a default, and any receiver so appointed shall have and may exercise all the rights and powers of the Department with respect to the Bridge and all of the appropriate rights and powers of a receiver in equity.

(Code 1935, c. 166; 45 Del. Laws, c. 275, § 4; 17 Del. C. 1953, § 322.)

§ 323 Power to collect and pledge tolls; sinking fund.

The Department may make and enforce such rules and regulations and establish, levy and collect (or may authorize by contract, franchise, lease or otherwise, the establishment, levy and collection of) such tolls, rents, rates and other charges in connection with the Bridge and any improvements or extensions thereof as it may deem necessary, proper, desirable and reasonable. The Department may

pledge such tolls, rates, rents and other revenues, or any part thereof, either presently received or to be received in the future, or both, as security for the repayment with interest of any moneys borrowed by it or advanced to it for any of the purposes of the Bridge and as security for the satisfaction of any other obligation assumed by it in connection with the construction, extension, maintenance and repair of such Bridge.

Such tolls, rents, rates and other charges shall be so fixed and adjusted as to provide a fund sufficient, which, with other revenues of the Bridge, will pay (1) the cost of maintaining, repairing and operating such Bridge, unless such cost shall be otherwise provided for, and (2) the bonds and the interest thereon as the same shall become due, subject, however, to any applicable law or regulation of the United States of America. Such tolls and all other revenues derived from the Bridge shall not revert to the General Fund of the State Treasury but shall at all times remain available to the Department for the purposes herein set out. Such tolls, rates, rents or other charges shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the State. The tolls and all other revenues derived from the Bridge, except such part thereof as may be required to pay the cost of maintaining, repairing and operating the Bridge and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of the bonds or in the trust indenture, shall be set aside, at such regular intervals as may be provided in such resolution or such trust indenture, in a sinking fund which is pledged to and charged with the payment of (1) the interest upon such bonds as such interest shall fall due, (2) the principal of the bonds as the same shall fall due, (3) the necessary fiscal agency charges for paying principal and interest and (4) any premium upon bonds retired by call or purchase as herein provided. The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of bonds or in the trust indenture, but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be a fund for the benefit of all bonds without distinction or priority of one over another. Subject to the resolution authorizing the issuance of bonds or of the trust indenture, any moneys in such sinking fund in excess of an amount equal to 1 years interest on all bonds then outstanding may be applied to the purchase or redemption of bonds. All bonds so purchased or redeemed shall forthwith be cancelled and shall not again be issued.

(Code 1935, c. 166; 45 Del. Laws, c. 275, § 5; 17 Del. C. 1953, § 323.)

§ 324 Reduction or cessation of tolls.

When the revenue bonds issued for the Bridge, or any addition or improvement thereto, and the interest thereon shall have been paid, or a sufficient amount shall have been provided for their payment and shall continue to be held for that purpose, the collection of tolls by the Department for the use of the Bridge shall be reduced to such nominal amount as shall be sufficient, in the judgment of the Department, to provide only the funds required for maintaining, repairing and operating such Bridge, or such collection shall cease entirely if such cessation is then in any way found practicable.

(Code 1935, c. 166; 45 Del. Laws, c. 275, § 6; 17 Del. C. 1953, § 324.)

§ 325 Contributions.

The Department, in addition to the moneys which may be received from the sale of revenue bonds and from the collection of tolls and other revenues derived under this chapter, may accept from any federal agency or other public or private body or from any other source grants for or in aid of the construction, maintenance or operation of the Bridge or the payment of the bonds and may receive and accept contributions from any source of either money or property or other things of value, to be held, used and applied only for the purposes for which such grants or contributions may be made.

(Code 1935, c. 166; 45 Del. Laws, c. 275, § 7; 17 Del. C. 1953, § 325.)

§ 326 Moneys as trust funds.

All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of revenue bonds as grants or other contributions or as tolls and revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter and none thereof shall revert to the General Fund of the State Treasury. The Department shall, in the resolution authorizing the issuance of bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds and the tolls and revenues to be received to any officer, agency, bank or trust company, who shall act as trustee of such funds and hold and apply the same to the purposes hereof, subject to such regulations as this chapter and such resolution or trust indenture may provide.

(Code 1935, c. 166; 45 Del. Laws, c. 275, § 8; 17 Del. C. 1953, § 326.)

§ 327 Revenue refunding bonds.

The Department may provide by resolution for the issuance of revenue refunding bonds of the State for the purpose of refunding any revenue bonds issued under this chapter or any prior law and then outstanding. The issuance of such revenue refunding bonds, the maturities and other details thereof, the rights of the holders thereof and the duties of the State and of the Department in respect to the same shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable. No revenue refunding bonds shall be issued unless issued to refund revenue bonds which have matured or will mature within 3 months, or unless issued to refund revenue bonds which are redeemable within 3 months, and the interest rate of the revenue refunding bonds shall be at least one fourth of 1 percent less than the interest rate borne by the revenue bonds so refunded. If the revenue refunding bonds do not mature prior to the earliest date of maturity of the revenue bonds refunded and the principal amount of such revenue refunding bonds maturing in any year does not exceed the principal amount of revenue bonds so refunded which would have matured in such year, such revenue refunding bonds shall rank on a

parity with the revenue bonds then outstanding, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the outstanding revenue bonds.

(Code 1935, c. 166; 45 Del. Laws, c. 275, § 9; 17 Del. C. 1953, § 327.)

§ 328 State covenant for control of Bridge.

The State covenants and agrees with the holders of any of the revenue bonds or other obligations issued by the Department under this chapter or any prior law for which there may be pledged the tolls, rents, rates or other revenues, or any part thereof, of the Bridge, that so long as any bonds or obligations remain outstanding and unpaid and unless and until adequate provision is made by law for the protection of the persons advancing money upon such obligations, the State will not diminish or impair the power of the Department or of any successor thereof to own, operate or control such Bridge and appurtenances or to establish, levy and collect tolls, rents, rates and other charges in connection therewith.

(Code 1935, c. 166; 45 Del. Laws, c. 275, § 10; 17 Del. C. 1953, § 328.)

§ 329 Pecuniary interest of member; penalty.

Whoever, being a member or employee of the Department is either directly or indirectly pecuniarily interested in any contract or subcontract made in connection with the construction, improvement, repair, operation or maintenance of the Bridge, shall be fined not more than $1,000 or imprisoned not more than 2 years, or both.

(Code 1935, c. 166; 45 Del. Laws, c. 275, § 11; 17 Del. C. 1953, § 329.)

§ 330 [Reserved].

Chapter 4
DELAWARE INTERSTATE HIGHWAY DIVISION

§ 401 Definitions.

As used in this chapter:

(1) "Crossing" shall include a bridge or bridges over the Delaware River or a tube or tubes under said River and all approaches thereto and approach highways and all other buildings or structures connected with any such bridge or tube and all equipment essential to the operation thereof and also all property rights, easements and franchises relating thereto and deemed necessary or convenient for the construction or operation thereof and may include any elevated or depressed highways connecting any such bridge or tube with a state road.

(2) "Department" means the Department of Transportation established under this title, or if said Department shall be abolished, any board, commission or officer succeeding to the principal functions thereof, or to whom the powers given by this chapter to said Department shall be given by law.

(3) "Revenues of the Division" means the proceeds of tolls, rates, rents and other charges for the use of toll crossings constructed by the Division under authority of this chapter, including, upon the satisfaction of the indenture and supplemental indentures securing the payment of all bonds issued prior to July 27, 1955, under the authority of 45 Del. Laws, c. 275, as provided by § 414 of this title, the proceeds of tolls, rates, rents and other charges for the use of the Delaware Memorial Bridge.

(17 Del. C. 1953, § 401; 50 Del. Laws, c. 492, § 25; 57 Del. Laws, c. 671, §§ 3A, 3B; 60 Del. Laws, c. 503, § 18.)

§ 402 Purpose.

Substantial and accumulated annual increases experienced in highway traffic for the United States as a whole and particularly for Delaware plus the concentration of interstate traffic flow through Delaware caused by the construction of the Delaware Memorial Bridge and the New Jersey Turnpike have forced upon the State the need for new construction and reconstruction of highway facilities out of all proportion to funds available to the State Highway Department. Presently scheduled express highway construction in the adjoining states of Maryland and Pennsylvania will very shortly bring to the boundaries of Delaware increased interstate traffic. To provide supplemental funds for certain highway construction and reconstruction, to provide for payment of a proportionate share of such highway construction and reconstruction costs by the interstate traffic which is producing the need for such added expenditures and to enable the State to discharge the obligations which this traffic has imposed upon it, the Delaware Memorial Bridge Division of the State Highway Department (originally created as the Delaware Crossing Division under authority of 46 Del. Laws, c. 193, which as amended and revised appears as Chapter 3 of this title) is reorganized and reconstituted within the Department of Transportation with the powers and duties specified in this chapter.

(17 Del. C. 1953, § 402; 50 Del. Laws, c. 492, § 1; 57 Del. Laws, c. 671, § 3C; 60 Del. Laws, c. 503, § 18.)

§ 403 Control, operation and revenues of Delaware Memorial Bridge and approaches vested in Department.

The control, operation, tolls and other revenues of the Delaware Memorial Bridge and its approaches, and all of the real and personal property appurtenant thereto or used in connection therewith, shall vest in the Department subject to the rights of the holders of outstanding Delaware Memorial Bridge Revenue Bonds of the State issued prior to July 27, 1955, under the authority of 45 Del. Laws, c. 275 as amended, and the State covenants that the control, operation, tolls and other revenues of said Delaware Memorial Bridge, its approaches and all real and personal property appurtenant thereto or used in connection therewith shall remain vested in the Department so long as said bonds or any bonds issued under the authority of this chapter shall remain outstanding and unpaid, or until all of the Delaware Memorial Bridge Revenue Bonds issued under authority of 45 Del. Laws, c. 275 as amended, have been paid in full or provision shall have been made for the payment thereof in the manner provided by the indenture between the Department and the Equitable Trust Company of Wilmington, Delaware, dated June 1, 1948, and the supplemental indentures between said Department and said Equitable Trust Company, dated June 1, 1951 and January 1, 1952, securing the payment of the Delaware Memorial Bridge Revenue Bonds now outstanding. The Delaware Memorial Bridge shall be operated and extensions and improvements made thereto and the tolls and revenue derived therefrom accounted for and applied in strict conformity with said indenture and supplemental indentures.

(17 Del. C. 1953, § 404; 50 Del. Laws, c. 492, § 3; 57 Del. Laws, c. 671, § 3D.)

§ 404 Contracts for maintenance of Delaware Memorial Bridge or repairs or improvements.

The Department may make and enter into all contracts and agreements with any firm, corporation, public body or authority of this State or any other state which it may consider necessary to or advisable for the maintenance of the Delaware Memorial Bridge or for repairs or additions thereto or improvements thereon.

(17 Del. C. 1953, § 405; 50 Del. Laws, c. 492, § 4; 57 Del. Laws, c. 671, § 3D.)

§ 405 Construction of toll crossings, highways, express highways and parallel service roads; operation of competitive commercial enterprises.

The Department may, with the approval of the Governor, construct toll crossings over or under the Delaware River between the State of

Delaware and the State of New Jersey and may construct, reconstruct or improve such highways and express highways, as defined in § 101 of this title, in the State as the Department, in its sole discretion, designates necessary to carry traffic to and from the Delaware Memorial Bridge and to and from any other toll crossing constructed after July 27, 1955, or to be constructed, by the Department under this chapter, provided that no commercial enterprise or activity for serving motorists, other than emergency services for disabled vehicles, shall be conducted within or on any property designated as, or acquired for or in connection with any such express highway. The Department may construct on such property at locations it deems appropriate connecting service roads parallel to such express highways in such manner as to facilitate the establishment and operation of competitive commercial enterprises for serving motorists on private property abutting such service roads. The cost of such parallel service roads may be included in the cost of construction, reconstruction or improvement of expressways authorized in this chapter. In considering any construction, reconstruction or improvement of highways as herein authorized, the Department shall give first consideration to express highways for the use of traffic to and from the Delaware Memorial Bridge.

(17 Del. C. 1953, § 406; 50 Del. Laws, c. 492, § 5; 57 Del. Laws, c. 671, §§ 3D-3F.)

§ 406 Acquisition of property for toll crossings.

(a) The Department may purchase within this State and within the State of New Jersey, if permitted to do so by the laws of that State, such lands, sand, earth, gravel, stone, buildings, structures, rights-of-way, franchises, easements and other interests in land, including lands under water and riparian rights of any person, copartnership, association, railroad or other corporation or other municipality or political subdivision deemed by the Department to be necessary for the construction, maintenance or operation of any toll crossing which the Department may acquire, construct or maintain under this chapter upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon by it and the owner thereof and to take title thereto in the name of the State or, if such property so purchased be located in the State of New Jersey, to take title thereto in the name of the Department if permitted by the laws of the State of New Jersey to do so, or, in the discretion of the Department, to take such title in the name of an individual or a corporation as trustee for the Department. Whenever a price cannot be agreed upon or whenever the owner is legally incapacitated or is absent or is unable to convey valid title or is unknown, the Department may acquire by condemnation any of the above mentioned properties located within this State and deemed by the Department to be necessary as aforesaid for said purposes.

(b) Whenever valid title to any of the properties mentioned in subsection (a) of this section which are located in the State of New Jersey cannot be acquired by the Department in its own name or in that of the trustee or nominee by amicable agreement with the owner or owners and the Highway Commissioner of the State of New Jersey or other appropriate officer or agency of the State of New Jersey is willing to condemn, for the use of and to become a part of the highway system of the State of New Jersey, and such property deemed by the Department necessary for constructing, maintaining or operating any toll crossing which the Department may construct and maintain, if reimbursed for the condemnation money or damages awarded in such condemnation and expenses thereof, the Department may enter into an agreement of reimbursement with the Highway Commissioner of the State of New Jersey or such other appropriate officer or agency for such condemnation money or damages and expenses and to secure the same by a deposit of cash or otherwise and may reimburse said Highway Commissioner of the State of New Jersey or the State of New Jersey or other appropriate officer or agency thereof for all condemnation money or damages and costs legally awarded or incurred in such condemnation. When such property is so acquired by the Highway Commissioner of the State of New Jersey or other appropriate officer or agency of said State as a part of the highway system of that State, the Department may construct, maintain and operate thereon or thereunder any toll crossing which the Department may construct and maintain under this chapter as fully as though title thereto had been acquired by the Department. The Department shall pay all costs and expenses of acquiring such properties out of its unencumbered revenues or out of the proceeds of the sale of its revenue bonds.

(17 Del. C. 1953, § 407; 50 Del. Laws, c. 492, § 6; 57 Del. Laws, c. 671, §§ 3D, 3G.)

§ 407 Use of lands under Delaware River.

The State of Delaware consents to the use by the Department, in any manner whatsoever in the performance of its duties under this chapter, of all lands lying under the waters of the Delaware River which are within the State and are deemed by the Department to be necessary for the construction and operation of the Delaware Memorial Bridge and of any other toll crossing which the Department may construct or maintain under this chapter.

(17 Del. C. 1953, § 408; 50 Del. Laws, c. 492, § 7; 57 Del. Laws, c. 671, § 3D.)

§ 408 Regulations for use of Bridge or other toll crossings for public utility facilities; penalty for violations.

(a) The Department may establish regulations respecting the use of the Delaware Memorial Bridge and/or any other toll crossing which it may construct or maintain by this chapter by any person, partnership, association or corporation desiring to use said crossing, its approaches, appurtenances or any part thereof, including the approach highways connecting with such Bridge, for placing therein or thereon gas or oil pipe lines, telephone, telegraph and electric wires or cables or for any other purpose and to fix the terms, conditions and rates of charge for such use.

(b) Whoever violates any regulation established by the Department in respect of the use of any such crossing, including regulations established by the Department regulating traffic over any such crossing and its approaches or approach highways, shall be fined not more than $100 for each such offense.

(17 Del. C. 1953, § 409; 50 Del. Laws, c. 492, § 8; 57 Del. Laws, c. 671, § 3D.)

§ 409 Insurance.

The Department shall procure and keep in force adequate insurance upon any toll crossing constructed or operated by it, including adequate use and occupancy insurance as well as insurance to defray the cost of removing obstacles from the Delaware River in the event of a collapse or other injury to such crossing.

(17 Del. C. 1953, § 410; 50 Del. Laws, c. 492, § 9; 57 Del. Laws, c. 671, § 3D.)

§ 410 Employment of general manager, guards and toll keepers; indemnity bond.

(a) The Department may employ a general manager for the purpose of supervising the operation of toll crossings constructed or maintained by it and may appoint such number of guards and toll keepers as may be deemed advisable by it for the proper operation of the Delaware Memorial Bridge and any toll crossing over the Delaware River constructed or maintained by the Department.

(b) The general manager, guards and toll keepers shall have the powers of a constable in the performance of their duties, and the Department shall procure and keep in force at all times a fidelity bond or bonds issued by a bonding company qualified to do business in this State to protect the Department against loss arising from the fraudulent or dishonest conduct of any such persons with respect to funds or property of the Department or of the State within the control of the Department, and the Department may pay the costs of such bond or bonds out of its revenues.

(17 Del. C. 1953, § 411; 50 Del. Laws, c. 492, § 10; 57 Del. Laws, c. 671, § 3D.)

§ 411 Other crossings prohibited.

(a) As long as any bonds issued prior to July 27, 1955, under 45 Del. Laws, c. 275, as amended, shall remain outstanding and unpaid or until provision shall have been made for the payment thereof as provided in the indentures securing such bonds, no bridge or tunnel over or under the Delaware River for the use of the traveling public or for the transportation of goods or other property, having a terminus in this State within the distance of 10 miles north along the shore of the Delaware River and 20 miles south along such shore of the Delaware terminus of the Delaware Memorial Bridge shall, after July 27, 1955, be constructed and operated by the State, by the Department or other agency of the State or by any county, municipal corporation or political subdivision of the State or by any agency or instrumentality thereof or by any public body or authority not created by an act of Congress of the United States or by any person, copartnership, association or corporation not created by or acting under authority of an act of Congress of the United States.

(b) The State covenants that if the Department shall issue bonds under this chapter, no crossing of the Delaware River shall thereafter be constructed and operated by the State, by the Department or by any other agency of the State or by any county, municipal corporation or political subdivision of the State or by any agency or instrumentality thereof or by any public body or authority not created by an act of Congress of the United States or by any person, copartnership, association or corporation not created by or acting under authority of an act of Congress of the United States, which shall compete with the Delaware Memorial Bridge or with any toll crossing over or under the Delaware River to be constructed in whole or in part out of the proceeds of such bonds, and the Department may agree with the holders of its bonds as to the character and location of any crossing which shall be deemed to be a competitive crossing within the meaning of this section, and such determination shall be binding upon the State and the Department, so long as any of such bonds remain outstanding and unpaid or until provision for their payment shall have been made in the manner provided in the resolution or indenture pursuant to which such bonds shall have been issued.

(17 Del. C. 1953, § 412; 50 Del. Laws, c. 492, §§ 11, 23; 57 Del. Laws, c. 671, § 3D.)

§ 412 Exemption from taxation.

All toll crossings constructed or operated and maintained by the Department under this chapter and all property acquired or used by the Department in connection therewith shall at all times be free from all taxation within this State.

(17 Del. C. 1953, § 413; 50 Del. Laws, c. 492, § 12; 57 Del. Laws, c. 671, § 3D.)

§ 413 Bonds for construction of facilities.

The Department may issue, in the name of the State, revenue bonds of the State, payable solely from the revenues of the Department, for the purpose of paying the cost of construction (including interest during the period of construction and for 1 year thereafter) of any toll crossing which it may construct under this chapter or to defray the cost of constructing or improving highways, and for the purpose of refunding any bonds issued under this chapter, at or prior to the maturity thereof.

(17 Del. C. 1953, § 414; 50 Del. Laws, c. 492, § 13; 57 Del. Laws, c. 671, §§ 3D, 3H.)

§ 414 Bonds for refunding of outstanding obligations.

The Department may issue, in the name of the State, revenue bonds of the State, payable solely from the revenues of the Department, at any time after July 27, 1955, for the purpose of refunding at or prior to maturity, all bonds issued prior to such date under the authority of 45 Del. Laws, c. 275, as amended, in an aggregate principal amount not exceeding the principal amount of said outstanding bonds and the redemption premium, if any, required to be paid upon their redemption prior to maturity, the fees and expenses of the trustee named in the indenture and supplemental indentures securing such bonds, the interest which will become due upon such bonds to the date of their redemption and all legal and other expenses incident to the issuance of said bonds, and the Department may deposit with the trustee named in the indenture and supplemental indentures securing the payment of said outstanding bonds, out of the proceeds of such refunding bonds, such amount as shall be required to authorize such trustee to satisfy such indenture and supplemental indentures.

(17 Del. C. 1953, § 415; 50 Del. Laws, c. 492, § 14; 57 Del. Laws, c. 671, § 3D.)

§ 415 Form and terms of bonds; disposition of proceeds.

(a) (1) All bonds issued under the authority of this chapter shall be dated, shall bear interest at such rate or rates, not exceeding 5 percent per annum, payable semiannually, shall mature at such time or times and may be made redeemable before maturity at such times and at such price or prices and under such terms and conditions as may be fixed by the Department prior to the issuance of the bonds.

(2) The principal of and the interest upon such bonds may be made payable in any lawful medium.

(3) The Department shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be any bank or trust company within or without the State.

(4) a. The bonds shall be signed by the Secretary of Transportation and the Great Seal of the State or a facsimile thereof shall be affixed thereto and shall be attested by the Secretary of State and any coupons attached thereto shall bear the facsimile signature of the Secretary of Transportation.

b. In case any officer whose signature or facsimile thereof shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or facsimile shall, nevertheless, be valid for all purposes, as if the officer had remained in office until delivery.

(5) All bonds issued under this chapter shall have, and are declared to have, all the qualities and incidents of negotiable instruments under Title 6.

(6) Such bonds and the income therefrom shall be exempt from all taxation by the State or by any political subdivision, agency or authority thereof.

(7) a. The bonds may be issued in coupon or registered form, or both, as the Department may determine, and provision may be made for the registration of any coupon bond as to principal alone or as to both principal and interest, and for the reconversion of any bonds registered both as to principal and interest into coupon bonds.

b. The Department may exchange such bonds for bonds issued under 45 Del. Laws, c. 275, as amended, or issued under this chapter or may sell such bonds either at public or private sale in such manner and for such price as it may determine to be for the best interests of the State, but no such sale may be at a price so low as to require the payment of interest on money received therefor at more than 5 percent per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values.

(c) (1) The proceeds of such bonds, exclusive of accrued interest, shall be used solely for the purposes specified in the resolution of the Department authorizing the issuance thereof, or as set forth in the indenture securing their payment, which purposes may include redemption premiums, interest on bonds to be refunded to the redemption date or date of maturity thereof and all legal and other expenses of their issuance and shall be disbursed under such restrictions, if any, as said resolution or trust indenture may provide.

(2) The proceeds of such bonds shall at no time revert to the General Fund of the State Treasury but shall at all times be available to the Department for the aforesaid purposes, provided, however, that if the proceeds of the bonds of any issue shall exceed the amount required for the purpose or purposes for which such bonds are authorized to be issued, the surplus may be used for any purpose of the Department authorized in this chapter or for the payment of the principal of or interest on its outstanding bonds.

(d) (1) Prior to the preparation of definitive bonds the Department may issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

(2) The Department may also provide for the replacement of any bond which shall become mutilated or be destroyed or lost.

(3) Such bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by this chapter.

(17 Del. C. 1953, § 415; 50 Del. Laws, c. 492, § 15; 57 Del. Laws, c. 671, §§ 3D, 3I; 60 Del. Laws, c. 503, § 19; 70 Del. Laws, c. 186, § 1.)

§ 416 Bonds as legal investments for institutions and fiduciaries, and as legal deposit.

Bonds issued under the authority of this chapter are made securities in which all state and municipal officers and administrative departments, boards and commissions of the State, all banks, bankers, savings banks, trust companies, saving and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries, and all other persons whatsoever, who now or may hereafter be authorized to invest in bonds or other obligations of the State, may properly and legally invest any funds, including capital belonging to them or within their control; and such bonds are made securities which may properly and legally be deposited with and received by any state, county or municipal officer or agency of the State for any purpose for which the deposit of bonds or other obligations of the State is now or may after July 27, 1955, be authorized by law.

(17 Del. C. 1953, § 417; 50 Del. Laws, c. 492, § 15.)

§ 417 Credit of State not pledged.

Bonds issued under this chapter shall be payable exclusively from the revenues of the Department and shall contain a statement on their face that the state shall not be obligated to pay the bonds or the interest thereon except from such revenues, and that the faith and credit of the State are not pledged to the payment of the principal or interest on such bonds. The issuance of bonds under this chapter shall not

directly or indirectly or contingently obligate the State to levy or pledge any form of taxation whatever therefor or to make any appropriation for their payment.

(17 Del. C. 1953, § 418; 50 Del. Laws, c. 492, § 16; 57 Del. Laws, c. 671, § 3D.)

§ 418 Trust indenture.

(a) In the discretion of the Department, each and any issue of such bonds may be secured by a trust indenture by and between the Department and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State.

(b) Such trust indenture may pledge or assign the revenues of the Department, but shall not convey or mortgage any toll crossing or other properly operated or maintained by the Department.

(c) Either the resolution providing for the issuance of the bonds or such trust indenture may contain such provisions specifying, defining, protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Department in relation to the acquisition, construction, improvement, maintenance, operation, repair and insurance of any toll crossing or additions thereto, and the custody, safeguarding and application of all moneys, and may also provide that any toll crossing constructed by the Department shall be constructed and paid for under the supervision and approval of consulting engineers employed or designated by the Department, and satisfactory to the original purchasers of the bonds issued therefor, and may also require that the security given by contractors and by any other depository of the proceeds of the bonds or revenues or other moneys be satisfactory to such purchasers.

(d) It shall be lawful for any bank or trust company incorporated under the laws of this State to act as such depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the Department.

(e) Such indenture may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations.

(f) In addition to the foregoing, such trust indenture may contain such other provisions as the Department may deem reasonable and proper for the security of the bondholders.

(g) All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation and repairs of any toll crossing to which such indenture is related or may be paid out of the revenues of the Department.

(17 Del. C. 1953, § 419; 50 Del. Laws, c. 492, § 17; 57 Del. Laws, c. 671, § 3D.)

§ 419 Remedies of bondholders and trustees.

Any holder of bonds issued under this chapter or any of the coupons attached thereto and the trustee under the trust indenture, if any, except to the extent the rights given by this chapter may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may, either at law or in equity by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the United States or of the state or granted under this chapter or under such resolution or trust indenture, and may enforce and compel performance of all duties required by this chapter or by such resolution or trust indenture, to be performed by the Department or any officer thereof, including the fixing, charging and collecting of tolls for the use of any toll crossing operated by the Department.

Such resolution or trust indenture may contain provisions under which any holder of such bonds or the trustee under such trust indenture shall be entitled to the appointment of a receiver in the event of a default, and any receiver so appointed shall have and be entitled to exercise all the rights and powers of the Department with respect to the crossings operated or maintained by the Department and all of the appropriate rights and powers of a receiver in equity.

(17 Del. C. 1953, § 420; 50 Del. Laws, c. 492, § 18; 57 Del. Laws, c. 671, § 3D.)

§ 420 Power to collect and pledge tolls and revenues; fixation of tolls, rates or charges.

(a) The Department may make and enforce such rules and regulations and establish, levy and collect (or authorize by contract, franchise, lease or otherwise, the establishment, levy and collection of) such tolls, rents, rates and other charges for the use of any toll crossing operated by the Department or any improvements or extensions thereof as it may deem necessary, proper, desirable and reasonable, and the Department may pledge such tolls, rates, rents and other revenues, or any part thereof, either presently received or to be received in the future, or both, as security for the repayment with interest of any moneys borrowed by it or advanced to it and as security for the satisfaction of any other obligation assumed by it under the authority of this chapter.

(b) Such tolls, rates, rents and other charges shall be so fixed and adjusted so as to provide funds at least sufficient, together with any other revenues of the Department, to pay the cost of maintaining, repairing and operating the toll crossings operated and maintained by the Department, and the principal of and the interest upon the outstanding revenue bonds of the Department, subject, however, to any applicable law or regulation of the United States of America now in force or enacted or made after July 27, 1955. Such tolls and all other revenues of the Department shall not revert to the General Fund of the State Treasury but shall at all times be available to the Department for the purposes set forth in this chapter. Such tolls, rates, rents or other charges shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the State.

(c) The Department shall not impose, establish, levy or collect a toll that it would otherwise be permitted to impose, establish, levy or collect under this section, for any emergency vehicle of a volunteer fire company or volunteer ambulance company, or any emergency vehicle engaged in the ordinary course of business of a volunteer fire company or a volunteer ambulance company.

(d) The Department shall not impose, establish, levy or collect a toll that it would otherwise be permitted to impose, establish, levy or collect under this section for any emergency vehicle of a police agency, including marked, semi-marked or unmarked vehicles, engaged in the ordinary course of business of a state, county or municipal police agency.

(17 Del. C. 1953, § 421; 50 Del. Laws, c. 492, § 19; 57 Del. Laws, c. 671, § 3D; 70 Del. Laws, c. 269, § 1; 70 Del. Laws, c. 468, § 1.)

§ 421 Contributions.

The Department, in addition to the moneys which may be received from the sale of bonds and from the collection of tolls and other revenues derived under this chapter, shall have authority to accept from any federal agency or other public or private body, or from any other source, grants or contributions of money or property for or in aid of the construction, maintenance or operation of the toll crossings maintained and operated by it or for or in aid of the construction, reconstruction or improvement of any highway which is authorized by this title, or for the payment of its bonds.

(17 Del. C. 1953, § 422; 50 Del. Laws, c. 492, § 20; 57 Del. Laws, c. 671, §§ 3D, 3J.)

§ 422 Moneys as trust funds.

All moneys received pursuant to this chapter, whether as proceeds from the sale of bonds or grants or other contributions, or as tolls and revenues, shall be deemed to be trust funds, to be held and applied solely as provided in this chapter. The Department shall, in the resolution authorizing the issuance of bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds and the tolls and revenues to be received, to any officer, agency, bank or trust company, who shall act as trustee of such funds, and shall hold and apply the same to the purposes of this chapter, subject to such regulations as this chapter and such resolution or trust indenture may provide.

(17 Del. C. 1953, § 423; 50 Del. Laws, c. 492, § 21; 57 Del. Laws, c. 671, § 3D.)

§ 423 State covenant for control of crossings.

The State covenants and agrees with the holders of any of the bonds issued by the Department under this chapter, for which there may be pledged the revenues of the Department or any part thereof, that so long as said bonds or obligations remain outstanding and unpaid and unless and until adequate provision is made by law for the protection of the persons advancing money upon such obligations, the State will not diminish or impair the power of the Department or of any successor thereof to operate or control any toll crossing constructed or maintained and operated by it, including the Delaware Memorial Bridge or to establish, levy and collect tolls, rates, rents or other charges in connection therewith.

(17 Del. C. 1953, § 424; 50 Del. Laws, c. 492, § 22; 57 Del. Laws, c. 671, § 3D.)

§ 424 Pecuniary interest of member or employee; penalty.

Whoever, being a member or employee of the Department, is directly or indirectly pecuniarily interested in any contract or subcontract made in connection with the construction, improvement, repair, operation or maintenance of any toll crossing operated or maintained by the Department shall be fined not more than $1,000 or imprisoned not more than 2 years or both.

(17 Del. C. 1953, § 425; 50 Del. Laws, c. 492, § 24; 57 Del. Laws, c. 571, §§ 3D, 3K.)

§ 425 Penalty for nonpayment of toll.

Whoever uses or attempts to use any toll crossing operated or maintained by the Department without paying the toll at the rate then in force for such use, shall be fined not more than $100 or imprisoned not more than 30 days or both.

(17 Del. C. 1953, § 426; 50 Del. Laws, c. 492, § 24; 57 Del. Laws, c. 671, § 3D.)

§ 426 Construction of chapter.

This chapter shall be liberally construed to carry its purposes into effect.

(17 Del. C. 1953, § 427; 50 Del. Laws, c. 492, § 26.)

Chapter 5
HIGHWAYS, ROADS AND BRIDGES GENERALLY

§ 501 Use of public road or bridge by railway.

No public road or bridge shall be used or occupied by any electric or other railway without the consent of the Department being first obtained, and such operation shall be subject to such regulations and conditions as the Department may from time to time prescribe.

(19 Del. Laws, c. 677; Code 1915, § 1577; 40 Del. Laws, c. 107, § 1; Code 1935, § 1669; 17 Del. C. 1953, § 501.)

§ 502 Closing of roads during repair.

(a) Whenever, in the judgment of the Department, it is necessary to close a road or a portion thereof which is being constructed, improved or repaired by the Department, upon the adoption of a resolution by the Department to the effect that it is necessary to close such road, or portion thereof for either of the aforesaid reasons, the Department, or those having charge of the construction, improvement or repair, shall have the right to close such road, or portion thereof, to public travel by the erection of barriers or otherwise.

(b) Whoever, being other than an ordinary foot traveler, uses such road, or portion thereof while the same is closed pursuant to the resolution for any purpose whatever shall be fined not more than $100.

(c) Nothing herein contained shall in any way affect the right of persons using the road or portion thereof so closed for the purpose of necessary ingress, egress or regress to any property located thereon.

(29 Del. Laws, c. 108; 40 Del. Laws, c. 107, § 1; Code 1935, § 1666; 17 Del. C. 1953, § 502.)

§ 503 Nuisance; penalty.

Whoever encroaches upon, or obstructs or commits any nuisance in, a public road or wilfully obstructs or injures a public bridge shall be fined not less than $15 nor more than $50. In case of a continuing nuisance, the judge shall order the person to abate the nuisance within a given time, and, on failure to do so, a writ of execution shall be issued to the sheriff commanding the person to abate the same. The sheriff's fee for executing the writ shall be $3.00 a day and all expenses, to be paid by the defendant, which payment may be enforced by attachment and imprisonment.

(Code 1852, § 1133; Code 1915, § 1575; Code 1935, § 1664; 17 Del. C. 1953, § 503; 70 Del. Laws, c. 186, § 1.)

§ 504 Entry upon contiguous or adjacent lands or streams; assessment of damages; hindering or obstructing work; penalty.

(a) In order to obtain the free passage of water for drainage of any road or causeway under its jurisdiction, the Department or its agents may enter upon any lands contiguous or adjacent to such road or causeway in order to maintain or repair any existing artificial or natural ditch, drain, culvert or sewer.

(b) In order to keep the waters of ditches, drains, streams and creeks within their proper channels, thereby preventing them from encroaching upon or flooding any road or causeway under its jurisdiction, the Department or its agents may enter upon and occupy the beds of any ditches, drains, streams and creeks contiguous or adjacent to such roads or causeways and perform such work of construction, improvement or maintenance as may be necessary or desirable to prevent such encroachment or flooding.

(c) Damages, if any, sustained by the owner of such contiguous or adjacent lands or ditch, drain, stream or creek beds as the result of operations under subsection (a) or (b) of this section, or both, shall be adjusted by agreement between the Department or its agents and such owner. If, however, the Department or its agents is unable to agree with such owner as to the damages sustained, if any, and the damages claimed are less than $1,000, the issue of damages, shall be submitted to the Court of Common Pleas. Such Court of Common Pleas shall have full and complete jurisdiction to hear and determine such issue of damages, if any. In order to invoke the jurisdiction of such Court of Common Pleas, the Department or its agents shall apply to it for a summons directed to the sheriff of the county commanding the sheriff to summon such owner to appear before the Court at a time and place specified in such summons, not less than 5 days nor more than 15 days from the date thereof, for the purpose of having the issue of damages, if any, determined. Such Court shall determine the issue of damages, if any, in accordance with the procedures contained in the statutes governing the trial of civil actions before Courts of Common Pleas generally.

(d) The judgment of the Court of Common Pleas shall not become final until 15 days after it has been handed down. While the case is pending and during the 15-day period after judgment, the owner may file a demand in writing with the Court of Common Pleas and with the Department that the case be brought before the Superior Court as a condemnation proceeding under Chapter 61 of Title 10. During the same period the Department shall also have the right to abandon the proceedings and proceed with condemnation in the Superior Court. Upon timely demand or abandoning as herein provided, the Department shall proceed with condemnation under Chapter 61 of Title 10. If such demand or abandoning is done after the judgment is handed down but before the end of the 15-day period, the judgment of the Court of Common Pleas shall be vacated.

(e) In cases where the owner claims damages of more than $1,000, the Court of Common Pleas shall have no jurisdiction and all proceedings where there is a failure to agree on damages shall be under Chapter 61 of Title 10.

(f) The amount of damages ultimately determined or agreed upon shall be paid out of funds appropriated to the Highway Department by the State Treasurer to such owner, when properly notified by the Department or its agents.

(g) Whoever hinders or delays the Department or its agents in the construction, repair or maintenance of any such ditch, drain, culvert or sewer or whoever stops, fills up, injures or obstructs any such ditch, drain, culvert or sewer, or whoever obstructs, diverts or changes the course of any such stream or creek without authority from the Department or its agents shall be fined not more than $100 for every such offense.

(Code 1852, § 1126; Code 1915, § 1571; 27 Del. Laws, c. 174, § 5; 40 Del. Laws, c. 107, § 1; Code 1935, § 1662; 17 Del. C. 1953, § 504; 50 Del. Laws, c. 504, § 1; 57 Del. Laws, c. 671, § 4A; 70 Del. Laws, c. 186, § 1.)

§ 505 Selling of nonuniform traffic-control devices; penalty.

Whoever sells or offers for sale for use on any public highway in this State any traffic-control device which does not conform to the Delaware Manual on Uniform Traffic-Control Devices for Division of Highways shall be fined not less than $25 nor more than $1,000 and shall make restitution to the purchaser in an amount equal to the entire sum originally paid for the device or devices. In the event a sale consists of the sale of more than 1 separate device, each sale of each separate device shall constitute a violation of this section.

(Code 1852, §§ 1081, 1082; Code 1915, § 1568; Code 1935, § 1661; 17 Del. C. 1953, § 505; 60 Del. Laws, c. 700, § 1.)

§ 506 Maintenance priority of roads used for school buses or mail routes.

All roads under the jurisdiction of the Department over which school buses and mail routes are established shall have first consideration in the expenditure of state road funds for the purpose of making and maintaining the roads passable at all times.

(36 Del. Laws, c. 130; Code 1935, § 1658; 17 Del. C. 1953, § 506.)

§ 507 Coordinating new development with local transportation improvements.

(a) *Legislative findings.* — (1) Under Chapters 1 and 5 of this title, the Department of Transportation reviews and approves entrance design and internal transportation network requirements for new and existing real property developments. This review process can identify necessary additional improvements to the local transportation system to accommodate the predicted impact of the new development. Under normal conditions, the new development may not in and of itself cause the need for new local transportation improvements, but instead acts as a triggering event in combination with preexisting traffic growth patterns in the area. The Department is best-positioned to assess statewide and county- and municipal-specific transportation improvements that will be needed based on safety and existing and projected growth patterns as indicated by a county or municipality in a certified comprehensive plan.

(2) On occasion, there is insufficient right-of-way for the construction of these off-site improvements, or the Department's own schedule for making the improvements as part of its capital program is on a different schedule than the entity seeking development approval. Under appropriately defined conditions, it is proper that the entities seeking development approval contribute toward the cost of obtaining the necessary rights-of-way in lieu of altering the timing of the State's own investments in such improvements.

(3) Under appropriately defined conditions, the Department should also be able to use its full powers to obtain the necessary rights-of-way for such improvements, triggered by the combination of preexisting traffic conditions and the proposed new development, as well as to oversee the installation of the required improvements.

(4) Even when there is sufficient right-of-way for the required improvements, there are other compliance issues that the local land use approval process may not fully take into account, such as the impact of the improvements on the State's ability to comply with federal Clean Air Act [42 U.S.C. § 7401 et seq.] regulations, or the linkage between the proposed development and the State's own land use planning and development policies.

(5) Therefore, the Department should enact appropriate rules and regulations to determine where and under what conditions it will use its powers to acquire real property interests for the construction of such improvements, to enforce the maintenance of safe operating conditions for the traveling public during the construction of these improvements, and to assure continued compliance with applicable environmental and other legal requirements implicated by these improvements.

(b) *Implementation.* —

The Department of Transportation is authorized and directed to enact rules and regulations to complement its existing authority under Chapters 1 and 5 of this title relating to new developments and their impacts on the local transportation network, as follows:

(1) a. By January 1, 2027, the Department shall establish a transportation impact fee applicable to each of the following:

1. Areas of this State that are designated in the Strategies for State Policies and Spending as an area designated for growth as indicated by a county or municipality in a certified comprehensive plan and that are not located within an established local or regional Transportation Improvement District.

2. Areas of this State that are outside of areas of this State that are designated in the Strategies for State Policies and Spending as an area designated for growth as indicated by a county or municipality in a certified comprehensive plan and that are not located within an established local or regional Transportation Improvement District. The transportation impact fee established by the Department under this paragraph (b)(1)a.2. may be greater than the transportation impact fee established by the Department under paragraph (b)(1)a.1. of this section to encourage development in areas of this State designated in the Strategies for State Policies and Spending as an Investment Level 1 or 2 Area.

b. The Department shall determine the transportation impact fees for each county based on the reasonable proportionate share of new development of the projected total costs to bring applicable transportation infrastructure up to State standards.

1. The Department may adopt a different transportation impact fee for each county.

2. The Department shall adopt a transportation impact fee for each county that establishes a rational nexus between new development and required costs and demonstrates proportionality between the fee and the impacts generated.

3. The Department may use deductive or inductive methodologies to determine each transportation impact fee.

4. The Department shall publish the formula used to calculate each transportation impact fee and shall reevaluate the formula every 5 years. Any increase in a transportation impact fee is capped at the increase in the United States Consumer Price Index plus 2%.

5. The transportation impact fee must be assessed on a land use basis in accordance with the Department's current required edition of the Trip Generation Manual published by the Institute of Transportation Engineers (Trip Generation Manual).

c. 1. The Transportation Impact Fee Fund is established to receive moneys collected by the Department from the transportation impact fees required to be established under paragraph (b)(1)a. of this section.

2. The Department shall deposit into the Transportation Impact Fee Fund established under paragraph (b)(1)c.1. of this section the moneys collected from the transportation impact fees.

d. The transportation impact fee is intended to fund the Department's planning, designing, engineering, and construction of improvements related to upgrading existing transportation infrastructure, including deficient pedestrian facilities and substandard signal and intersection facilities, acquisition of applicable rights-of-way and easements, and the Department's funding of necessary administrative costs to staff and otherwise administer this section.

1. A. Except as provided by paragraph (b)(1)d.1.B. of this section, the Department shall, in consultation with the applicable county and municipal government, use any transportation impact fee collected to fund improvements in the same county as the development paying the transportation impact fee.

B. If a county or municipality fails to do all of the following by June 1, 2027, the Department shall use transportation impact fees collected in that county or municipality to fund improvements as determined solely by the Department:

I. Enact an ordinance or regulation regarding traffic impact studies that is consistent with § 2662(b), § 4962(b), or § 6962(b) of Title 9 or § 313 of Title 22, as applicable.

II. Enact an ordinance or regulation regarding residential density requirements that is consistent with § 2663, § 4963, or § 6963 of Title 9 or § 314 of Title 22, as applicable.

2. A development remains responsible for access and entrance improvements directly to the development's site, including auxiliary lanes as required by the Department. The Department may require changes to entrance locations or frontage with identified safety issues and any work required will be at the cost of the development.

3. The Department shall acquire any necessary right-of-way and easements required under this section.

e. Except as provided by paragraph (b)(1)f. and (b)(1)i. of this section and for Capital Transportation Program projects that require developer contributions, the Department shall require all new development that generates new vehicle trips to pay the transportation impact fee.

f. The Secretary of the Department shall waive or reduce the transportation impact fee for a residential development that is financed in whole, or in part, by the Delaware State Housing Authority.

g. A development shall pay the transportation impact fee before the issuance of a building permit.

h. 1. In addition to the transportation impact fee, the Department shall assess and collect a surcharge in the amount of 2% of the transportation impact fee due under paragraph (b)(1)a. of this section.

2. The Department shall, on a quarterly basis, deposit the moneys collected from the surcharge under paragraph (b)(1)h.1. of this section with the Office of Management and Budget, which shall, at the direction of the Governor, in consultation with the Director of the Office of Management and Budget and the Controller General, divide the moneys between the following:

A. The Delaware Farmland Preservation Fund established under § 905 of Title 3.

B. The Delaware Land and Water Conservation Trust Fund established and maintained under subchapter II of Chapter 54 of Title 30, for exclusive use by the Open Space Program established under Chapter 75 of Title 7.

C. The Department of Natural Resources and Environmental Control's Shoreline and Waterway Management Section, for use in programs dedicated to coastal resilience.

D. The Department of Transportation's programs for sidewalks to bicycle pathways.

E. The Brownfields Development Program established under subchapter II of Chapter 91 of Title 7.

i. A development that performs a traffic impact study that requires off-site improvements beyond the direct site access and applicable auxiliary lanes, and the costs are in excess of the transportation impact fee, shall pay the additional cost of the design, construction, right-of-way acquisition costs, and traffic impact study costs, less the required transportation impact fee, to the Department.

(2) The regulations required under paragraph (b)(1) of this section ("regulations") must outline the procedures for the Department's acquisition of rights-of-way and easements necessary for transportation infrastructure within an area described in paragraph (b)(1) of this section.

(3) If the predicted impact of new development necessitates a need for additional improvements within the local transportation network, beyond improvements necessary to bring transportation infrastructure up to State standards, and for which additional rights-of-

way must be acquired, the regulations must outline the procedures for the use of the Department's powers under § 137 of this title for this purpose, using contributed funds from the entity triggering the need. Any rights-of-way and easements required may be acquired by the Department, if deemed by the Department, in its reasonable and sole discretion, to be appropriate in the given circumstances.

a. In using this authority, such additional improvements must be limited to those that do not implicate the State's ability to comply with the air quality conformity regulations of the federal Clean Air Act [42 U.S.C. § 7401 et seq.].

b. The use of the authority granted pursuant to this section is limited to those geographic areas defined by the State's land use policies as appropriate for the type and extent of the proposed development.

(4) As part of the approval process for projects built under this section, the Department shall consult with state and local governmental representatives in the area of the proposed improvements. The Department shall also establish procedures for public notice and comment on the potential impacts of the development and the proposed changes to the local transportation network.

(5) The regulations shall provide for 2 alternative methods of constructing the necessary improvements, as follows:

a. The Department may enter into an agreement with the entity seeking development approval to assume direct responsibility for planning, design, inspection, and construction of the improvements. At a minimum, the agreement shall also include terms giving the Department appropriate provisions for quality assurance and quality control of the construction of the additional local improvements.

b. If the entity seeking development approval is eligible for and pays a transportation impact fee, the Department may assume responsibility for the scheduling, planning, design, construction, and inspection of improvements.

(74 Del. Laws, c. 404, § 1; 85 Del. Laws, c. 344, § 11.)

§ 508 Dedication of new roads and streets for state maintenance; approval required; security.

(a) (1) As used in this section, "developer" means the owner of real property on which residential or commercial development is occurring, or the person actually engaged in the development or construction of residential or commercial property.

(2) This section applies to a residential or commercial development which the Department determines affects or requires access to state-maintained highways, streets, or roads.

(3) A person, firm, or corporation may not construct, or cause to be constructed, a new road or street outside the corporate limits of any municipality and intended to be dedicated by the owner of the road or street to this State for public use, including the initial installation of traffic and street name signs, unless the road or street is in conformity with this section and with plans and specifications approved by the Department.

(4) At a minimum, the initial installation of road or street name signs must include the placement of the signs at each intersection of the new road or street with any other road or street, capable of being read from each direction on a road or street at each intersection.

(5) The new road or street is a continuation of an existing or proposed public road designed to be part of the general highway system of the State.

(6) The construction of a new road or street must be performed under a written agreement with the Department, signed by the developer, that includes all of the following:

a. The plans and specifications approved by the Department.

b. The posted security for completion required under paragraph (b)(1) of this section.

c. The location of any decorative subdivision entrance signs installed by the developer.

d. Any other terms the Department determines may be necessary.

(7) a. The Department shall accept a road or street constructed in compliance with this section and the rules, regulations, and standards adopted by the Department under this section into the state maintenance system.

b. Notwithstanding paragraph (a)(7)a. of this section, the Department has the sole discretion as to whether a road or street constructed to serve a dwelling, building, facility, or other structure is accepted into the state maintenance system.

(b) (1) Except as provided by paragraph (b)(3) of this section, before commencement of construction under this section, including the installation of utilities within the dedicated right-of-way, a developer shall first post with the Department a good and sufficient bond, certified check, letter of credit, or other form of security acceptable to the Department in a manner and form approved by the Department and in the amount of 150% of the estimated cost of top coat as approved by the Department. The bond, certified check, letter of credit, or other form of security acceptable to the Department must be conditioned on the faithful performance and satisfactory completion of the obligations imposed by subsection (a) of this section.

(2) a. If top coat is not underway 7 years from the date the bond, certified check, letter of credit, or other form of security acceptable to the Department is posted with the Department under paragraph (b)(1) or (b)(3) of this section, the estimate to complete top coat must be revised to reflect current costs and the developer must post any security the Department deems necessary to meet the requirements of paragraph (b)(1) or (b)(3) of this section.

b. The process under paragraph (b)(2)a. of this section is to be repeated every 5 years until the developer complies with the written agreement entered into under paragraph (a)(6) of this section.

(3) If a developer, regardless of corporate name, has been adjudged by the Department to be in violation of this section or has not maintained a satisfactory record of compliance on repair and construction completion as determined by the Department, the Department may require a bond, certified check, letter of credit, or other form of security acceptable to the Department, consistent with this subsection in an amount of at least 100%, but not more 125%, of the cost of the construction.

(c) (1) The Department shall inspect a new road or street being constructed under this section and any construction, including utilities within the road or street right-of-way, to ensure the construction is in conformity with standards, plans, and specifications approved by the Department. On dedication of the right-of-way to the public use and satisfactory completion of the road or street construction, including connection to an existing state maintained highway, street, or road, the Department shall do all of the following:

a. Notify the developer that the road or street has been accepted into the state maintenance system and that the dedicated right-of-way has been accepted according to the terms of the acceptance.

b. Release to the developer the bond, certified check, letter of credit, or other security acceptable to the Department posted by the developer under subsection (b) of this section.

(2) A signature from a Department inspector must be obtained before the Department can accept a road or street from a developer into the state maintenance system.

(3) The Department shall inform by letter an officer of the maintenance association, if any, in the development in which the road or street will be dedicated, that the Department has accepted the road or street from the developer. The Department shall send copies of the letter to the state Senator and state Representative for the senatorial and representative district in which the road or street is located. The letter must indicate the acceptance date of the road or street and an explanation of the State's 3-year good faith warranty.

(4) The Department, on acceptance of a road or street, shall assume the sole and absolute care, management, and control of the new road or street as a public road or street. Until the Department accepts a new road or street, the developer or the developer's legal successor in interest is solely responsible for maintenance of the road or street.

(5) a. The Department's standards for a new road or street include a requirement that a decorative sign that includes the name of the subdivision and a logo of the State's famous patriot, Caesar Rodney be installed at each newly approved subdivision and be paid for by the developer of the subdivision.

b. A subdivision in existence on July 1, 2005, may request the Department to install a decorative sign required under paragraph (c)(5)a. of this section in place of other signs previously used by the Department. The requested decorative sign must be paid for by the subdivision or from Community Transportation Funds allocated by a legislator who requests the decorative sign.

c. The Department shall replace a standard sign damaged by vandalism, accident, or the ravages of time with another standard sign under the Department's regular maintenance program, unless the decorative alternative has been requested under the provisions of this subsection.

(d) The Department shall make and publish rules, regulations, standards, or specifications for planning, designing, constructing, and maintaining a new road or street.

(e) The bond, certified check, letter of credit, or other form of security acceptable to the Department posted with the Department under paragraph (b)(1) or (b)(3) of this section is immediately due and owing on failure of the developer to meet the obligations set forth in the agreement executed under this section. On failure of the developer to comply with the standards, plans, and specifications or with the terms of the agreement executed under this section, the Department may do 1 or more of the following:

(1) Withdraw any approval to construct a road or street which the Department has given under this section and may, after the withdrawal of the approval, notify the appropriate governmental agency to cease issuance of occupancy permits for dwellings in the construction area.

(2) Proceed to forfeiture of the bond, certified check, letter of credit, or other form of security acceptable to the Department posted under paragraph (b)(1) or (b)(3) of this section.

(3) Move to fine a violator under this section.

(4) Seek specific performance of the developer's agreement.

(5) Conditionally accept and satisfactorily complete the road or street and recover damages in the amount of completion costs and incidental expenses from the developer.

(6) Institute whatever other legal or equitable action is necessary to cause the road or street to be completed.

(f) A developer that does not comply with this section within 100 days of written notification by the Department of a violation is to be punished by a fine of not less than $100 nor more than $1,000 for each offense and the further sum in an amount equal to the amount fined for the initial offense for each day the violation exists. The total fine imposed under this subsection may not exceed the total estimated cost of the construction and incidental expenses related to the construction of the road or street.

(g) Any funds received as the result of action taken under this section must be utilized by the Department to carry out the general purposes of this title.

(h) A developer found in violation of this section by the Department is prohibited from conducting business in the State until all conditions created by the developer constituting a violation of this section have been corrected to the satisfaction of the Department.

(i) The Justice of the Peace Court has jurisdiction over a violation of this section. The Court may order forfeiture of the security required under paragraph (b)(1) or (b)(3) of this section and may impose a fine under subsection (f) of this section.

(Code 1935, c. 55; 48 Del. Laws, c. 85, § 1; 17 Del. C. 1953, § 508; 59 Del. Laws, c. 180, §§ 5-7; 60 Del. Laws, c. 630, § 1; 62 Del. Laws, c. 349, § 1; 68 Del. Laws, c. 405, § 52(a); 69 Del. Laws, c. 409, §§ 1-3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 150, § 74; 71 Del. Laws, c. 318, § 6; 75 Del. Laws, c. 98, § 103; 84 Del. Laws, c. 381, § 1.)

§ 509 Highways deemed public roads.

All public roads, causeways and bridges laid out as such, or made by lawful authority, or which have been used as such and maintained at the public charge for 20 years or more are declared to be common highways. The usage by the public for 20 years or more of any road shall not cause the road to become a common highway or public road unless the same has been maintained at the public charge for 20 years or more.

(Code 1852, § 1077; Code 1915, § 1566; 29 Del. Laws, c. 106; Code 1935, § 1657; 17 Del. C. 1953, § 509.)

§ 510 Speed limit and weight limits on structure.

(a) The Department may conduct an investigation of any public or private bridge, causeway, viaduct or other elevated structure which crosses any public highway regardless of the owner or the owners of said bridge, causeway, viaduct or elevated structure and regardless of what government has jurisdiction over it.

(b) If it finds that a public structure set forth in subsection (a) of this section cannot safely withstand vehicles traveling at the speed permissible under the Code, or cannot withstand vehicular gross weights, including carried load, permissible under the Code, the Department shall determine and declare the maximum speed or gross weight, including carried load, or both, of vehicles which such structure can withstand and shall cause or permit signs stating such maximum speed or gross weight, including carried load, to be erected and maintained before the entrance to such structure.

(c) If it finds that a private structure as set forth in subsection (a) of this section cannot withstand the usage to which it is being subjected, the Department shall declare the maximum usage to which the structure can be subjected. The Department shall notify the owner and/or user of the private structure, who shall not permit the maximum safe usage as determined by the Department to be exceeded.

(d) Whoever violates subsection (c) of this section shall be fined not less than $25 nor more than $500, or imprisoned not less than 10 days nor more than 30 days or both.

(Code 1852, § 1131; Code 1915, § 1573; 29 Del. Laws, c. 108; 40 Del. Laws, c. 107, § 1; Code 1935, § 1665; 17 Del. C. 1953, § 510; 57 Del. Laws, c. 671, § 4C; 60 Del. Laws, c. 700, § 2.)

§ 511 Injury to roads and bridges; double damages; jurisdiction of courts; procedure and appeal.

(a) Whoever negligently or wilfully injures or damages any public road, bridge or drain, or any gate, light or other appurtenance maintained and used for the convenience or safety of the traveling public in connection with such road, bridge or drain shall forfeit and pay double damages therefor. If a public road, bridge, drain, gate, light, or other appurtenance is on or along a “Delaware byway,” as defined in § 101 of this title, an additional civil mandatory penalty of $500 must be added to the amount of double damages.

(b) Action for the recovery of such damages, where the road, bridge, drain or other appurtenance is under the jurisdiction and control of the Department, shall be brought in the name of the State, and all money recovered thereby shall be paid to the State Treasurer.

(c) Justices of the peace, the Court of Common Pleas and the Superior Court shall have concurrent jurisdiction of actions under this section, provided that the jurisdiction of justices of the peace shall be limited to cases where the double damage shall not exceed $2,500, and the jurisdiction of the Court of Common Pleas shall be limited to cases where the double damages shall not exceed the sum of $15,000.

(d) In actions before Justices of the Peace, the procedure shall be the same as is provided for actions of trespass before Justices of the Peace, with the right of appeal to the Court of Common Pleas, and, in actions before the Court of Common Pleas, the right of appeal to the Superior Court shall be preserved.

(Code 1852, § 1131; Code 1915, § 1573; 29 Del. Laws, c. 108; 40 Del. Laws, c. 107, § 1; Code 1935, § 1665; 17 Del. C. 1953, § 511; 66 Del. Laws, c. 265, § 1; 69 Del. Laws, c. 423, § 20; 77 Del. Laws, c. 350, § 4.)

§ 512 Injury to roads, bridges, etc.; penalty.

Whoever wilfully damages or injures any public road, bridge, drain, light, gate or other appurtenance used and maintained for the safety or convenience of the traveling public shall be fined not more than $500. However, if the damage or injury was on or along a “Delaware byway,” as defined in § 101 of this title, an additional civil mandatory penalty of $500 must be added to the fine. The fine and civil penalty, upon the collection thereof, shall be paid to the State Treasurer.

(Code 1852, § 1131; Code 1915, § 1573; 29 Del. Laws, c. 108; 40 Del. Laws, c. 107, § 1; Code 1935, § 1665; 42 Del. Laws, c. 77; 17 Del. C. 1953, § 512; 77 Del. Laws, c. 350, § 5.)

§ 513 Trimming of hedges and removal of trimmings; penalty.

All hedges growing along any of the public roads in this State shall be trimmed at least once in every year to a height of not more than 4 1/2 feet, and the owner, tenant or occupant of any land upon which such hedge is so growing shall so trim such hedge. None of the trimmings removed from such hedge shall be allowed to remain on any of the public roads longer than 2 weeks, but shall be removed therefrom by the party doing the trimming. Nothing in this section shall be construed to compel the owner, tenant or occupant of any land upon which such hedge is so growing to remove from the public roads any of such trimmings that cannot be removed by the use of an ordinary horse rake, and such owner, tenant or occupant shall not be compelled to remove the small trimmings within 5 feet of such hedge.

Where hedges are cut down for the purpose of laying or allowing to thicken, the same may be permitted to grow without trimming for a period of 3 years.

Whoever fails to perform any of the duties imposed by this section shall be fined not more than $50 and, in default of payment thereof, may be imprisoned not more than 60 days.

(32 Del. Laws, c. 203; Code 1935, § 4180; 17 Del. C. 1953, § 513.)

§ 514 Glass or injurious obstruction on public highways; penalty [Repealed].

Repealed by 60 Del. Laws, c. 701, § 5, effective Aug. 5, 1976.

§ 515 Maintenance of unfenced junkyards within certain distance of highways; penalty.

(a) No person shall place, store or permit the placing or storage of abandoned or scrapped automobiles, or automobiles that have been junked, or maintain or keep any yard where scrapped, abandoned or junked automobiles are kept or stored within a distance of 1/4 mile from the right-of-way of the nearest improved state or public highway, unless the yard or field wherein such automobiles are kept, placed or stored shall have erected thereon a fence parallel to the improved highway for the full length of the yard or field along the highway, and shall also have a further fence extending back from the parallel fence the full length of that portion of the field used for such storage, or for a distance of 75 feet, whichever distance shall be the shorter, which fence or fences shall be at least 7 feet in height, shall be built of wood and the panels thereof shall be spaced not more than 2 inches apart.

(b) Whoever violates subsection (a) of this section shall, for each separate offense, be fined not less than $25 nor more than $200 or imprisoned not less than 10 nor more than 60 days, or both.

(c) Each day that any violation is continued shall be deemed a separate offense and violation of subsection (a) of this section.

(41 Del. Laws, c. 194, §§ 1, 2; 17 Del. C. 1953, § 515.)

§ 516 Creation or maintenance of nuisance within certain limits.

(a) No person shall create, erect, maintain or continue a nuisance, as defined in subsection (b) of this section, within 200 feet of either side of the right-of-way of any public highway entering into the City of Wilmington for a distance of 1 mile from the corporate limits of the City, or within the boundaries thereof, upon land of which such person is partner, or persons are the owner, lessee, agent, tenant or occupant.

(b) As used in this section, "nuisance" means any condition of the land, or of the buildings erected thereon, or of the trade or business conducted thereon, or of unsightly articles collected thereon or therein or of obnoxious odors arising thereon, therein or therefrom, which causes any annoyance to the persons making use of any public highway, as mentioned in subsection (a) of this section, by being offensive or obnoxious to the senses of such persons.

(c) The Council of the "Mayor and Council of Wilmington" may abate the nuisance by the enactment of ordinances giving directions for the cleansing, removal or remedy of the matter or thing complained of and providing penalties for violations of its orders to be recovered in the Court of Common Pleas.

(35 Del. Laws, c. 90, §§ 1-3; Code 1935, §§ 2465-2467; 17 Del. C. 1953, § 516; 71 Del. Laws, c. 176, § 26.)

§ 517 Boulevard corporations.

Article 10, Chapter 65 of the Revised Code of Delaware 1935 shall continue in full force and effect as to boulevard corporations established according to law and existing at the time of the effective date of this Code.

(17 Del. C. 1953, § 517.)

§ 518 Trash within a certain distance of the highway; penalty.

(a) No person shall throw, deposit or place any trash, rubbish or garbage within 100 feet of any public highway in this State.

(b) Whoever violates this section shall be punished as follows: The court shall order the violator within a specified period of time to clean up that section of the public highway or property within 100 feet of the public highway where the violator has thrown, deposited or placed trash, rubbish or garbage, except that if the violator refuses to do so, or if such is not possible or feasible, or if the violator fails to do so to the satisfaction of the court, the violator shall be fined not less than $250 nor more than $500 for each violation and there shall be no suspension of the fine.

(c) Justices of the peace shall have jurisdiction of offenses under this section.

(d) Each day that any violation is continued shall be deemed a separate offense and violation of this section.

(17 Del. C. 1953, § 518; 50 Del. Laws, c. 336, § 1; 52 Del. Laws, c. 190; 57 Del. Laws, c. 354, §§ 1, 2; 57 Del. Laws, c. 414; 70 Del. Laws, c. 186, § 1.)

§ 519 William J. Winchester Bridge.

The Department of Transportation is hereby directed to name the bridge which crosses the Christina River at Third Street in the City of Wilmington the "William J. Winchester Bridge."

(62 Del. Laws, c. 54, § 1.)

§ 520 Injury to trees, shrubs, and landscaping.

(a) Whoever negligently, wilfully or maliciously injures or damages trees, shrubs or other landscaping under the jurisdiction and control of the Department shall forfeit and pay treble damages therefor. The damages shall be computed as the sum of the cost of purchase of new trees, shrubs or other landscaping of equivalent size and quality and the removal and installation costs to replace the damaged trees, shrubs or other landscaping, including direct labor costs plus overhead costs, computed in accordance with accepted governmental accounting principles.

(b) Justices of the peace, the Court of Common Pleas and the Superior Court shall have concurrent jurisdictions of actions under this section.

(c) In actions before Justices of the Peace, the procedure shall be the same as is provided for actions of trespass before Justices of the Peace, with the right of appeal to the Court of Common Pleas, and, in actions before the Court of Common Pleas, the right of appeal to the Superior Court shall be preserved.

(66 Del. Laws, c. 353, § 1; 69 Del. Laws, c. 423, § 21.)

§ 521 Snow removal in nonmunicipal residential communities.

(a) For purposes of this section:

(1) "Department" means the Department of Transportation.

(2) "Feeder road" means a road that serves more than a single residential development or community as a primary entry way. These roads may serve any of the following:

a. Two or more different residential developments or communities.

b. A residential development or community and either a school, church, business, or other public building.

(3) "Organization" means a civic association, neighborhood alliance, homeowners maintenance corporation, homeowners maintenance association, neighborhood improvement district management association as defined in § 3503 of Title 9, or other similar entity charged with or assuming the duties of maintaining the public areas, open space, or common facilities within a residential development or community not within the boundaries of a municipality.

(4) "Snow event" means any snow event whose accumulation within the relevant maintenance district is equal to or greater than 2 and less than 4 inches for the cost of plowing the feeder road leading to the school, as determined by the Department.

(5) "Snowstorm" means a snowstorm event whose accumulation within the relevant maintenance district is equal to or greater than 4 inches, as determined by the Department.

(6) "Streets" means those streets within a residential development or community which have been accepted for perpetual maintenance by the Department.

(b) An organization created pursuant to New Castle County ordinance or regulation has the authority to contract for snow removal services and include the cost of such snow removal services in assessments made by such organization to property owners of the residential development or community. Such charges or fees are considered assessments for the maintenance of open space and common facilities for collection and lien purposes.

(c) An organization may contract for snow removal services for snowstorms impacting the streets within its development or community and be partially reimbursed for the costs of such services, subject to the following conditions:

(1) The reimbursement must be in an amount not to exceed 75% of the actual contracted cost of said services, but in any event, may not exceed 75% of an annual cost analysis determination made by the Department in its implementing regulations under subsection (e) of this section. The regulatory cost determination must include the Department's cost of purchasing similar services under its own contracts.

(2) The organization's contracts with contractors providing these services must include provisions for proof of insurance and compliance with all relevant state license requirements, including the provisions of Chapter 21 of Title 30.

(3) The selection of contractors for services is not subject to Chapter 69 of Title 29.

(4) To obtain economies of scale, an organization may enter into written agreements with other organizations to obtain joint snow removal contracts for purposes of this section.

(d) An organization with a school located in its development or community may seek reimbursement for any snow event for the cost of plowing the feeder road leading to the school, as prescribed in the Department regulations and subject to the conditions provided in paragraphs (c)(1) through (c)(4) of this section.

(e) The Department is responsible for the implementation and administration of this section through the adoption and publication of rules, regulations, or procedures deemed necessary for these purposes.

(70 Del. Laws, c. 599, § 1; 74 Del. Laws, c. 68, § 235; 74 Del. Laws, c. 347, §§ 1, 2; 80 Del. Laws, c. 240, § 1; 83 Del. Laws, c. 457, § 2.)

§§ 522, 523 [Reserved.]

§ 524 Removal of nonofficial signs from utility poles within state rights-of-way.

(a) *Legislative findings.* — The General Assembly finds that persons and firms post nonofficial signs on utility poles without prior authorization from the pole owner. Placing such signs on these poles is unsafe, both for the person attaching the sign and those in the vicinity of such activity when it occurs, including passersby. Therefore, it is appropriate to authorize the Department of Transportation to treat such signs as subject to immediate removal and other enforcement action under §§ 525 through 527 of this title, without regard to the clear zone distance limitations of those sections.

(b) The Department of Transportation may treat any nonofficial signs placed on utility poles at any location within the State's rights-of-way as artificial obstructions within the clear zone, subject to immediate removal and other enforcement action under §§ 525 through 527 of this title, upon confirmation that the utility company had not previously authorized the placement of such signs.

(75 Del. Laws, c. 98, § 121.)

§ 525 Maintenance of clear zones within rights-of-way.

(a) The Department is authorized to maintain clear zones within the rights-of-way under its jurisdiction in the unincorporated areas of the State. In maintaining these clear zones, the Department shall have the immediate authority to remove artificial obstructions placed therein, including, but not limited to, nonofficial signs, poles, mailboxes not placed in conformance with Departmental regulation, or other hazards to safe passage. In removing artificial obstructions, the Department shall attempt to determine the owner of the obstruction and provide written notice and an opportunity for the owner to recover the obstruction after its removal. The Department shall also have the immediate authority to remove or trim vegetation growing within these rights-of-way.

(b) As used in this chapter, the term "clear zone" has the following meanings:

(1) For all roads except those described in paragraph (b)(2) of this section, the term includes the total roadside border area within a right-of-way, starting at the edge of the pavement and continuing for a distance of 10 feet perpendicular to the pavement edge.

(2) For all interior streets within residential subdivisions, the term includes the total roadside border area within a right-of-way, starting at the edge of the pavement and continuing for the shorter distance of either:

a. Seven feet perpendicular to the pavement edge, or

b. If there is a sidewalk adjacent to the street, the sidewalk edge further from the street.

(3) The total area within the median strips between traveled ways or on any channelization islands or on any gore areas, except as permitted by § 1108(d) of this title. For purposes of this section, "gore area" means a longitudinal point where a physical barrier or the lack of a paved surface inhibits road users from crossing from a ramp or channelized turn lane or channelized entering lane to the adjacent through lane or lanes or vice versa.

(c) The owner of any obstruction removed pursuant to this section shall be liable for a civil fine of $25 for each item so removed, payable to the Department. Justices of the Peace shall have original jurisdiction for any court proceedings relating to this fine. No owner of any such obstruction shall be entitled to the return of any removed obstruction without proof of payment of all outstanding fines.

(d) Recovery by the owner of any artificial obstruction removed by the Department under this section shall be subject to the payment of a $15 recovery fee per obstruction. If the owner does not pay the fee and recover the obstruction within 30 days of its removal, the Department shall dispose of the obstruction in the exercise of its reasonable discretion. The Department may also take such legal steps as it deems necessary and proper to collect these recovery fees, including but not limited to a debt action in the courts of this State.

(71 Del. Laws, c. 318, § 7; 75 Del. Laws, c. 98, §§ 122, 123; 79 Del. Laws, c. 310, § 1.)

§ 526 Restrictions against commercial use of State rights-of-way; site-based enforcement mechanisms.

(a) Except as provided in subsection (b) of this section, there shall be no commercial activity within any rights-of-way under the Department's jurisdiction in the unincorporated areas of the State. As used herein, "commercial activity" includes, without limitation, such activities as the placement of news boxes in such rights-of-way for the sale of newspapers, the placement of vending machines in such rights-of-way for the sale of goods, the placement of commercial advertising signs in such rights-of-way or the sale of goods from vehicles parked within such rights-of-way. If a commercial activity occurs within the clear zone of any such rights-of-way, the Department shall treat the machines, fixtures, signs or other materials used in such activity as an artificial obstruction under § 525 of this title, and may undertake the immediate removal of said materials as authorized therein.

(b) Any of the following commercial uses of the rights-of-way shall be subject to enforcement under Chapter 11 of this title:

(1) Commercial activities occurring outside the clear zone; or

(2) The placement of nonofficial signs outside the clear zone; or

(3) The placement of vending machines at designated locations at safety roadside rest areas, as permitted by § 132(c)(14) of this title; or

(4) The placement of news boxes outside the clear zone; or

(5) Signs displayed on any school bus waiting shelter located with the approval of the Department of Education; or

(6) Nonofficial signs displayed on transit shelters pursuant to Department-approved contracts.

(71 Del. Laws, c. 318, § 7.)

§ 527 Coordination with other statutes.

In the event of a conflict between §§ 525 and 526 of this title and Chapter 11 of this title, §§ 525 and 526 shall take precedence.

(71 Del. Laws, c. 318, § 7.)

§ 528 Restrictions against vehicle sales activities on State rights-of-way.

(a) No vehicle shall be left unattended on a state right-of-way for the purpose of selling such vehicle.

(b) If a duly authorized employee of the Department of Transportation or a police officer shall determine that an unattended vehicle is on state right-of-way in violation of subsection (a) of this section, the vehicle may be removed from that location without prior notice to the registered owner of the vehicle, and taken to a private storage area maintained for the safe storage of vehicles, as prescribed by the towing and storage procedures in current use by the Delaware State Police or the Department of Transportation. Any costs of the removal and storage shall be borne by the registered owner of said vehicle, who shall be held prima facie responsible for the violation of this section.

(c) The registered owner of any vehicle towed from a state right-of-way pursuant to this section shall also be subject to the enforcement

provisions of § 4181 of Title 21.

(d) This section shall not apply to vehicles left unattended on a state right-of-way due to the presence of a disabling condition or otherwise legally parked on the right-of-way.

(74 Del. Laws, c. 181, § 1.)

§ 529 Inspection requirements for bridge owners.

(a) As used herein, the terms "bridge" and "bridge with approaches" are defined as structures, including supports, erected over a depression or an obstruction such as water, a highway or a railway, with tracks or passageways for carrying traffic or other moving loads, and with openings measured along the center of the roadway of more than 20 feet (6.1 meters) between undercopings of abutments or spring lines of arches, or the extreme ends of openings for multiple boxes. The term "bridge" shall also include multiple pipe structures where the clear distance between pipe openings is less than half of the smaller pipe diameter(s), and the combined structure exceeds 20 feet (6.1 meters) in total span length.

(b) All bridges and bridges with approaches located on or over public roads must be inspected in accordance with The National Bridge Inspection Standards, as codified in 23 C.F.R. Part 650, Subpart C, as amended, and in accordance with the following provisions:

(1) Such inspections shall be the responsibility of the bridge owner.

(2) The inspections shall be performed by qualified personnel not less frequently than every 2 years, based on the bridge condition and on the schedule set by the Department of Transportation.

(3) Inspection information must be collected, maintained and be available for review as required by the Federal Highway Administration's Recording and Coding Guide for Structure Inventory and Appraisal of the Nation's Bridge.

(4) If the bridge owner does not perform the required inspection on the schedule approved by the Department of Transportation, the Department shall notify the bridge owner and give the bridge owner 60 days to produce the required inspection report.

(5) If the bridge owner fails to produce the required inspection report after notice pursuant to paragraph (b)(4) of this section, the Department shall be empowered to take the following enforcement actions:

a. Perform the inspection, the costs of which shall be borne by the bridge owner. The Department shall have the right to enter the property to perform such inspections, regardless of the ownership of the property; or

b. Close the bridge.

(72 Del. Laws, c. 201, § 1.)

§ 530 Dedication of right-of-way adjacent to a state highway.

Notwithstanding any rule, law, or provision to the contrary, the dedication of a right-of-way along a state highway by any property owner pursuing a subdivision of their land, shall not be required where the property being subdivided is a farm or farmland and a right-of way is not deemed by the Department to be necessary due to safety issues that would be directly caused by the requested subdivision and:

(1) The parcel is subdivided into no more than 2 parcels which are continued to be used as a farm or farmland; or

(2) The subdivided parcel or parcels are transferred to a family member or members for purposes of use as a family member or members' principal residence or farmland.

The Department shall have the burden of proof to establish by clear and convincing evidence that a right-of-way is necessary due to safety issues directly caused by the requested subdivision. Should the Department require a right-of-way dedication pursuant to this section and fail to meet its burden of proof in a court proceeding then the property owner shall be entitled to reimbursement of their reasonable costs including but not limited to reasonable attorney fees incurred as a result of the Department's action.

(75 Del. Laws, c. 39, § 1.)

§ 531 Connections to roads within restricted age communities.

(a) The Department shall not accept into the state maintenance system any new road or street, pursuant to its authority under § 508 of this title, if the new road or street makes a connection to an existing street right-of-way of an adjoining residential age-restricted development, defined herein as a planned residential community whose deed restrictions or similar recorded provisions limit ownership and residence to persons 55 years of age or older.

(b) Subsection (a) of this section shall not prohibit a connection to an existing street right-of-way of an adjoining residential age-restricted development, if the new road or street is to be part of a residential age-restricted development.

(c) Subsection (a) of this section shall not prohibit a connection to an existing street right-of-way of an adjoining residential age-restricted development, if the owners of the property within that adjoining development elect to permit the connection, by a majority vote under the homeowner association rules or similar self-governance provisions applicable to that development.

(d) Subsection (a) of this section shall not prohibit a connection to an existing street right-of-way of an adjoining residential age-restricted development, if the connection is limited to a sidewalk or multi-use pathway not designed for motorized vehicles and the owners of the property within that adjoining development elect to permit the connection, by a majority vote under the homeowner association's rules or similar self-governance provisions applicable to that development.

(e) This section shall not be applicable to those roads and streets for which acceptance into the State maintenance system under § 508 of this title has been conditioned upon agreement to potential connections to the streets and roads of an adjoining property, as evidenced by the Department's approval of the conceptual site plan or proposed entrance configuration for the development, if granted prior to March 15,

2011.

(78 Del. Laws, c. 32, § 1.)

§ 532 Memorial signage.

Notwithstanding any law or regulation to the contrary, memorial signs for firefighters, EMS personnel, or law-enforcement officers killed along a Delaware road or highway in the line of duty are specifically authorized to be placed along the road near the place such person was killed. Such signage shall be constructed and installed in accordance with the Federal Manual on Uniform Traffic Control Devices, as published by the Federal Highway Administration under 23 C.F.R., Part 655, Subpart F.

(78 Del. Laws, c. 67, § 1.)

§ 533 Establishment of Department ownership of abandoned land encumbered by Department right-of-way easements.

(a) Any land encumbered by a permanent easement for right-of-way purposes may be deemed to be owned in fee simple, by the Department, in the name of the State, when such land has been abandoned by the grantor(s) of such permanent easements, or by the grantor's successors in interest, provided that the following conditions are satisfied:

(1) The land is encumbered by a permanent easement, for right-of-way purposes, that was properly conveyed to the Department.

(2) A minimum of 40 years has passed since the granting of the permanent easement and during that period the Department has used the permanent easement in accordance with § 131 of this title.

(3) A minimum of 40 years has passed since the underlying fee simple ownership of the encumbered land was conveyed by a properly recorded instrument and neither the original grantor(s) nor the heirs or successors of the original grantor(s) can be located.

(4) Neither the original grantor(s) of the permanent easement nor the heirs or successors of the original grantor(s) are the fee simple owners of any land directly adjoining the land encumbered by the permanent easement.

(5) No action has been filed by any purported owner in any court of this State pertaining to determination of fee simple ownership of the land encumbered by the permanent easement.

(6) The land encumbered by the Department's permanent easement is part of a current Department project.

(b) The Department shall promulgate regulations to establish procedures for establishing its determination that the land encumbered by the permanent right-of-way easement has been abandoned and for recording its fee simple ownership of the land.

(84 Del. Laws, c. 305, § 1.)

Chapter 6

Toll Express Highways; Delaware Turnpike [Repealed].

§§ 601-622 Finding and declarations of legislative intent; definitions; Delaware Turnpike; John F. Kennedy Memorial Highway; Turnpike Division; preliminary expenses; general grant of powers; incidental powers; State highways and bridges; revenues; exemption from taxation; maintenance and operation of Turnpike; damage to private property; lease, loan or grant of municipal real property; arrest for nonpayment of tolls; annual report; unclaimed property; Turnpike revenue bonds; Turnpike revenue refunding bonds; credit of State not pledged; trust agreement; bonds eligible for investment; trust funds; remedies of bondholders and trustees; transfer to State; construction; territorial limitation of authority [Repealed].

Repealed by 60 Del. Laws, c. 665, § 2, effective July 30, 1976.

Chapter 7
RAILROAD CROSSINGS OVER HIGHWAYS

§ 701 Whistles at public highway crossings; blocking of crossings; penalty; jurisdiction.

(a) Every corporation operating any line of railroad within this State shall cause the approach of its locomotive engine to every public highway crossing such line of railroad at grade to be signalled by sounding 2 long blasts followed by 1 short blast followed by 1 long blast of the engine whistle on every such locomotive engine, beginning at least 300 yards from such crossing. Where 2 or more public highways cross any such railroad within a distance of 400 yards, the signal for the crossing first reached shall answer for all. This section shall not apply to the City of Wilmington, nor to any other crossings than those at grade nor to any such as are guarded by a watchperson or protected by safety gates.

(b) If any corporation neglects or omits the performance of the duty prescribed and imposed by subsection (a) of this section, it shall be fined for the first offense $20, for the second offense $40 and for every subsequent offense not more than $100.

(c) Every corporation operating any line of railroad within the State shall cause its trains to cross a highway or road for the public use within 10 minutes so that the highway or road is not blocked for any longer period of time, unless an emergency is the cause of the delay.

(d) Any corporation violating subsection (c) of this section shall be fined not less than $500 and not more than $1000 for the first conviction and not less than $1000 and not more than $2000 for each subsequent conviction which occurs within 1 year after a previous conviction.

(e) Justices of the peace shall have jurisdiction of offenses under this section. There shall be a right of appeal to the Court of Common Pleas in every case.

(18 Del. Laws, c. 685, §§ 1, 2; Code 1915, § 1613; Code 1935, § 1699; 17 Del. C. 1953, § 705; 52 Del. Laws, c. 124; 57 Del. Laws, c. 371, §§ 1-3; 69 Del. Laws, c. 423, § 22; 70 Del. Laws, c. 186, § 1.)

§ 702 Elimination of grade crossings; ascertainment of damages to owners.

Whenever eliminating any grade crossing in this State is desired, either by lowering or raising the grade of any public road at such grade crossing, whereby it becomes necessary to take or occupy any property for the purpose of eliminating such grade crossing, or whereby any damage will be done to any property adjacent thereto, the owners of such property shall be paid or tendered such damages as they shall respectively be entitled to receive, whether the damages shall be caused by the Department or by any railroad company or companies whose tracks or roadbeds are located at the crossings, which damages shall be assessed as in cases of condemnation in accordance with the procedure prescribed in Chapter 61 of Title 10.

(27 Del. Laws, c. 168; Code 1915, § 1615; 40 Del. Laws, c. 107; Code 1935, § 1702; 17 Del. C. 1953, § 706.)

§ 703 Crossing by state highways with watercourses or railroads.

(a) The Department may cross any canal, navigable stream or watercourse with a state highway, but in such manner as not unnecessarily to impede the navigation and use thereof, and also may cross any railroad or railway with a state highway and acquire the necessary easement for such crossing either by agreement with the owner, or on failure to agree, by condemnation thereof in accordance with Chapter 61 of Title 10. However, no state highway shall cross any railroad or railway at grade except at a point or place where such railroad or railway is now crossed at grade by a public road, provided, however, state highways may cross spurs, sidings and branchlines of any railroad or railway at grade if approval is first obtained from the Secretary of the Department of Transportation to whom reasons and supporting data for requesting at grade crossing shall be furnished. All at grade crossings so approved shall be furnished with crossing protection, required by applicable federal, state and local regulations.

(b) The Department may enter upon the lands or waters of any person for the purpose of making such examination and surveys for proposed highways as shall be required to be made in the selection of the most advantageous route for such highway, but subject at all times to responsibility for all and any damages which shall be done to the property of any such person or persons.

(29 Del. Laws, c. 63, § 6; 34 Del. Laws, c. 79; Code 1935, § 5739; 46 Del. Laws, c. 257, § 1; 17 Del. C. 1953, § 707; 62 Del. Laws, c. 341, § 1.)

§ 704 Abandonment of roads crossing railroad at grade; relocation of roads; character of construction.

(a) Whenever in the opinion of the Department a public road crossing of a railroad at grade should be abandoned, the Department may close and vacate the public road or such part thereof as may be necessary to prevent the use of the grade crossing. If, in the opinion of the Department, the convenience of the traveling public requires it, the Department shall relocate the public road or the part thereof thus vacated and shall connect the public road with some other public road which crosses the railroad. The Department may acquire any land, building, franchise, easement or other property necessary for the relocation of the road by purchase thereof or by condemnation proceedings as provided in Chapter 61 of Title 10. The character of the construction of the relocated public road shall be at the discretion of the Department and need not conform to the usual standards of the Department.

(b) Whenever any public road is vacated, who shall enclose the same or any part thereof and what portion of the costs such persons ought to pay respectively shall be determined as provided in Chapter 13 of this title.

(29 Del. Laws, c. 63, § 6; 34 Del. Laws, c. 80; Code 1935, § 5740; 17 Del. C. 1953, § 708.)

§ 705 Safety devices [Repealed].

Repealed by 59 Del. Laws, c. 393, § 1, effective June 28, 1974.

§ 706 Regulation of maintenance of railroad property.

(a) No hedge, shrub, tree or solid fence shall be erected, planted or maintained within the railroad property or right-of-way and for a distance of 25 yards from the point where that property or right-of-way crosses any public or private road at which grade crossing protection is not provided by gates, warning lights or watchperson.

(b) If any railroad company, at any time, fails to comply with subsection (a) of this section, the Department shall notify the president or other executive officer of the company, in writing, stating the nature of the obstruction. If the company does not within 30 days thereafter comply with subsection (a) of this section, it shall be fined for the first offense $100, for the second offense $200 and for every subsequent offense not less than $500 nor more than $1,000.

(c) The Superior Court shall have jurisdiction of offenses under this section.

(17 Del. C. 1953, § 711; 57 Del. Laws, c. 721; 70 Del. Laws, c. 186, § 1.)

§§ 707-711 [Reserved].

Chapter 8
HIGHWAY CONSTRUCTION PAYMENTS

§ 801 Definitions.

As used in this chapter:

(1) "Contractor" includes, but is not limited to, an architect, engineer, nursery worker, landscaper, subcontractor or any other person who enters into any contract with the Department of Transportation, its agents or authorized employees for the erection, construction, completion, authorization or repair of any highway, right-of-way, turnpike or toll express highway, including shoulders, median strips, parkways and islands, by such contractor.

(2) "Moneys or funds" includes, but is not limited to, the entire amount of all moneys or funds received by a contractor, as defined in this section, in connection with a contract with the Department of Transportation for the erection, construction, completion, authorization or repair of any highway, right-of-way, turnpike or toll express highway, including shoulders, median strips, parkways and islands, by such contractor, and moneys or funds by way of a loan or advance for the purpose of such erection, construction, completion, authorization or repair of any highway, right-of-way, turnpike or toll express highway, including shoulders, median strips, parkways and islands, by such contractor.

(17 Del. C. 1953, § 801; 57 Del. Laws, c. 688; 60 Del. Laws, c. 503, § 18; 70 Del. Laws, c. 186, § 1.)

§ 802 Payments to contractor impressed with trust.

All moneys or funds received by a contractor in connection with the erection, construction, completion, authorization or repair of any highway, right-of-way, turnpike or toll express highway, including shoulders, median strips, parkways and islands, by such contractor shall be trust funds in the hands of the contractor.

(17 Del. C. 1953, § 802; 57 Del. Laws, c. 688.)

§ 803 Use or application of money received by contractor.

(a) No contractor, or agent of a contractor, shall pay out, use or appropriate any money or funds described in § 802 of this title until they have first been applied to the payment of the full amount of all moneys due and owing by the contractor to all persons furnishing labor or material for the erection, construction, completion, authorization or repair of any highway, right-of-way, turnpike or toll express highways, including shoulders, median strips, parkways and islands, by such contractor, whether or not the labor or material entered into or became a component part of any such highway right-of-way, turnpike or toll express highways, including shoulders, median strips, parkways and islands, and whether or not the same were furnished on the credit of such highway right-of-way, turnpike or toll express highways, including shoulders, median strips, parkways and islands, or on the credit of such contractor.

(b) All general contractors or agents of any general contractor receiving funds impressed with a trust under this chapter shall, within 30 days of receipt of any payment, file a statement in a form to be determined by the Division of Highways, with the contracting state agency that the contractor or the contractor's agent has paid all subcontractors furnishing labor or material the full sum due them at that stage of the contract, except any funds withheld under the terms of the contract.

(c) In any instance where the contract stipulates that the general contractor will receive a series of prorated payments the general contractor or the general contractor's agents shall, upon the receipt of each payment, pay all subcontractors furnishing labor or materials, who have properly completed all work required of them at that stage of the contract, according to the same prorated formula which governs payments to the general contractor, i.e., if the general contractor receives 10% initially, persons furnishing labor and materials will receive 10% initially, and so through the course of the contract.

(17 Del. C. 1953, § 803; 57 Del. Laws, c. 688; 59 Del. Laws, c. 174, § 1; 70 Del. Laws, c. 186, § 1.)

§ 804 Contractor's failure to use or apply money in accordance with § 803 of this title.

(a) Failure of a contractor, or an agent of a contractor, to pay or cause to be paid, in full or pro rata, the lawful claims of all persons, firms, associations of persons or corporations furnishing labor or material as required by § 803 of this title within 30 days after the receipt of any moneys or funds for the purposes of § 802 of this title shall be prima facie evidence of the payment, use or appropriation of such trust moneys or funds by the contractor in violation of this chapter.

(b) Prior to any payment made to any subcontractors for materials, workmanship and all other supplies furnished by such person, persons or corporations an inspection shall be made by the Department of Transportation of all supplies and work furnished by the subcontractors and their approval of the work shall be required before payment is made.

(17 Del. C. 1953, § 804; 57 Del. Laws, c. 688; 60 Del. Laws, c. 503, § 18.)

§ 805 Penalties.

Whoever, being a contractor, or any agent of a contractor, pays out, uses or appropriates, or consents to the paying out, use or appropriation of any moneys or funds received for any of the purposes specified in § 802 of this title, prior to paying in full or pro rata to the extent of the moneys or funds so received all the lawful claims of all persons furnishing labor or materials, as prescribed by § 803 of this title, shall be fined not more than $1,000 or imprisoned not more than 3 years or both.

(17 Del. C. 1953, § 805; 57 Del. Laws, c. 688.)

Chapter 9
DRAINAGE OF LANDS ADJACENT TO PUBLIC ROADS

§ 901 Department of Transportation to drain certain lands along highways.

The Department shall drain or cause to be drained by suitable and sufficient ditches, or other conduits, waters which have backed upon lands along the right-of-way of any road or highway caused by the construction, alteration or changing of the natural contour lines and levels along and over the area confined within such right-of-way, whereby the natural flow and drainage from such lands along and over such right-of-ways is retarded, hindered or stopped.

(41 Del. Laws, c. 238, § 1; 17 Del. C. 1953, § 901; 57 Del. Laws, c. 671, § 7; 60 Del. Laws, c. 503, § 18.)

§ 902 Construction of ditches along certain highways.

The Department shall, at all times, cause suitable and sufficient ditches or other conduits to be constructed along the right-of-way of any road or highway constructed, altered or changed, whereby, because of such construction, alteration or changing of such lands included in the right-of-way of such road or highway, the natural contour lines and levels of the lands included within such right-of-way of such road or highway would be changed, and waters would tend to collect upon and over the lands adjacent to such road or highway because of such change.

(41 Del. Laws, c. 238, § 2; 17 Del. C. 1953, § 902.)

§ 903 Drainage of flooded highway.

The Department, upon being notified that any lands along the right-of-way of any road or highway are covered with water resulting from the construction, alteration or changing of such road or highway as provided in §§ 901 and 902 of this title shall forthwith drain, or cause to be drained by 1 or more ditches, or other conduits, such water from such lands.

(41 Del. Laws, c. 238, § 3; 17 Del. C. 1953, § 903.)

§ 904 Agreements with ditch companies for drainage purposes.

For the purpose of draining the right-of-way of any highway, the Department may make agreements with any ditch company or corporation with respect to the cleaning of ditches, or widening, deepening or extending ditches. For this purpose the Department may pay a fair and proportionable part of the expense thereof, the expense to be mutually agreed upon before the work is undertaken; and provided that the ditch company or corporation shall levy taxes sufficient to pay its fair and proportionable part of the expense, and provided that the work of cleaning, widening, deepening and extending the ditches shall be under the supervision of the Department.

(32 Del. Laws, c. 57; Code 1935, § 5760; 17 Del. C. 1953, § 904.)

Chapter 10
BIKEWAYS AND SAFE ROUTES TO SCHOOL

Subchapter I

Bikeways

§ 1001 Authority for establishment of bikeways.

The Department of Transportation, Division of Highways, referred to in this chapter as "the Department," is hereby authorized to establish bikeways within this State for the use, enjoyment and participation of the public in nonmotorized bicycling. The routes established for such bikeways shall be designed with consideration for the safety of both cyclists and motorists and may be separate roadways, or may utilize existing roads, streets and parkways or other appropriate thoroughfares. Such bikeways may also be constructed on land acquired by the Department specifically for that purpose.

(59 Del. Laws, c. 481, § 1; 73 Del. Laws, c. 435, § 1.)

§ 1002 Bikeway routes.

Bikeway routes shall be clearly marked with appropriate signs to guide cyclists and to alert motorists. Such signs shall be placed at intervals and designed in such form as prescribed by the Department.

(59 Del. Laws, c. 481, § 1; 73 Del. Laws, c. 435, § 1.)

§ 1003 Cooperation with other governmental agencies.

The Department may cooperate with federal, county or municipal conservation boards, city or town councils or any private organizations interested in the establishment of bikeways, and may consult with such groups in the planning of appropriate bikeway routes and related activities. The Department shall, where feasible and where it finds the need justified, review all proposals submitted to it by other groups and/or agencies and may provide matching funds from moneys authorized by the capital bond issue for planning, construction and designation of bikeways.

(59 Del. Laws, c. 481, § 1; 73 Del. Laws, c. 435, § 1.)

§ 1004 Power to acquire real property.

In order to establish a system of bikeways within this State, the Department may acquire real property by gift, devise or purchase. Title to such lands shall be in the name of the State.

(59 Del. Laws, c. 481, § 1; 73 Del. Laws, c. 435, § 1.)

§ 1005 Bikeway planning.

The Department shall maintain a planning activity concerned with the near and long-term development of bikeways within the State.

(59 Del. Laws, c. 481, § 1; 73 Del. Laws, c. 435, § 1.)

§ 1006 Bicycle access to highways.

Nothing in this chapter shall be construed as a limitation of the use of bicycles on existing roads, streets, parkways and other thoroughfares by bicyclists even though such roadways are not specifically designated as bikeways, except as specified in § 4196(c) of Title 21.

(59 Del. Laws, c. 481, § 1; 73 Del. Laws, c. 435, § 1.)

Subchapter II

Safe Routes to School

§ 1021 Declaration of purpose.

The federal Highway Safety Act [23 U.S.C. § 401 et seq.] has authorized appropriations for a number of programs relating to projects for the improvement of highway safety and the reduction of traffic congestion. Such programs include the rail-highway crossings program; the pavement marking demonstration program; projects for high-hazard locations, including, but not limited to, projects for bicycle and pedestrian safety and traffic calming measures in those locations; a program for the elimination of roadside obstacles; and the federal-aid safe roads demonstration program. The Department of Transportation has been implementing these programs successfully for many years. The purpose of this subchapter is to authorize the Department of Transportation to include a "Safe Routes to School" program in its implementation of these federal programs in this State. The Secretary, the Department of Transportation, the county governments, and governing bodies of the incorporated municipalities in this State are authorized to do all things necessary in their respective jurisdictions to secure and expend such federal funds in accordance with the intent of the federal act and of this subchapter.

(73 Del. Laws, c. 435, § 1.)

§ 1022 Safe Routes to School Program; establishment; grants; regulations.

(a) The Department of Transportation is authorized to establish and administer a "Safe Routes to School" program pursuant to the authority granted under Title 23 of the United States Code, to use federal transportation funds for bicycle and pedestrian safety and traffic calming measures.

(b) The Department of Transportation is authorized to make grants available to schools and school districts that are recognized by the Delaware Department of Education under the Safe Routes to School Program based on the results of a statewide competition that requires submission of proposals for funding and that rates those proposals on the following factors:

(1) Demonstrated needs of the applicant;

(2) Potential of the proposal for reducing child injuries and fatalities;

(3) Potential of the proposal for encouraging increased walking and bicycling among students;

(4) Completion of a "Safe Routes to School" plan that requires all of the following:

a. Identification of safety hazards;

b. Identification of current and potential walking and bicycling routes to school; and

c. Involvement in plan development by students, parents, teachers, local transportation agencies, law enforcement agencies and school officials.

(c) Grants shall only be awarded to the highest rated project or projects as measured on the rating system and scale established by the Department of Transportation, subject to the amount of funding approved by the Secretary for use under the "Safe Routes to School Program" for any given year. The Department of Transportation shall announce the amount of money available for grants for a given fiscal year within 1 month after the commencement of that fiscal year. Establishment of the necessary rating system and scale and the amount of money available for grants to be issued in each such year shall be in the complete discretion of the Secretary.

(d) If awarded, grants shall be issued in 2 disbursements, the first in an amount equal to $^{1}/_{3}$ of the proposed necessary funding to be paid prior to the commencement of the project and the second in an amount equal to the remaining $^{2}/_{3}$ of the proposed necessary funding to be paid upon completion of the project.

(e) The Secretary shall promulgate rules and regulations necessary for the implementation of this section.

(73 Del. Laws, c. 435, § 1.)

Chapter 11
REGULATION OF OUTDOOR ADVERTISING
Subchapter I
General Provisions

§ 1101 Purpose and policy.

The rapid growth in the use of motor vehicles throughout this State and the concurrent extension of highways built or improved at public expense has lead to great changes in the extent and character of public travel. The investment of this State, municipalities and towns in good roads, parks, parkways, playgrounds and reservations, and the safety, convenience and welfare of the inhabitants have been affected.

The regulation and control of outdoor advertising signs, displays and devices of all kinds is provided for in order to promote the general welfare, especially in the particulars hereinafter recited.

The people of this State would suffer economically if the State failed to participate fully in the allocation and apportionment of federal-aid highway funds since a reduction in federal-aid highway funds would necessitate increased taxation to support and maintain the state road program and system. It is, consequently, the intention of this chapter, among other things, to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relating to areas adjacent to federal-aid interstate and primary systems declared by the Congress of the United States in Title 23, United States Code.

(42 Del. Laws, c. 182, § 1; 17 Del. C. 1953, § 1101; 53 Del. Laws, c. 87, § 1; 57 Del. Laws, c. 276.)

§ 1102 Scope and definitions.

(a) The powers and authority granted in this chapter are in derogation of no other powers or authority granted by or created by or exercised under any other statute, or by a planning or zoning board or authority, or other public officer, but shall be construed as in addition to any such power or authority, which shall remain unaffected.

(b) As used in this chapter:

(1) “Commercial or industrial activities for purposes of unzoned commercial and industrial areas” means those activities generally recognized as commercial or industrial by zoning authorities in this State, except that none of the following activities shall be considered commercial or industrial:

a. Outdoor advertising structures;

b. Forestry, ranching, grazing and farming including, but not limited to, wayside fresh produce stands;

c. Transient or temporary activities;

d. Activities more than 600 feet from the nearest edge of the right-of-way along the interstate and federal-aid primary route;

e. Activities conducted in buildings principally used as a residence;

f. Railroad tracks and minor sidings;

g. Activities not visible from the main traveled way.

(2) “Controlled areas” means and includes any area inside the boundaries of this State which is adjacent to the right-of-way of a highway of the interstate or primary systems, except that areas beyond 660 feet of the right-of-way inside urban areas shall be excluded from this chapter.

(3) “Department” means the Department of Transportation.

(4) “Erect” means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish, but it shall not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance of a sign or sign structure.

(5) “Gateway sign” means any sign, display, or device intended for its purpose to provide information to the travelling public advising motorists that they are entering the boundaries of a political subdivision or established nonincorporated area of the State. A gateway sign may include a slogan or related graphic, or both, subject to the approval of the Department.

(6) “Information center” means an area or site established and maintained at a rest area for the purpose of informing the public of places of interest within the State and providing such other information as the Department may consider desirable.

(7) “Interstate system” means that portion of the national system of interstate and defense highways located within this State, as officially designated, or as may hereafter be so designated, by the Department and approved by the Secretary of Transportation of the United States, pursuant to Title 23, United States Code, “Highways.”

(8) The “laws of this State” shall include a provision of the Constitution or statutes of the State, or an ordinance, rule or regulation enacted or adopted by an agency or political subdivision of this State pursuant to the Constitution or statutes.

(9) “Maintain” means to allow to exist in accordance with state law.

(10) “Outdoor advertising” or “outdoor advertising signs, displays and devices” shall include any outdoor sign, display, device, picture, emblem, trademark, figure, painting, drawing, message, placard, poster, billboard, light or other thing which is designed, intended or used to advertise, to inform or to attract the attention of the traveling public, which is within 660 feet and visible or beyond

660 feet and visible and erected with the purpose of being read from the main traveled way of any state highway.

(11) "Primary system" means that portion of connected main highways of this State officially designated as such, or as may hereafter be designated as such, by the Department and approved by the Secretary of Transportation of the United States, pursuant to Title 23, United States Code, "Highways."

(12) "Rest area" means an area or site established and maintained within or adjacent to the right-of-way by or under public supervision or control, for the convenience of the traveling public.

(13) "Unzoned commercial or industrial areas" means those areas not zoned by any state, county or local ordinance or regulation on which there are located 1 or more permanent structures devoted to a business or industrial activity or on which a commercial or industrial activity is actually conducted, whether or not a permanent structure is located thereon, and the area along the highway extending outward 800 feet from and beyond the edge of such activity. Each side of the highway will be considered separately in applying this definition. All measurements shall be from the outer edges of the regularly used buildings, parking lots, storage or processing areas of the commercial or industrial activities, not from the property lines of the activities, and shall be along or parallel to the edge of the pavement of the highway.

(14) "Urban areas" means and includes those areas designated as such by the Bureau of the Census and whose boundaries have been approved by the Secretary of the United States Department of Transportation.

(15) "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(16) "Zoned commercial or industrial areas" means those areas which are zoned for business, industry, commerce or trade pursuant to a state or local zoning ordinance or regulation, except that those areas beyond 660 feet outside urban areas shall not be recognized as commercial, industrial, unzoned commercial or unzoned industrial in the application of this chapter.

(42 Del. Laws, c. 182, § 1; 17 Del. C. 1953, § 1102; 53 Del. Laws, c. 87, § 1; 57 Del. Laws, c. 276; 57 Del. Laws, c. 633, §§ 1, 2; 60 Del. Laws, c. 290, § 1; 61 Del. Laws, c. 262, §§ 1-6; 79 Del. Laws, c. 320, § 1.)

§ 1103 Enforcement of chapter; rules and regulations; examinations; territorial limitations.

(a) The Department shall:

(1) Enforce this chapter; and

(2) Make, publish and enforce such regulations for the proper control and restriction of outdoor advertising signs, displays and devices as may be necessary or advisable to implement the policy and accomplish the purposes of this chapter.

(b) All employees of the Department, or any peace officer of this State, when so directed by the Department or its officers, may enter into and upon any land or building to make any examination or survey which the Department deems necessary to the effective administration of this chapter or to enforce this chapter.

(c) This chapter shall apply only to outdoor advertising signs, displays and devices situate outside the corporate limits of any incorporated city or town in this State and to those outdoor advertising signs, displays and devices situate in controlled areas within such corporate limits.

(42 Del. Laws, c. 182, §§ 2, 14; 17 Del. C. 1953, § 1103; 53 Del. Laws, c. 87, § 1; 57 Del. Laws, c. 276; 57 Del. Laws, c. 633, § 7; 61 Del. Laws, c. 262, § 7.)

§ 1104 Application and issuance of permits; revocation.

(a) Except as otherwise provided, no person, whether engaged in the business of outdoor advertising or not, shall erect, maintain or display any outdoor advertising sign, display or device, above or upon real property, without first obtaining a permit from the Department.

(b) A separate application for a permit shall be made for each separate outdoor advertising sign, display or device on a form furnished by the Department, which application shall contain such information as it may require. For the purpose of this subsection, each single sign panel or face shall be interpreted as constituting an outdoor advertising sign, display or device. Each application shall be accompanied by the written consent of the owner or tenant of the real property upon which such sign, display or device is to be erected or maintained. No new application shall be made for a permit to maintain any existing outdoor advertising sign, display or device or to renew a permit.

(c) The Department, in accordance with this chapter, shall issue or renew permits for a period of at least 1 year for the erection and maintenance of all types of outdoor advertising signs, displays and devices; provided, however, that all new permits issued shall expire at the next regular renewal period established by the Department. No permit shall be issued for the erection or construction of any sign which would be in violation of local law or ordinance at the time application is filed.

(d) The Department may establish and collect fees for the issuance of permits and renewals thereof. The amount of such charge shall be so fixed as to provide the Department with the funds deemed necessary by it to defray the costs of the administration of this chapter.

(e) When an application for a permit or for a renewal thereof is made by a nonresident or by a foreign corporation engaged in the business of outdoor advertising, the Department, at its discretion, as a condition to the issuance of such permit or renewal, may require such corporation to deposit with the Department a bond, in an amount and with surety to be approved by the Department, to secure such corporation's compliance with this chapter.

(f) All sign permits issued under this section shall terminate and become void if the sign structure for which the permit is issued is not under construction within 6 months and is not fully constructed in full compliance with the terms of this chapter within 1 year after its issuance. Under no circumstances shall there be any refund of a permit fee which has become void.

(42 Del. Laws, c. 182, § 3; 17 Del. C. 1953, § 1104; 53 Del. Laws, c. 87, § 1; 57 Del. Laws, c. 276; 57 Del. Laws, c. 633, §§ 8, 9; 61 Del. Laws, c. 262, §§ 8-10.)

§ 1105 Advertising identification.

The Department shall require that each outdoor advertising sign, display or device shall bear an identifying tag or plate to be issued by the Department, and, upon erection shall bear the name of the party responsible for the erection and maintenance of the sign and the Department shall make provisions for the details thereof.

(42 Del. Laws, c. 182, § 4; 17 Del. C. 1953, § 1105; 53 Del. Laws, c. 87, § 1; 57 Del. Laws, c. 276; 60 Del. Laws, c. 290, § 3; 61 Del. Laws, c. 262, § 11.)

§ 1106 Removal upon expiration or revocation of permit.

All outdoor advertising signs, displays and devices shall be removed by the outdoor advertiser or other person erecting, owning, maintaining or displaying the same, or, in the event of that person's default, by the owner or tenant of the premises upon which any such sign, display or device is located, within 30 days from the date of the expiration or revocation of the permit for the same.

(42 Del. Laws, c. 182, § 5; 17 Del. C. 1953, § 1106; 53 Del. Laws, c. 87, § 1; 57 Del. Laws, c. 276; 70 Del. Laws, c. 186, § 1.)

§ 1107 Unlawful to remove or damage road markers, etc., or place advertising on highways.

(a) No person shall willfully or maliciously displace, remove, destroy or injure a mileboard, milestone, danger sign or signal, guide sign or guide post or any inscription thereon, lawfully within the right-of-way of a public highway.

(b) No person shall in any manner paint, print, place, put or affix any outdoor advertising, outdoor advertising signs, displays or devices upon or to any rock, stone, tree, fence, stump, pole, milestone, danger signal, guide sign, guide post, building or other object lawfully within the right-of-way of any public highway.

(42 Del. Laws, c. 182, § 7; 17 Del. C. 1953, § 1107; 53 Del. Laws, c. 87, § 1; 57 Del. Laws, c. 276; 61 Del. Laws, c. 262, § 12.)

§ 1108 Location and condition of advertising regulated.

(a) Subject to subsection (c) of this section, no outdoor advertising sign, display or device, except a directional, gateway, or warning sign, official sign or notice erected by or with the approval of the Department, shall be erected subsequent to July 14, 1969, within 25 feet of the right-of-way line of any public highway if visible from any portion of the same.

(b) Subject to subsection (c) and subsection (d) of this section, no outdoor advertising sign, display or device, except a gateway sign or historical marker erected with the approval of the Department, shall be erected or maintained:

(1) On the right-of-way of any public highways;

(2) Within 25 feet of any public playground, school or church if visible from any portion of the same;

(3) Upon the inside curves or at or near a railroad crossing or a highway intersection, if such would obstruct or interfere with the view of a train, locomotive, streetcar or other vehicle at or approaching such crossing or intersection or so as to obstruct the view of such intersection or crossing or of a turn or a sharp change in alignment or in any manner dangerous to the public;

(4) If such sign, display or device is obsolete or is not in good physical condition;

(5) If such sign, display or device is not securely affixed to a substantial structure or in any way endangers traffic on any public highway.

(c) Subsection (a) of this section shall not apply to outdoor advertising signs, displays or devices which advertise the sale or lease of, or activities conducted upon, the real property where they are located, or any outdoor advertising signs displayed on any school bus waiting shelter located and approved by the State Department of Education.

(d) Beautification/landscape planting sponsorship signs located within the right-of-way of any public highway shall be erected or placed as defined below and as such are exempt from this chapter and section:

(1) Signs under the above provision denoting the name of the person or persons or organization sponsoring/or donating, planting and/or maintaining beautification/landscape projects shall require an approved right-of-way use agreement issued by the Department of Transportation;

(2) Such signs shall not exceed 6 square feet and shall be constructed, painted and lettered according to standards for material and fabrication as required by the Department of Transportation.

(42 Del. Laws, c. 182, §§ 6, 11; 17 Del. C. 1953, § 1108; 53 Del. Laws, c. 87, § 1; 55 Del. Laws, c. 407; 56 Del. Laws, c. 178; 56 Del. Laws, c. 351, § 1; 57 Del. Laws, c. 276; 57 Del. Laws, c. 633, §§ 10, 11; 61 Del. Laws, c. 262, §§ 13-15; 62 Del. Laws, c. 267, §§ 1, 2; 71 Del. Laws, c. 318, § 1; 79 Del. Laws, c. 320, § 1; 80 Del. Laws, c. 23, § 1.)

§ 1109 Forbidden advertising.

No outdoor advertising signs, displays or devices shall display copy which violates any federal or state law, or which is offensive to the moral standards of the community at the time the copy is offered for display, or which is false, misleading or deceptive.

(42 Del. Laws, c. 182, § 10; 17 Del. C. 1953, § 1109; 53 Del. Laws, c. 87, § 1; 57 Del. Laws, c. 276.)

§ 1110 Delaware Byways Program.

In order to provide criteria for the size, spacing and lighting of signs which effectively control the erection of outdoor advertising signs, displays and devices erected subsequent to July 14, 1969, other than those advertising the sale or lease of the property on which they are located, or activities conducted thereon, the Department establishes the following criteria for use in making, publishing and enforcing

regulations:

(1) In zoned commercial and industrial areas, the Department shall certify to the administrator as notice of effective control that there have been established within such areas regulations which are effective and are enforced with respect to the size, lighting and spacing of outdoor advertising signs, displays and devices. In such areas, the size, lighting and spacing requirements set forth below shall not apply.

(2) In all other zoned and unzoned commercial and industrial areas, the criteria set forth below shall apply:

a. *Construction of signs.* — 1. The maximum area for any 1 sign shall be 1,200 square feet with a maximum height of 25 feet and maximum length of 60 feet, inclusive of any border and trim but excluding ornamental base or apron, supports and other structural members.

2. The area of the sign shall be computed by the sign maker utilizing the most practical method which encompasses the entire sign and this data shall be submitted to the Division of Highways upon application for permit.

3. A sign structure may contain 1 or 2 signs per facing and 2 sign facings may be placed back to back or V-type at 1 location but in no event shall the total area of any facing exceed 1,200 square feet.

4. A sign which exceeds 600 square feet in area may not be on the same sign facing with any other sign.

5. All newly erected, rebuilt or replaced sign structures shall be constructed in accordance with the applicable wind pressure standards of the local building code, or, in the absence of such requirement, shall be constructed to withstand a minimum wind pressure of 25 pounds per square foot.

b. *Spacing of signs.* — 1. *Interstate and federal aid primary highways.* — Signs may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of an official traffic sign, signal or device, or obstruct or physically interfere with the driver's view of approaching, merging or intersecting traffic. Except for roof signs, wall signs and free standing signs against the wall of a building, no ground sign shall be placed within 35 feet of either highway right-of-way at an intersection where they converge, unless the base of such sign shall be at least 8 feet above ground level or road bed, whichever is higher.

2. *Interstate highways and controlled access highways on the federal aid primary system.* —

A. No 2 structures shall be spaced less than 500 feet apart.

B. Outside of incorporated cities and towns, no structure may be located within 500 feet of an interchange, intersection at grade, rest area or information center (measured along the interstate or freeway from the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).

3. *Noncontrolled access federal aid primary highways.* —

A. Outside of incorporated cities and towns, no 2 structures shall be spaced less than 300 feet apart.

B. Within incorporated cities and towns, no 2 structures shall be spaced less than 100 feet apart.

4. The above spacing-between-structures provisions do not apply to structures separated by buildings or other obstructions in such a manner that only 1 sign facing located within the above spacing distances is visible from the highway at any 1 time.

5. Official and "on premise" signs, as defined in subsection (c) of § 131 of Title 23, United States Code, and structures that are not lawfully maintained shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

6. The minimum distance between structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and shall apply only to structures located on the same side of the highway.

c. *Lighting.* — Signs may be illuminated, subject to the following restrictions.

1. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or traffic conditions, or as defined in paragraph (2)c.5. of this section.

2. Signs which are not effectively shielded to prevent beams or rays of light from being directed at any portion of the traveled ways of an interstate or federal-aid primary highway and which are of such intensity or brilliance as to cause glare or to impair the vision of a driver of a motor vehicle or which otherwise obscure or interfere with a driver's operation of a motor vehicle are prohibited.

3. A sign may not be illuminated so that it interferes with the effectiveness of, or obscures, an official traffic control device such as a sign or signal.

4. All lighting is subject to any other provisions of law relating to the lighting of signs presently applicable to all highways under the jurisdiction of the State.

5. Notwithstanding the provisions of paragraphs (2)c.1. through (2)c.4. of this section, signs commonly known as variable message signs may be changed at intervals by electronic or mechanical process or remote control, and are permitted within 660 feet of the edge of the right-of-way of any interstate or federal-aid primary highway so designated as of June 1, 1991, and of the National Highway System. These variable message signs are permitted, except as prohibited by local ordinance or zoning regulation or by the Delaware federal-state outdoor advertising agreement of May 1, 1968, and are not considered to be in violation of flashing, intermittent, or moving lights criteria provided that:

A. Each message remains fixed for a minimum of at least 10 seconds.

B. When the message is changed, it must be accomplished in 1 second or less, with all moving parts or illumination changing

simultaneously and in unison.

C. A variable message sign along the same roadway and facing in the same direction of travel may not be placed, as measured along the centerline of the roadway, within 2,500 feet of another variable message sign, or within 500 feet of a static billboard sign regulated by this section, or within 1,000 feet of an interchange, interstate junction of merging or diverging traffic, or an at-grade intersection.

D. A variable message sign must contain a default design that will freeze the sign in 1 position if a malfunction occurs or, in the alternative, that will shut down.

E. A variable message sign may not contain or display any lights, effects, or messages that flash, move, appear to be animated or to move, scroll, or change in intensity during the fixed display period. A variable message sign must appropriately adjust display brightness as ambient light levels change.

F. A sign that attempts or appears to attempt to direct the movement of traffic or which contains wording, color, shapes, or likenesses of official traffic control devices is prohibited.

G. A sign may not be placed along designated Delaware byways.

d. The State and local political subdivisions shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes and the action of the State and local political subdivisions in this regard will be accepted for the purposes of this chapter. At any time that a political subdivision adopts regulations which include the size, lighting and spacing of outdoor advertising, the State shall so certify to the administrator and control of outdoor advertising in commercial or industrial areas will transfer to paragraph (1) of this section.

(17 Del. C. 1953, § 1110; 57 Del. Laws, c. 276; 57 Del. Laws, c. 633, §§ 3-6; 60 Del. Laws, c. 290, § 2; 61 Del. Laws, c. 262, § 16; 76 Del. Laws, c. 144, § 1; 77 Del. Laws, c. 367, § 1.)

§ 1111 Public nuisance; abatement.

(a) Any outdoor advertising sign, display or device which is erected or maintained in violation of this chapter or any regulations lawfully adopted pursuant to this chapter is declared to be a public nuisance and may be forthwith removed, obliterated or abated by the Department, its employees or any peace officer of this State, when such violation is not corrected after 30 days' written notice of the violation to the owner of the sign, display or device or to the owner, lessee or occupant of the land upon which the sign, display or device is located. All costs incurred by the Department in abating a nuisance pursuant to this section shall be the responsibility of the owner of the sign, display or device and the Department shall have an action at law to recover such costs, as well as the expenses of suit.

When any sign is damaged, or falls into disrepair to the extent that obvious repairs are needed, the owner shall be notified in writing by the Department to make all necessary repairs. If the sign is not repaired, rebuilt or removed within 30 days of the notification, the applicable sign permit shall lapse and become null and void.

(b) Any person, business or company which knowingly paints, builds and erects or maintains an outdoor advertising sign without a permit shall be in violation of the chapter.

(c) (1) Any outdoor advertising sign, display or device which is erected or maintained in violation of § 1108(b)(1) of this title shall be subject to immediate removal and the other enforcement provisions of § 525 of this title, without regard to the clear zone distance limitations of that section.

(2) Paragraph (c)(1) of this section shall not apply during the 30-day period immediately preceding and the 30-day period after an election administered pursuant to Title 15, in those election districts affected by such election or elections.

(42 Del. Laws, c. 182, § 13; 17 Del. C. 1953, § 1111; 53 Del. Laws, c. 87, § 1; 57 Del. Laws, c. 276; 57 Del. Laws, c. 633, § 12; 60 Del. Laws, c. 290, §§ 4, 5; 75 Del. Laws, c. 98, § 124.)

§ 1112 Injunctive relief.

The Department or any taxpayer may maintain an action for an injunction to restrain any violation or threatened violation of this chapter or of any regulation lawfully adopted pursuant thereto.

(42 Del. Laws, c. 182, § 13; 17 Del. C. 1953, § 1112; 53 Del. Laws, c. 87, § 1; 57 Del. Laws, c. 276.)

§ 1113 Penalties.

Whoever violates this chapter or any regulation lawfully adopted pursuant to this chapter shall be fined not less than $10 nor more than $50.

Each day that a violation is allowed to continue after 30 days' written notice of its existence shall constitute a separate offense.

(42 Del. Laws, c. 182, § 13; 17 Del. C. 1953, § 1113; 53 Del. Laws, c. 87, § 1; 57 Del. Laws, c. 276.)

§ 1114 Signs excepted from provisions of this subchapter.

The classes of signs described below are excepted from all provisions of this subchapter other than the provisions of § 1103(a)(2) insofar as those provisions may be implemented by regulations controlling and restricting outdoor advertising signs, displays and devices in controlled areas:

(1) Outdoor advertising signs, displays and devices 32 square feet or less erected or maintained upon real property and placed on the premises to identify a business conducted thereon.

(2) Outdoor advertising signs, displays and devices (containing 12 square feet or less in areas zoned residential or 32 square feet or

less in areas zoned otherwise) upon real property stating that the property, or a part thereof, is for sale or for rent.

(3) A notice or advertisement required by law in any legal proceeding or put upon the property by public authority.

(4) A danger or precautionary sign containing 2 square feet or less relating to the premises or a sign warning of the condition of or danger of travel on a highway.

(5) Any notice or sign of any railroad or other transportation or transmission or communication company necessary for the direction or information or safety of the public.

(6) Any sign containing 6 square feet or less and directing travelers to any town, village, city, historical site or attractions, provided the same is maintained at public expense.

(7) Nonofficial signs displayed on transit shelters under contracts approved by the Department.

(42 Del. Laws, c. 182, § 8; 17 Del. C. 1953, § 1114; 53 Del. Laws, c. 87, § 1; 57 Del. Laws, c. 276; 60 Del. Laws, c. 290, § 6; 61 Del. Laws, c. 262, §§ 17, 18; 63 Del. Laws, c. 178, §§ 1, 2; 71 Del. Laws, c. 318, §§ 2, 3.)

§§ 1115-1119 [Reserved].

§ 1120 Severability.

If any exception, section, part, phrase, or provision of this chapter or the application thereof be held invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the exception, section, part, phrase, provision, or application directly involved in the controversy in which such judgment shall have been rendered, and shall not affect or impair the remainder of this chapter or the application thereof.

(71 Del. Laws, c. 318, § 4.)

Subchapter II

Areas Adjacent to Highways of the Interstate and Primary Systems

§ 1121 Limitations of outdoor advertising in controlled areas.

Subject to § 1122 of this title, no outdoor advertising sign, display or device, any part of the advertising, informative or attention attracting contents of which is visible from the main traveled way of a highway of the interstate system or primary system, shall be erected or maintained within a controlled area, unless it shall come within 1 or more of the following categories:

(1) Directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions as authorized or required by the laws of this State;

(2) Signs, displays and devices advertising the sale or lease of the real property upon which they are located;

(3) Signs, displays and devices advertising activities conducted on the real property upon which they are located;

(4) Signs, displays and devices located either:

a. In controlled areas adjacent to the interstate system and within the boundaries of incorporated municipalities, as such boundaries existed on September 21, 1959, wherein the use of real property is subject to municipal regulation and control, which are zoned industrial or commercial; or

b. In other controlled areas adjacent to the interstate system zoned industrial or commercial which were zoned industrial or commercial as of September 21, 1959;

(5) Signs, displays and devices located in controlled areas adjacent to highways of the primary system which are zoned industrial or commercial;

(6) Signs, displays and devices located in unzoned commercial and industrial controlled areas adjacent to highways of the primary system and defined by regulations to be promulgated by the Department;

(7) Any school bus waiting shelter displaying a sign provided such sign does not exceed 32 square feet in area and with a limit of 2 signs per shelter. Should the State Department of Education determine that there is no longer a need for a waiting shelter at its present location, the exemption provided by this paragraph shall then terminate.

Such outdoor advertising signs, displays and devices as are permitted in controlled areas under this section shall be erected and maintained only in conformity with such applicable regulations as may be promulgated by the Department under § 1103 of this title.

(17 Del. C. 1953, § 1121; 57 Del. Laws, c. 276; 57 Del. Laws, c. 633, § 13; 61 Del. Laws, c. 262, §§ 19-21; 71 Del. Laws, c. 318, § 5.)

§ 1122 Removal of nonconforming advertising; fair compensation.

(a) Just compensation shall be paid upon the removal of the following outdoor advertising signs, displays and devices:

(1) Those lawfully in existence on July 14, 1969;

(2) Those lawfully on any highway made a part of the interstate or federal-aid primary system on or after July 14, 1969; and

(3) Those lawfully erected on or after July 14, 1969.

(b) The Department is authorized to acquire the necessary right in and to property and is directed to pay compensation therefor in the same manner as with other property acquired for state highway purposes with respect to the foregoing outdoor advertising signs, displays

and devices. The compensation to be paid shall be for the following:

(1) The taking from the owner of such sign, display or device of all right, title, leasehold and interest in such sign, display and device; and

(2) The taking from the owner of the real property on which such sign, display or device is located, of the right to erect and maintain such signs, displays or devices thereon. Notwithstanding these provisions, no rights in and to property shall be acquired with respect to any outdoor advertising sign, display or device except to the extent that federal funds authorized to be appropriated pursuant to the federal Highway Beautification Act of 1965, as amended, to reimburse the State for 75% of the cost thereof, are in fact appropriated and allocated to the State for that purpose.

(17 Del. C. 1953, § 1122; 57 Del. Laws, c. 276.)

§ 1123 Advertising in rest areas.

In order to provide information in the specific interest of the traveling public, the Department is authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at rest areas and to establish information centers in such areas for the purpose of informing the public of places of interest within the State and providing such other information as may be considered desirable, provided, however, that no such information centers shall be established within controlled areas adjacent to the interstate system without the approval of the Secretary of Transportation of the United States.

(17 Del. C. 1953, § 1123; 57 Del. Laws, c. 276; 61 Del. Laws, c. 262, § 22.)

§ 1124 Signs, displays and devices providing information for the traveling public; location.

Signs, displays and devices giving specific information in the interest of the traveling public may be erected and maintained, pursuant to agreement between the Department and the Secretary of Transportation of the United States, within the right-of-way of highways of the interstate system, at appropriate distances from interchanges on such systems.

(17 Del. C. 1953, § 1124; 57 Del. Laws, c. 276.)

§ 1125 Agreements with federal government or agencies.

The Department may enter into agreements, consistent with this chapter, with the Secretary of Transportation of the United States relating to the control of outdoor advertising in controlled areas and take action in the name of the State to comply with the terms of such agreements.

The Department may accept allotment of funds by the United States, or any department or agency thereof, authorized by the Federal-Aid Highway Act of 1958, or any subsequent legislation supplementary to or amending such Act, in connection with any agreement entered into by the Department and the Secretary of Transportation of the United States relating to the control of outdoor advertising in controlled areas adjacent to the interstate and/or primary system.

(17 Del. C. 1953, § 1125; 53 Del. Laws, c. 87, § 1; 57 Del. Laws, c. 276; 61 Del. Laws, c. 262, § 23.)

§ 1126 Relationship of subchapter to other provisions of chapter.

The provisions of this subchapter relating to the regulation of outdoor advertising in controlled areas are in addition to, and not in lieu of, subchapter I of this chapter.

(61 Del. Laws, c. 262, § 24.)

Subchapter III

Limited Access, State Toll Roads

§ 1131 Limitations of outdoor advertising along limited access, state toll roads.

The provisions of subchapter II of this chapter shall be applicable to any limited access, state toll road in this State.

(68 Del. Laws, c. 417, § 1.)

§ 1132 Sign limitations on state toll highways.

(a) Notwithstanding any other provisions of this Code to the contrary, variable message signs (VMS) may not be erected or placed, facing in the same direction of travel, and directed toward and able to be read by travelers along state toll highways, within 1,000 feet of any toll highway listed in subsection (c) of this section, except for those signs installed within the rights-of-way of a toll highway for official Department use.

(b) As used in this section, “variable message sign” (“VMS”) means a sign or portion of a sign on which the message copy includes characters, letters, or illustrations that can be changed or rearranged electronically or mechanically without touching or physically altering the primary surface of the sign. Message copy for a VMS may be changed in the field or from a remote location.

(c) The provisions of this section apply to the following: the portion of State Route 1 running from the point at which it merges with U.S. Route 13 below State Route 71 to the point where it merges with the southbound on-ramp of State Route 9.

(78 Del. Laws, c. 138, § 1.)

Chapter 12
REGULATION OF JUNKYARDS

§ 1201 Purposes.

The establishment, operation and maintenance of junkyards in areas adjacent to the public highways of this State should be controlled in order to promote the safety and recreational value of public travel, to protect the public investment in public highways and to preserve and enhance the scenic beauty of lands bordering such highways.

The people of this State would suffer economically if the State failed to participate fully in the allocation and apportionment of federal-aid highway funds since a reduction in federal-aid highway funds would necessitate increased taxation to support and maintain the state road program system. It is, consequently, the intention of this chapter, among other things, to provide a statutory basis for the establishment, operation and maintenance of junkyards consistent with the public policy relating to areas adjacent to federal-aid interstate and primary highways declared by the Congress of the United States, in Title 23, United States Code.

(17 Del. C. 1953, § 1201; 56 Del. Laws, c. 253, § 2.)

§ 1202 Scope and definitions.

(a) The powers and authority granted in this chapter are in derogation of no other powers or authority granted or created or exercised under any other statute, by a planning or zoning board or authority or other public officer, but shall be construed to be in addition to any such power or authority, which shall remain unaffected.

(b) As used in this chapter:

(1) "A controlled area" means, and "controlled areas" includes, any area inside the boundaries of this State which is adjacent to and within 1,000 feet of the nearest edge of the right-of-way of a highway of the interstate system or the primary system.

(2) "Automobile graveyard" means any establishment or place of business which is maintained, used or operated, for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

(3) "Illegal junkyard" means any junkyard which was established, operated and/or maintained in violation of Delaware law.

(4) "Interstate system" means that portion of the national system of interstate and defense highways located within this State, as officially designated, or as may hereafter be so designated, by the Department, and approved by the Secretary of Transportation pursuant to Title 23, United States Code, "Highways."

(5) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled or wrecked automobiles, or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material.

(6) "Junkyard" means an establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling junk, or for the maintenance or operation of an automobile graveyard. This definition includes scrap metal processors, auto-wrecking yards, salvage yards, scrap yards, auto-recycling yards, used auto parts yards and temporary storage of automobile bodies and parts awaiting disposal as a normal part of a business operation when the business will continually have like materials located on the premises. The definition includes garbage dumps and sanitary landfills. The definition does not include litter, trash and other debris scattered along or upon the highway, or temporary operations and outdoor storage of limited duration.

(7) The "laws of this State" includes a provision of the Constitution or statutes of this State, or an ordinance, rule or regulation enacted or adopted by an agency or political subdivision of this State pursuant to the Constitution or statutes.

(8) "Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways or parking areas.

(9) "Nonconforming junkyard" is one which was lawfully established, but which does not comply with the laws of this State or Department regulations passed at a later date or which later fails to comply with such law or regulations due to changed conditions.

(10) "Primary system" means that portion of connected main highways of this State officially designated as such, or as may hereafter be designated as such, by the Department, and approved by the Secretary of Transportation, pursuant to Title 23, United States Code, "Highways."

(11) "Unzoned industrial areas" means those areas not zoned by any state, county or local authority, but used primarily for industrial purposes as determined by the Department. Outdoor advertising structures shall not be considered industrial.

(12) "Visible" means capable of being seen without visual aid by a person of normal visual acuity.

(13) "Zoned industrial areas" means those areas which are zoned for industry or manufacturing pursuant to a state, county or local zoning authority.

(17 Del. C. 1953, § 1202; 56 Del. Laws, c. 253, § 2; 61 Del. Laws, c. 166, §§ 1, 2.)

§ 1203 Enforcement of chapter; rules and regulations; examinations; application of chapter.

(a) The Department shall:

(1) Enforce this chapter; and

(2) Make, publish and enforce such regulations governing the establishment, maintenance and operation of junkyards as may be

necessary or advisable to implement the policy and accomplish the purposes of this chapter.

Such regulations may include provisions governing the location, planting, construction (including materials used) and maintenance of the screening required by this chapter. Regulations pertaining to controlled areas shall be consistent with any national standards for junkyard control promulgated by the Secretary of Transportation of the United States pursuant to Title 23, United States Code.

(b) All employees of the Department, or any peace officer of this State, when so directed by the Department or its officers, may enter into and upon any land or building to make any examination or survey which the Department deems necessary to the effective administration of this chapter, or to enforce this chapter.

(c) This chapter shall apply only to junkyards situate, in whole or in part, outside the corporate limits of any incorporated municipality in this State and to those junkyards situate, in whole or in part, in controlled areas within such corporate limits, except for the requirement of § 1204 of this title.

(17 Del. C. 1953, § 1203; 56 Del. Laws, c. 253, § 2; 61 Del. Laws, c. 166, §§ 3, 4.)

§ 1204 Application and issuance of licenses.

(a) No person, whether or not engaged in the junk business, shall establish, operate or maintain a junkyard within the jurisdiction of the Department under this chapter any portion of which is within 1,000 feet of the nearest edge of the right-of-way of any public highway of this State without obtaining a license from the Department.

(b) The Department, in accordance with this chapter, shall issue and renew licenses for a period of 1 year for the establishment, maintenance and operation of junkyards within its jurisdiction, provided, however, no license shall be issued for the erection or construction of any junkyard which would be in violation of local law or ordinance at the time the application is filed.

(c) The Department may establish and collect fees for the issuance of licenses and renewals thereof. The amount of such charge shall be so fixed as to provide the funds deemed necessary by it to defray the cost of the administration of this chapter.

(17 Del. C. 1953, § 1204; 56 Del. Laws, c. 253, § 2; 61 Del. Laws, c. 166, § 5.)

§ 1205 Restrictions as to locations.

(a) No license shall be granted for the establishment, maintenance or operation of a junkyard any portion of which is within a controlled area except the following:

(1) Junkyards which are lawfully in existence on the effective date of this chapter;

(2) Junkyards which are screened by natural objects, plantings, fences or other means found appropriate by the Department so as not to be visible from the main-traveled way of the highway of the interstate or primary systems;

(3) Junkyards located within areas which are zoned for industrial use under the laws of this State;

(4) Junkyards located within unzoned industrial areas which the Department shall find are used for industrial activities.

(b) No such license shall be granted for a junkyard which is permitted in a controlled area under this chapter solely because of paragraphs (a)(3) and (4) of this section unless such junkyard is fenced in the manner provided in paragraph (c)(3) of this section.

(c) No license shall be granted for a junkyard which is not located within the limits of an incorporated municipality and which is within 1,000 feet of the nearest edge of the right-of-way of a public highway of this State other than a highway of the interstate or primary systems except the following:

(1) Junkyard lawfully in existence on the effective date of this chapter;

(2) Junkyards which are screened by natural objects, plantings, fences or other means found appropriate by the Department so as not to be visible from the main-traveled way of public highway;

(3) Junkyards which have a fence parallel to the public highway for the full length of the yard along the highway and a further fence extending back from the parallel fence the full length of the junkyard or for a distance of 1,000 feet, whichever distance shall be shorter, which fence or fences shall be at least 7 feet in height and shall to the extent of such height render the junkyard not visible from the view of persons traveling on the main-traveled way of the public highway.

(17 Del. C. 1953, § 1205; 56 Del. Laws, c. 253, § 2; 61 Del. Laws, c. 166, § 6.)

§ 1206 Screening, relocation, removal or disposal of lawfully preexisting junkyards.

Any junkyard lawfully in existence on the effective date of this chapter any portion of which is within a controlled area and which is not in any of the classes specified in § 1205(a)(2), (3) and (4) of this title shall be screened, if physically and economically feasible, by the Department at locations on the highway right-of-way or in areas acquired for such purposes outside the right-of-way, so as not to be visible from the main-traveled way of the highway of the interstate or primary systems. Any such junkyard which the Department determines cannot, as a practical matter, be screened pursuant to this section shall be relocated, removed or disposed of by the owner thereof.

(17 Del. C. 1953, § 1206; 56 Del. Laws, c. 253, § 2; 61 Del. Laws, c. 166, § 7.)

§ 1207 Compensation to owners on relocation, removal or disposal of their facilities.

Just compensation shall be paid by the Department to the owners of junkyards in controlled areas which must be relocated, removed or disposed of pursuant to this chapter and which fall into the following categories:

(1) Those lawfully in existence on the effective date of this chapter; and

(2) Those lawfully established and maintained on or after the effective date of this chapter.

(17 Del. C. 1953, § 1207; 56 Del. Laws, c. 253, § 2; 61 Del. Laws, c. 166, § 8.)

§ 1208 Acquisition of real property interest to effectuate screening, relocation, etc.

The Department may acquire by gift, purchase or the power of eminent domain, such interest in real property as may be necessary to secure the screening, relocation, removal or disposal of junkyards required by this chapter.

(17 Del. C. 1953, § 1208; 56 Del. Laws, c. 253, § 2.)

§ 1209 Public nuisance; screening or relocation, etc., of noncomplying junkyards; action to recover expenses.

(a) Any junkyard which is established, maintained or operated in violation of this chapter is a public nuisance.

(b) The Department may screen, relocate, remove or dispose of any junkyard or portion thereof which is established or maintained in violation of this chapter or the regulations prescribed thereunder after a written notice has been posted on such property for a period of 30 days and a copy thereof has been forwarded by mail to the owner of such junkyard at the owner's last known address.

(c) All costs incurred under this section in screening, relocating, removing or disposing of such junkyards shall be the responsibility of the owner thereof and the Department shall have an action at law to recover such costs as well as the expenses of suit.

(17 Del. C. 1953, § 1209; 56 Del. Laws, c. 253, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1210 Injunction.

The Department may apply to the Court of Chancery for an injunction to restrain any violation or threatened violation of this chapter.

(17 Del. C. 1953, § 1210; 56 Del. Laws, c. 253, § 2.)

§ 1211 Penalties.

Whoever violates this chapter or any regulation lawfully adopted pursuant to this chapter shall be fined not less than $25 nor more than $200.

Each day that a violation is allowed to continue after notice of its existence shall constitute a separate offense.

(17 Del. C. 1953, § 1211; 56 Del. Laws, c. 253, § 2.)

§ 1212 Agreements with the United States government.

The Department may enter into agreements with the United States Secretary of Transportation provided by Title 23, United States Code, relating to the control of junkyards in areas adjacent to the interstate and primary systems and may take action in the name of the State to comply with the terms of such agreement.

(17 Del. C. 1953, § 1212; 56 Del. Laws, c. 253, § 2.)

Chapter 13
VACATING PUBLIC ROADS AND BRIDGES

§ 1301 Jurisdiction of Superior Court and Department of Transportation.

(a) The Superior Court shall have jurisdiction to vacate public roads, bridges and all other rights-of-way, including, but not limited to, alleys, pathways, walkways and the like, whether within the jurisdiction of the Department, the county in which it is located, municipalities, towns, any governmental authority or the general public, including areas not within the jurisdiction of a governmental authority, but for which the general public or specific members of the public have acquired an interest. The Court shall, in its final order, decide all questions raised concerning the vacation or collateral issues including the award of damages and shall further have the authority to review any decision made by the Department, county or other governmental authority concerning the abandonment or vacation of such rights-of-way.

(b) The Department shall have jurisdiction and authority to conduct such administrative hearings and procedures as defined herein to vacate or abandon public roads, bridges and all other rights-of-way, as provided herein.

(c) This chapter shall not preclude the Department from seeking equitable relief in the Court of Chancery for this State on any issue, including, but not limited to, injunctive relief, actions to acquire or quiet title, declaratory judgment or any other matter in the nature of an equitable remedy.

(Code 1852, c. 60; Code 1915, § 1601; 21 Del. Laws, c. 259; 26 Del. Laws, c. 169, § 1; Code 1935, § 1672; 17 Del. C. 1953, § 1301; 65 Del. Laws, c. 209, § 1.)

§ 1302 Petition for vacation and/or abandonment; notice requirements.

(a) In any action commenced in Superior Court, 5 or more residents of the county in which the road, bridge or right-of-way desired to be vacated or to be abandoned is located, the Department, or the county in which the road, bridge or right-of-way is located, may apply to the Superior Court of such county for the vacation or declaration of abandonment thereof, by first giving notice to the Department and to the county, if neither is the applicant, and to all persons owning property abutting or contiguous to, or which is accessible only by, along or across that part of the road, bridge or right-of-way desired to be vacated, or declared to be abandoned, by mailing to the Department, the county and to such persons or their legal representatives, if known, at their last known address, written notice of their intent to file such petition with the Court at least 10 days prior to filing.

(b) Upon the filing of any petition in Superior Court to vacate or to seek a declaration of abandonment of any road, bridge or other right-of-way, formal notice shall be provided by the petitioner to the Secretary of the Department, and the chief executive officer or officers of the county in which the right-of-way is located, by service of process as provided by law. Written notice by registered mail, return receipt requested, to such party or their legal representative at their last known post office address at the time of the filing of the application shall also be made upon all persons owning property abutting or contiguous to or which is only accessible by, along or across that part of the road, bridge or right-of-way desired to be vacated or declared to be abandoned and by posting signs at 100-foot intervals along such road, bridge or right-of-way desired to be vacated or declared to be abandoned clearly indicating such intent, at least 20 days prior to the hearing date set by the Court on such petition and also by publishing notice at least once per week for 2 consecutive weeks to all such parties in interest in a newspaper of general circulation in the county in which said road, bridge or right-of-way is located, clearly providing the place, time and hearing date on the petition set by the Court, at least 20 days prior thereto.

(c) In all cases in which an order of abandonment or vacation is sought by administrative action by the Department, such action may be commenced by the Department, the county or other governmental authority or 5 or more residents of the county in which the road is located, in accordance with the terms of this chapter.

(Code 1915, § 1602; 26 Del. Laws, c. 169, § 2; 40 Del. Laws, c. 107; Code 1935, § 1673; 44 Del. Laws, c. 103; 17 Del. C. 1953, § 1302; 60 Del. Laws, c. 338, § 1; 65 Del. Laws, c. 209, § 1.)

§ 1303 Definitions.

For purposes of this chapter the following definitions shall apply:

(1) “Abandonment” shall mean the loss of all right, title, interest and jurisdiction in any road, bridge or other right-of-way previously held by the Department, other governmental authority or the general public in which the Department, other governmental authority or the general public has clearly indicated an intent to surrender all right, title, interest, and jurisdiction through lack of use, care, or maintenance thereof.

(2) “Public use” shall mean the consistent use by 1 or more members of the general public for a minimum period of 7 years over an area to which no other person or entity has a clear, legal or equitable right. This section shall not apply to any area owned or controlled by the Department or other governmental authority.

(3) “State-maintained street” shall mean any road, bridge or other right-of-way regardless of use which is within the control or jurisdiction of the Department.

(4) “Vacation” shall mean the transfer of all right, title, interest, and jurisdiction in any road, bridge or other right-of-way when the Department, other governmental authority or the general public has clearly indicated an intent to abandon same through lack of use, care or maintenance thereof. In addition, “Vacation” with respect to any alley, pathway, walkway or other such right-of-way not within the

jurisdiction of the Department shall mean the transfer of all right, title, interest and jurisdiction, in such right-of-way when the Superior Court shall determine that continued maintenance and use of such right-of-way has created or constitutes a nuisance or detriment to the abutting or surrounding landowners which nuisance outweighs the benefit to the general public of the continued existence of the right-of-way; provided, that no parkland, open space or greenway under the control of the Department of Natural Resources and Environmental Control or any county or municipal parks department shall be vacated under this chapter without the written approval of the controlling jurisdiction.

(Code 1915, § 1602; 26 Del. Laws, c. 169, § 2; 40 Del. Laws, c. 107; Code 1935, § 1673; 17 Del. C. 1953, § 1303; 60 Del. Laws, c. 338, § 3; 65 Del. Laws, c. 209, § 1; 69 Del. Laws, c. 239, §§ 1, 2.)

§ 1304 Vacation and abandonment hearing.

(a) In all proceedings in Superior Court, after all interested parties have received notice in accordance with this chapter, a hearing shall be held in Superior Court, at which time each party before the court, including the Department, the county in which the right-of-way is located, all abutting land owners or all interested parties, may present relevant evidence regarding the necessity or advisability of the continued use of the road, bridge or right-of-way for the benefit of the general public or interested parties. Upon conclusion of the hearing, the Superior Court shall order whether said road, bridge or other right-of-way shall be vacated or declared to be abandoned. Any administrative hearing conducted by the Department shall address the same issues and utilize the criteria defined in this chapter.

(b) The Court shall also decide such other collateral issues which are raised at the hearing, including, but not limited to, whether the Department holds title to the road, bridge or other right-of-way by virtue of § 509 of this title, by deed transfer or by some other means, whether the Department, county, other governmental authority or the general public has an interest in such road, bridge or right-of-way by virtue of dedication, easement or some other means, whether such parties have a compensable interest and to whom the land, bridge or other right-of-way shall revert in the event of vacation or declaration of abandonment.

(c) Any administrative hearing to consider the question of abandonment or vacation shall be conducted in accordance with the terms of this chapter.

(d) There is a rebuttable presumption, as to all roads, bridges or other rights-of-way created or used at any time within this State, that each shall continue in existence until officially vacated or abandoned by judicial or administrative action pursuant to this chapter.

(e) In determining whether any road, bridge or other right-of-way should be vacated or declared to be abandoned, the Court or the administrative agency shall make a determination as to whether the Department, other governmental agency or general public has a use or need for the continued existence of such road, bridge or right-of-way and the judgment of the Department to keep it open shall be paramount. In making a determination in this regard, the Court or the Department shall consider such items as may be pertinent including, but not limited to, alternative routes, fitness for travel of the respective routes, previous relocation of routes performed by public authority, use of the new route as a bypass rather than an independent route, service, maintenance and repair of the respective routes, barricades or other hand-made or natural obstructions within and along the routes, the financial impact upon any interested party and any other item which the Court or the Department may deem pertinent.

(f) Any state-maintained street shall not be vacated or abandoned without the consent of the Department.

(g) As the result of the public use, as defined herein, the general public may have acquired a right to the use of such right-of-way, if clearly evidenced intent has been demonstrated such as by the grant of an easement or dedication, regardless of whether such area is classified as a state-maintained street, as defined herein. Any such right of the general public to use such right-of-way shall not place the responsibility of maintenance with the Department or any other governmental authority, without formal acceptance of such responsibility.

(Code 1915, § 1602; 26 Del. Laws, c. 169, § 2; 40 Del. Laws, c. 107; Code 1935, § 1673; 17 Del. C. 1953, § 1304; 60 Del. Laws, c. 338, § 4; 65 Del. Laws, c. 209, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1305 Right-of-way jurors; appointment and direction as to return.

(a) If the Superior Court orders that the road, bridge or other right-of-way shall be vacated, or declared to be abandoned, it shall then appoint 5 judicious and impartial right-of-way jurors of the county to view said road, bridge or right-of-way and make return on a date fixed by the Court. The Court shall authorize the right-of-way jurors, so appointed, to employ, if necessary, a surveyor, and direct said right-of-way jurors to determine who shall enclose the area vacated or abandoned or any part thereof, and what portion of the costs such persons or agencies ought to pay respectively, all of which shall be set out in the return.

(b) The right-of-way jurors named in the commission shall be first sworn or affirmed as shall be directed in the commission.

(c) The return of the jurors shall be made to the Superior Court or to a judge thereof, who shall file the same in the Office of the Prothonotary.

(d) In all cases such right-of-way jurors shall assess the damages which the Department, county, governmental authority, owner or other parties in interest will sustain by reason of such road, bridge or right-of-way vacation or abandonment, including, but not limited to, loss of use, impact upon other roads, bridges or rights-of-way, improvements previously made thereto, loss of benefit or aesthetic value to the public, inconvenience or the use of road or bridge materials, and, considering all circumstances of benefit or injury which may accrue to any such party in interest therefrom, shall make a recommendation to the Court, in the return, as to apportionment thereof.

(26 Del. Laws, c. 169, § 3; Code 1915, § 1603; 40 Del. Laws, c. 107; Code 1935, § 1675; 17 Del. C. 1953, § 1305; 60 Del. Laws, c. 338, § 5; 65 Del. Laws, c. 209, § 1.)

§ 1306 Damages; hearing.

(a) On a day fixed by the Court, a hearing shall then be had on the issue of damages as presented in the return. At such hearing all interested parties may present evidence and argument regarding the question of damages, their amount and apportionment, as are permitted under this section or at the discretion of the Court. At the close of said hearing, the Court shall enter an order affixing damages in such manner as it determines the evidence warrants.

(b) All damage questions shall be decided as provided in this chapter and shall include the right of the Department to recover the actual value of the real property, if it holds title thereto, to recover reasonable expenses for its loss of use of said vacated land, bridge or right-of-way, whether jurisdiction has been acquired by title, dedication, easement or some other means, and any reasonable costs and expenses incurred as a result of said vacation or abandonment resulting from an impact to other lands, bridges or rights-of-way within the jurisdiction of the Department.

(c) Payment of damages shall be in such amounts and under such terms and conditions as the Superior Court, by order, shall direct. Any order of the Superior Court to vacate or abandon a road, bridge or right-of-way shall not become final until all damages have been paid in accordance with the Court's order.

(d) Whenever any interested party neglects or omits to pay or tender the amount of ascertained damages to the parties or persons entitled to the same, said interested party shall be subject to the contempt power of the Court upon proper application by any party or person to whom damages are payable pursuant to the terms of the Court's order regarding same.

(e) Any other provision of this chapter notwithstanding, the Court or the Department in making a determination as to what damages shall be paid by the Department shall consider only 2 factors:

(1) Only persons owning real property abutting the road or part thereof to be vacated or abandoned shall be entitled to recover damages; and

(2) Any damages which may be otherwise recoverable by such persons from the Department must be offset by a monetary estimate of the benefit to be derived by said abutting real property owner.

(f) Any hearing on damages conducted at an administrative hearing shall be as provided herein.

(26 Del. Laws, c. 169, § 4; Code 1915, § 1604; 40 Del. Laws, c. 107; Code 1935, § 1676; 17 Del. C. 1953, § 1306; 60 Del. Laws, c. 338, § 6; 65 Del. Laws, c. 209, § 1.)

§ 1307 Appeal.

Any interested party before the Superior Court may appeal the Court's decision to the Supreme Court, within 30 days of the final order thereon, regarding the question of whether the road, bridge or right-of-way shall be vacated or abandoned or the question of the amount of damages and their apportionment or any other matter raised at the Superior Court hearing.

(26 Del. Laws, c. 195, § 5; Code 1915, § 1605; 40 Del. Laws, c. 107; Code 1935, § 1677; 17 Del. C. 1953, § 1307; 60 Del. Laws, c. 338, § 7; 65 Del. Laws, c. 209, § 1.)

§ 1308 Compensation and expenses of jurors and employees.

(a) The jurors shall be allowed $25 a day for their services and shall be entitled to mileage at the rate of 15 cents a mile going and returning.

(b) The Court shall fix the compensation of all persons properly employed as surveyors, chain carriers, axepersons and target bearers, and all other persons necessary to the economical execution of any order for vacating or abandoning roads, bridges or other rights-of-way, including the board and accommodation of persons properly employed in and about the execution of the work.

(21 Del. Laws, c. 260, § 1; 26 Del. Laws, c. 169, § 3; Code 1915, §§ 1603, 1606; 40 Del. Laws, c. 107; Code 1935, §§ 1675, 1678; 17 Del. C. 1953, § 1308; 60 Del. Laws, c. 338, § 8; 65 Del. Laws, c. 209, §§ 2, 7; 70 Del. Laws, c. 186, § 1.)

§ 1309 Costs of proceedings.

The costs of proceedings for vacating or abandoning a road, bridge or other right-of-way shall be paid by the petitioners, unless such petition is granted in which case such costs shall be paid by the party or persons authorized by the return to enclose it, and in the pro rata share fixed by the return, before such enclosure.

(Code 1852, § 1093; 14 Del. Laws, c. 468; 17 Del. Laws, c. 118, § 2; Code 1915, § 1607; 40 Del. Laws, c. 107; Code 1935, § 1679; 17 Del. C. 1953, § 1309; 65 Del. Laws, c. 209, § 3.)

§ 1310 Power of railroads to vacate roads in special cases by agreement.

A railroad company by agreement with the landowners interested, and the approval of both the Department and the county wherein the road is located, may, without proceedings provided for in this chapter, change, at the expense of such company, any public or private road whenever a change will add to the safety of public travel. The change shall be made subject to the approval of the Department and of the county wherein the road is located, and shall be certified in writing and appended to a draft thereof, which draft and certification, returned to and recorded by the Prothonotary of the county wherein the same is located, shall, to all intents and purposes, confirm the change.

(13 Del. Laws, c. 487, § 2; Code 1915, § 1608; 40 Del. Laws, c. 107; Code 1935, § 1680; 17 Del. C. 1953, § 1310; 60 Del. Laws, c. 338, § 9.)

§ 1311 Vacation of public roads by administrative action of department; procedure.

In all cases in which the necessity for existing public roads has ceased to exist because they have been superseded by improved roads or

highways constructed by the Department whether a state-maintained street or otherwise, or their necessity has ceased to exist as a part of the general highway system of the State, the Department may vacate or abandon such public roads or such part thereof as the Department may deem proper and may determine who shall enclose the same. The Department may, at any time, determine that a public road not serving the general public and not maintained by the Department for a period of 20 years shall be abandoned and no longer be under the Department's jurisdiction. The procedure therefor shall be as follows:

(1) Whenever the necessity for the continuation of an existing public road, or a portion thereof, in this State shall cease to exist, as stated in this section, the Department shall, by resolution signed by the Secretary, fix a time and place at which persons interested, including the county wherein the road is located, may be heard with respect to the vacation or abandonment thereof. A copy of the resolution shall be published in a newspaper of the county in which the public road is located in at least 2 issues thereof, prior to the date fixed for the hearing, and likewise a copy of the resolution shall be sent by mail addressed to the chief executive officer or officers of the county wherein the road is located and to the owners of the land abutting or contiguous to the road, or part thereof, and to owners whose land is accessible only by, along or across that part of the road at least 20 days prior to the day fixed for the hearing. The copy shall be addressed to the owners at their last known post office addresses, if such can be ascertained by reasonable inquiry, otherwise the publication of the resolution shall be deemed to be sufficient.

(2) The Department shall, on the day and time fixed, proceed to hear persons interested and shall consider any objection to the vacation or abandonment of the road, or part thereof, and shall make a determination concerning the same. If the Department determines that no necessity exists for continuation of the public road, or part thereof, it may order the same to be vacated or abandoned and may determine who shall enclose the same. The order of the Department shall be entered in the road books or records of the county in which the public road is located, after any appeal time has lapsed, together with a description of the road, or part thereof, ordered to be vacated or abandoned, and thereupon the road, or part thereof, shall cease to exist as a public road, and the persons entitled to enclose the same may proceed to use and occupy the vacated or abandoned road.

(3) The Department may vacate any public road in this State running parallel with an improved highway in this State; provided that all the abutting property owners along the public road consent to the vacating of such public road and signify such consent in writing; and provided further that such vacation shall have no significant adverse impact upon any party or person owning property which is only accessible by, along or across that part of the road to be vacated; provided, however, that circuity of access alone shall not be considered significant adverse impact for purposes of this section.

(4) Whenever any public road is vacated or abandoned pursuant to this section, unless specifically determined otherwise by the Department, the abutting property owners on either side thereof shall be permitted to extend the boundaries of their respective property to the middle of such vacated or abandoned public road and shall own all of that land to said middle of the vacated or abandoned public road. If required, the Department may issue a deed of such land suitable for filing.

(5) The Department, at an administrative hearing conducted after prior notice to all interested parties as provided in this chapter, may determine and award an apportionment of damages under the criteria set forth in this chapter. Such award of damages shall be strictly enforceable by any party or person by application to the Superior Court, which may then adopt, modify or remand such award in the form of an enforceable order.

(6) Notwithstanding the foregoing, the Department may vacate a portion of a public road or right of way by way of a resolution signed by the Secretary without the necessity of undertaking public notice or hearing when such portion to be vacated is only subject to newly improved or alternate roadway realignment of an existing public road and does not result in such public road being vacated or abandoned altogether. The Department shall document the appropriateness and reasonableness of the administrative action procedure for a proposed road vacation or abandonment of said road. The Department may issue a document suitable for recording to accomplish the particular vacation. Such document may include a deed, resolution, or easement extinguishment, as the individual circumstances may require. Said document shall be recorded in the Office of the Recorder of Deeds in and for the county where the vacated portion of such public road lies and shall provide for the disposition of the property rights of the vacated road portion or right of way, with such disposition to occur as otherwise provided herein. The order of the Department and realigned portions shall be entered in the road books or records of the county in which the public road is located.

(37 Del. Laws, c. 116, § 2; 40 Del. Laws, c. 107; Code 1935, §§ 1682, 1683; 47 Del. Laws, c. 277, §§ 1, 2; 17 Del. C. 1953, § 1311; 60 Del. Laws, c. 338, § 10; 65 Del. Laws, c. 209, § 4; 84 Del. Laws, c. 91, § 1.)

§ 1312 Appeal from administrative decision.

Any interested party appearing before the Department may appeal such administrative decision to the Superior Court within 30 days of the final order therefrom, regarding the question of whether the road shall be vacated or abandoned or the question of the amount of damages and their apportionment. Any appeal not made pursuant to this section shall be barred and the decision of the Department shall be strictly enforceable by the Superior Court, pursuant to this chapter.

(36 Del. Laws, c. 129, §§ 1, 2; 40 Del. Laws, c. 107; Code 1935, § 1654; 48 Del. Laws, c. 157, § 1; 17 Del. C. 1953, § 1312; 55 Del. Laws, c. 464; 65 Del. Laws, c. 209, § 5.)

§ 1313 Road closures.

(a) For purposes of this section, the following definitions shall apply:

(1) "Closure" means the physical erection of temporary or permanent barricades and/or construction or reconstruction in any manner

inhibiting the movement of vehicular or pedestrian traffic at any point along or adjacent to any road, street, bridge or other right-of-way.

(2) "Governmental authority" means the Department of Transportation in the case of any state-maintained road, street, bridge or other right-of-way, or any other county, municipality or other political subdivision having the care, custody, control or jurisdiction of any road, street, bridge or other right-of-way.

(3) "Notice" means publication once a week for 2 consecutive weeks in a newspaper of general circulation within the county in which such road, street, bridge or other right-of-way is located and written correspondence from the petitioner to each governmental authority or private owner having jurisdiction of or owning property abutting such road, street, bridge or other right-of-way in the form of a registered letter, return receipt requested.

(4) "Private owner" means any nonpublic owner or owners of any land dedicated to public use or to which the public may otherwise have a right to use as a road, street, bridge or other right-of-way.

(b) The Superior Court may, upon hearing and notice as provided in this section and upon a specific finding of the existence of a safety hazard or other valid public purpose, order temporary or permanent closure of any road, street, bridge or other right-of-way within this State. The Court, in making its determination, may further order the governmental authority having control or jurisdiction of such road, street, bridge or other right-of-way to prepare a statistical and factual report to be submitted to the Court detailing the usage of the road, the specific safety or other valid public purpose or reason ordering its closure and the impact such action will have upon the users of such road, street, bridge or other right-of-way.

(c) Upon the receipt of any report prepared by the governmental authority relating to any right-of-way within its respective control or jurisdiction, the Court may order a hearing or take any other such action which it determines to be necessary to evaluate and determine whether such road, street, bridge or other right-of-way should be closed and the means and methods of such closure.

(65 Del. Laws, c. 209, § 6.)

Chapter 14

Public Carriers [Repealed].

§§ 1401-1411 Regulation of ticket agents; penalties for violations; redemption of unused tickets; erection and maintenance of telegraph and telephone lines by railroad; fences and cattle guards; liability for damages; trespass with animals; walking on tracks; penalties; liability of those damaging railroad property; badges of railroad conductor, baggage master and brakeman; railroad car brakes; penalties for violations of §§ 1406, 1407; free passes and franks; transportation without fare; transportation utilities; intra and interline connections; switch connections; public carriers operating buses; public liability insurance [Transferred].

Transferred. The material formerly codified as §§ 1401-1411 of this title was transferred by 60 Del. Laws, c. 503, and now appears as §§ 1808-1818 of Title 2.

Chapter 15
FERRY BETWEEN LEWES AND CAPE MAY

§ 1501 Title to land.

The Department shall accept title on behalf of and in the name of the State to those lands necessary or convenient for use as the southerly terminus and approach for a ferry service to be established, operated and maintained by the State Highway Commissioner of the State of New Jersey between a point in Cape May County, New Jersey, and a point in Lewes, Delaware, such lands to be located in the Town of Lewes, Sussex County.

(48 Del. Laws, c. 262, § 1; 17 Del. C. 1953, § 1501.)

§ 1502 Use of lands.

The Department shall take title to the lands as provided in § 1501 of this title and shall hold the same dedicated to the purpose of the construction, operation and maintenance of terminal facilities for a ferry service so long as such service shall exist, and no tolls shall be charged by the State for the use of such facilities. However, this State shall not be liable in any respect whatsoever for any expense, cost, liability or indebtedness incurred for the construction, operation or maintenance of such service or facilities.

(48 Del. Laws, c. 262, § 2; 17 Del. C. 1953, § 1502.)

§ 1503 Power of condemnation.

In the event that the State Highway Commissioner of the State of New Jersey is unable, by agreement with the owner or owners thereof, to cause title to all lands in Sussex County necessary or convenient for the construction, operation or maintenance of such service and facilities and approaches thereto to be conveyed to the State of Delaware, the Department of Transportation of Delaware shall, upon the written request of the State Highway Commissioner of New Jersey and upon being satisfactorily assured, by the deposit of cash or otherwise, by such State Highway Commissioner that the State of New Jersey will provide the money necessary to pay the condemnation money or damages awarded and expenses of the proceeding, condemn for the use of and to become a part of the ferry facilities the real estate in Sussex County, Delaware, deemed by the State Highway Commissioner of New Jersey and the Department of Transportation of Delaware to be necessary or convenient for the construction, operation and maintenance of the ferry service and facilities and approaches thereto. Such condemnation shall be effected in the manner in which the Department of Transportation is now authorized by law to condemn land for highway purposes.

(48 Del. Laws, c. 262, § 3; 17 Del. C. 1953, § 1503; 57 Del. Laws, c. 671, § 8; 60 Del. Laws, c. 503, § 18.)

§ 1504 Right of State Highway Commissioner of the State of New Jersey to operate ferry.

(a) Upon the acceptance of title to the lands as provided in § 1501 of this title and upon the acquisition of the right of use of lands as provided in § 1503 of this title, the State Highway Commissioner of the State of New Jersey is granted a license to use the lands for the purpose of constructing, operating and maintaining the ferry service and facilities and the approaches thereto, and any additions thereto or improvements or repairs thereof.

(b) The consent of this State is granted to the State of New Jersey, acting by and through the State Highway Commissioner of New Jersey, to construct, operate and maintain and to charge and collect rates, rents and other charges for the use of the ferry service and facilities and approaches thereto over and under the Delaware River, the southerly terminus thereof to be in Sussex County, Delaware, at or near the Town of Lewes, in accordance with certain legislation enacted by the Legislature of the State of New Jersey.

(48 Del. Laws, c. 262, §§ 4, 5; 17 Del. C. 1953, § 1504.)

§ 1505 Tax exemption.

The ferry facilities and approaches thereto and all property acquired or used for the purpose of the ferry service in this State and the revenues thereof shall at all times be free from taxation by this State or any political subdivision thereof.

(48 Del. Laws, c. 262, § 6; 17 Del. C. 1953, § 1505.)

Chapter 16
ADVANCED WIRELESS INFRASTRUCTURE INVESTMENT ACT

§ 1601 Short title.

This chapter shall be known as the "Advanced Wireless Infrastructure Investment Act."

(81 Del. Laws, c. 159, § 1.)

§ 1602 Findings of public policy.

The General Assembly finds and declares as follows:

(1) To foster economic development in this State, responsible and reasonable investment in and development of wireless communications systems employing advanced technology shall be encouraged as an integral part of the State's infrastructure.

(2) The design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are instrumental to the provision of emergency services, and to increasing access to advanced technology and information for the citizens of Delaware.

(3) The Department of Transportation in accordance with § 131(a) of this title is responsible for the absolute care, management and control of the state rights-of-way.

(4) Wireless services providers and wireless infrastructure providers are not "public utilities" under § 102 of Title 26, but need access to the state rights-of-way and the ability to attach to poles and structures in the state rights-of-way to densify their networks and provide next generation services subject to the same policies and procedures as public utilities for accommodation in the state rights-of-way.

(5) Small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the state rights-of-way.

(6) Accordingly, expeditious processes and reasonable and nondiscriminatory rates and terms related to such deployments are essential to the construction and maintenance of wireless facilities.

(7) Wireless facilities help ensure the State remains competitive in the global economy.

(8) The timely design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are declared to be matters of statewide concern and interest.

(81 Del. Laws, c. 159, § 1; 85 Del. Laws, c. 315, § 1.)

§ 1603 Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

(2) "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with the terms of this chapter. The term shall also include the highway engineering manuals, regulations, design standards and guidance adopted by the Department to ensure the safety of travelers on Delaware's roadways and the provision of roadside safety for errant vehicles.

(3) "Applicant" means any person who submits an application and is a wireless provider.

(4) "Application" means a request submitted by an applicant to the Department for a permit:

a. To collocate small wireless facilities; or

b. To approve the installation or modification of a utility pole or wireless support structure.

(5) "Collocate" means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a small wireless support structure or utility pole.

(6) "Collocation" has a corresponding meaning.

(7) "Communications service provider" means: a cable operator, as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.

(8) "Department" means the Delaware Department of Transportation.

(9) "Department pole" means a pole owned or operated by the Department in the state right-of-way (ROW), including, a camera pole, roadway lighting pole, traffic signal strain pole and overhead sign structure.

(10) "FCC" means the Federal Communications Commission of the United States.

(11) "Fee" means a 1-time charge.

(12) "Law" means federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.

(13) "Micro wireless facility" means a small wireless facility that is not larger in dimension than 24 inches in length, 15 inches in width, 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

(14) "Permit" means a written authorization required by the Department to perform an action or initiate, continue, or complete a project.

(15) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or

organization, including the Department.

(16) “Rate” means a recurring charge.

(17) “Small wireless facility” means a wireless facility that meets both of the following qualifications:

a. Each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than 6 cubic feet; and

b. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume.

The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

(18) “Small wireless support structure” means: a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or, other existing or proposed structure that complies with the height restrictions in § 1606(g) of this title designed to support or capable of supporting wireless facilities. Such term shall not include a utility pole.

(19) “State rights-of-way” or “ROW” means the area on, below, or above or across public roads, causeways, highways, bridges in the State which have been or may hereafter be constructed, acquired, or accepted by the Department. The term does not include any public roads, causeways, highways and bridges that are considered a controlled access facility as defined in § 172 of this title.

(20) “Utility pole” means a pole or similar structure owned by a public utility located in the ROW. Such term shall not include structures supporting only wireless facilities.

(21) a. “Wireless facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

1. Equipment associated with wireless communications; and

2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

The term includes small wireless facilities.

b. The term does not include:

1. The structure or improvements on, under, or within which the equipment is collocated;

2. Wireline backhaul facilities; or

3. Coaxial or fiber optic cable that is between utility poles or wireless support structures or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

(22) “Wireless infrastructure provider” means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities or wireless support structures, pursuant to an agreement with a wireless service provider. The term does not include a wireless services provider.

(23) “Wireless provider” means a wireless infrastructure provider or a wireless services provider.

(24) “Wireless services” means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

(25) “Wireless services provider” means a person who provides wireless services.

(81 Del. Laws, c. 159, § 1.)

§ 1604 Applicability; exclusive use prohibited.

(a) The provisions of this chapter shall only apply to activities of a wireless provider within the ROW, over which the Department has absolute control.

(b) The Department may not enter into an exclusive arrangement with any person for use of the ROW for the construction, operation, marketing, or maintenance of wireless facilities or small wireless support structures or the collocation of small wireless facilities.

(81 Del. Laws, c. 159, § 1.)

§ 1605 Fees.

The Department may not charge a wireless provider an application fee or fee or rate for the use of the ROW with respect to the construction, installation, mounting, maintenance, modification, operation, or replacement of a wireless facility or small wireless support structure in the ROW, including collocation in such ROW. However, wireless providers shall pay the actual, reasonable costs borne by the Department attributable to the processing and administration of a program to authorize the accommodation, review and issuance of construction permits, and conduct inspections of wireless facilities in the ROW if necessary. Such fees shall not exceed $100 for each small cell facility on a permit application. If there are additional nonrecurring expenses associated with inspections for new installations or construction, wireless providers shall pay the actual, reasonable cost borne by the Department attributable to each provider’s inspections where it exceeds the permit fee collected. In any controversy concerning the appropriateness of the fee, the Department shall have the burden of proving that the fees are reasonably related to the actual, direct and reasonable costs incurred. Micro wireless facilities are not subject to such processing and administration costs.

(81 Del. Laws, c. 159, § 1.)

§ 1606 Right of access.

(a) To the extent permitted by this chapter, a wireless provider shall have the right to collocate wireless facilities and install, construct, modify, maintain, and operate utility poles, small wireless support structures, along, across, upon, and under the ROW subject to the following requirements.

(b) The Department may impose requirements that conform to applicable codes on new installations of above ground fixed obstructions within the clear zone of any roadway.

(c) Wireless support structures and facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such ROW or obstruct the legal use of such ROW by other utilities or wireless providers.

(d) The Department shall have the authority to grant an accommodation to access the ROW to a wireless infrastructure provider if it has a contract with a wireless service provider to install, construct, modify, maintain or operate utility poles, small wireless support structures or wireless facilities in the ROW under which such installation or construction is to begin within 1 year of access.

(e) Installation shall be collocated on existing infrastructure already located in the ROW wherever feasible except that the wireless provider shall not attach or otherwise collocate its equipment, facilities, fixtures or any appurtenant structures or devices to state-owned infrastructure except as specified in § 1613 of this title.

(f) The wireless provider shall not attach its equipment, facilities, or fixtures to utility poles or to privately-owned structures without the express written consent of the owner.

(g) (1) Each new or modified utility pole and small wireless support structure installed in the ROW shall not exceed the greater of:

a. Ten feet in height above the tallest existing utility pole in place as of August 31, 2017, located within 500 feet of the new pole in the same ROW; or

b. Fifty feet above ground level.

(2) New small wireless facilities in the ROW may not extend:

a. More than 10 feet above an existing utility pole or small wireless support structure in place as of August 31, 2017; or

b. Above the height permitted for a new utility pole or small wireless support structure under this section.

(3) The height limitations do not apply to the placement of any small wireless facility on a utility pole constructed on or before June 30, 2017, if the small wireless facility does not extend more than 10 feet above the structure.

(h) Subject to the provisions of § 1609(b)(5) of this title, the Department may not require the placement of small wireless facilities on any specific utility pole or category of utility pole or require multiple antenna systems on a single pole.

(i) Subject to the provisions of § 1609(b)(5) of this title, the Department may not limit the placement of small wireless facilities by minimum separation distances.

(j) The Department, at its discretion, shall have the authority to approve a wireless provider's request to construct, modify and maintain a utility pole, small wireless support structure or wireless facility or other structure that exceeds these size limits along, across, upon and under the ROW.

(81 Del. Laws, c. 159, § 1.)

§ 1607 Use and occupancy agreement.

(a) The Department is authorized to enter into use and occupancy agreements with wireless providers for the accommodation of wireless facilities in the ROW under terms that:

(1) Protect the safety of travelers on Delaware's roadways;

(2) Minimize conflicts with the use of the State's ROW for the primary purpose of transportation;

(3) Facilitate the placement of small wireless facilities at locations that do not unreasonably interfere with existing public uses; and

(4) Are competitively neutral and nondiscriminatory.

(b) Such agreements shall be for a term of 10 years with an option to renew for additional 5-year terms.

(c) Such agreements are nonassignable and nontransferable without the reasonable consent of the Department that the assignee or transferee has the financial, technical, organizational and managerial resources needed to operate in the ROW and protect the public health, safety and welfare.

(d) Each wireless provider holding a valid use and occupancy agreement shall comply with the Underground Utility Damage Prevention and Safety Act, § 801 of Title 26, et seq. to the extent applicable.

(81 Del. Laws, c. 159, § 1.)

§ 1608 Relocation of small wireless facilities.

Whenever it becomes necessary to relocate any wireless facility due to expansion of the transportation system or if it is found to interfere unreasonably with the ingress and egress to adjacent properties or their development, or for reasons deemed in the public interest by the Department, the wireless provider shall relocate its small wireless facility at its sole expense to a location mutually agreed upon by the wireless provider and the Department at a time and manner prescribed by the Department.

(81 Del. Laws, c. 159, § 1.)

§ 1609 Permits.

(a) The wireless provider shall acquire 1 or more permits to collocate a small wireless facility or construct, modify, maintain, and operate utility poles or small wireless support structures in the ROW provided such permits are of general applicability and do not apply

exclusively to wireless facilities.

(b) The Department shall receive applications for, process, and issue such permits subject to the following requirements.

(1) The Department may not directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the Department including reserving fiber, conduit, or pole space for the Department.

(2) An applicant shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers.

(3) Within 14 days of receiving an application, the Department will determine and notify the applicant whether the application is complete. If an application is incomplete, the Department must specifically identify the missing information.

(4) An application shall be processed on a nondiscriminatory basis and deemed approved if the Department fails to approve or deny it within 60 days. The parties may mutually agree to extend the 60-day application review period. The Department shall grant or deny the application at the end of the extended period.

(5) The Department shall approve an application unless the Department finds that it fails to comply with any of the following:

a. Applicable codes or, to the extent feasible, applicable provisions of the Delaware Utilities Manual Regulations, 2 DE Admin. Code 2401, unless or until the Secretary of the Department promulgates regulations specific to accommodation of wireless service providers in the state ROW;

b. Public safety;

c. Objective, reasonable design standards and stealth and concealment requirements;

d. Undergrounding requirements that prohibit the installation of new or modification of existing utility poles in a ROW without prior approval, if such requirements include a waiver or another process that addresses request to install such new utility poles or modify existing utility poles and do not prohibit the replacement of utility poles; or

e. The Department's reasonable spacing requirements that determine the distance between utility poles based on best engineering practices and the facilities that will be attached thereto, if such requirements include a waiver or another process that addresses requests for exception or variance and do not prohibit granting of such exceptions or variances. Designs should be performed to maximize the spacing and to limit the quantity of poles utilized.

(6) The Department must document the basis for a denial, including the specific applicable code provisions on which the denial was based, and send the documentation to the applicant on or before the day the Department denies an application. The applicant may cure the deficiencies identified by the Department and resubmit the application within 30 days of the denial. The Department shall approve or deny the revised application within 15 days. Any subsequent review shall be limited to the deficiencies cited in the denial.

(7) To the extent possible, wireless providers shall plan their installations in a comprehensive manner based on geographic areas or proximate roadways, file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities.

(8) The Department may not institute, either expressly or de facto, a moratorium on issuing permits or other approvals for the collocation of small wireless facilities or construction, modification, and operation of utility poles or small wireless support structures in the ROW. However, the Department may issue a temporary moratorium related to a particular road or limited geographic area where exigent circumstances exist that directly impact the public health, safety or welfare.

(9) Unless otherwise required by applicable code, the Department shall not require an application approval or permit or require fees or rates for:

a. Routine maintenance; or

b. The replacement of wireless facilities with wireless facilities that are substantially similar or the same size or smaller; or

c. The installation, placement, operation, maintenance, or replacement of micro wireless facilities that are suspended on cables that are strung between existing utility poles in compliance with applicable codes.

(81 Del. Laws, c. 159, § 1.)

§ 1610 No discrimination.

The Department, in the exercise of its administration and regulation related to the management of the ROW must be competitively neutral with regard to other users of the ROW, including that terms may not be unreasonable or discriminatory and may not violate any applicable law.

(81 Del. Laws, c. 159, § 1.)

§ 1611 Limitation of ROW authority.

The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this section does not authorize the provision of any voice, data, or video communications services or the installation, placement, maintenance, or operation of any communications facilities other than small wireless facilities in the ROW.

(81 Del. Laws, c. 159, § 1.)

§ 1612 Damage and repair.

The Department may require a wireless provider to repair all damage to the ROW directly caused by the activities of the wireless provider, while occupying, installing, repairing or maintaining wireless facilities, small wireless support structures or utility poles in the ROW and to return the ROW to its functional equivalence before the damage pursuant to the competitively neutral, reasonable

requirements and specifications of the Department. If the wireless provider fails to make the repairs required by the Department within a reasonable time after written notice, the Department may effect those repairs and charge the applicable party the reasonable, documented cost of such repairs.

(81 Del. Laws, c. 159, § 1.)

§ 1613 Access to department land and structures.

The Department will allow for the collocation of small wireless facilities on department poles as determined by the Department subject to the following:

(1) A person owning or controlling department poles may not enter into an exclusive arrangement with any person for the right to attach to such poles.

(2) Such collocations shall be subject to reasonable, cost-based, competitively neutral and nondiscriminatory rates, fees and terms as provided in an agreement between the Department and the wireless provider.

(3) The Department and wireless provider shall negotiate in good faith to arrive at mutually agreeable contract terms and conditions.

(4) The annual recurring rate to collocate a small cell facility on a department pole shall not exceed the actual, direct and reasonable costs related to the wireless service provider's use of space on the pole. In any controversy concerning the appropriateness of the rate, the Department shall have the burden of proving that the rates are reasonably related to the actual, direct and reasonable costs incurred for use of space on the pole for such period.

(81 Del. Laws, c. 159, § 1.)

§ 1614 Collocation on department wireless support structures, utility poles and land outside the ROW.

The Department may authorize wireless facilities on small wireless support structures, other structures that exceed the height limitations in § 1606(g) of this title, and utility poles on lands owned or controlled by the Department that are not located within the ROW. Such collocations shall be subject to reasonable, cost-based, competitively neutral and nondiscriminatory rates, fees, and terms as provided in an agreement between the Department and the wireless provider.

(81 Del. Laws, c. 159, § 1.)

Chapter 17
DELAWARE-NEW JERSEY COMPACT

Subchapter I

Delaware-New Jersey Compact

§ 1701 Delaware-New Jersey Compact.

The state of Delaware agrees with the state of New Jersey, upon the enactment by the state of New Jersey of legislation having the same effect as this section, to the following Compact:

DELAWARE-NEW JERSEY COMPACT

WHEREAS, the States of Delaware and New Jersey are separated by the Delaware River and Bay which creates a natural obstacle to the uninterrupted passage of traffic other than by water and with normal commercial activity between the 2 states thereby hindering the economic growth and development of those areas in both states which border the River and Bay; and

WHEREAS, the pressures of existing trends from increasing traffic, growing population and greater industrialization indicate the need for closer cooperation between the 2 states in order to advance the economic development and to improve crossings, transportation, terminal and other facilities of the area; and

WHEREAS, the financing, construction, operation and maintenance of such crossings, transportation, terminal and other facilities of commerce and the overall planning for future economic development of the area may be best accomplished for the benefit of the 2 states and their citizens, the region and Nation, by the cordial cooperation of Delaware and New Jersey by and through a joint or common agency or authority; and

WHEREAS, the Delaware-New Jersey Compact, enacted pursuant to 53 Laws of Delaware, Chapter 145 (17 Del. C. § 1701) and P.L. 1961, c. 66 (C. 32:11E-1 et seq.) of the Pamphlet Laws of New Jersey, with the consent of the United States Congress by Joint Resolution being Pub. L. 87-678, 87th Congress, H.J. Res. 783, September 20, 1962, created the Delaware River and Bay Authority with the intention of advancing the economic growth and development of those areas in both states which border the Delaware River and Bay by the financing, development, construction, operation and maintenance of crossings, transportation or terminal facilities, and other facilities of commerce, and by providing for overall planning for the future economic development of those areas; and

WHEREAS, the economic growth and development of areas of both states will be further advanced by authorizing the Authority to undertake economic development projects, other than major projects, as defined in Article II, at its own initiative, and to undertake major projects after securing only such approvals as may be required by legislation of the state in which the project is to be located, except that the Authority is prohibited from undertaking any major project, to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without the prior approval, by concurrent legislation, of the 2 states; and

WHEREAS, the natural environment of those areas in the 2 states which border the Delaware River and Bay would be better preserved by requiring that the projects, other than crossings, of the Authority shall be in complete compliance with all applicable environmental protection laws and regulations before the Authority may undertake the planning, development, construction or operation of any project, other than a crossing;

NOW, THEREFORE, the state of Delaware and the state of New Jersey do hereby solemnly covenant and agree, each with the other as follows:

ARTICLE I SHORT TITLE

This Compact shall be known as the "Delaware-New Jersey Compact."

ARTICLE II DEFINITIONS

"Crossing" means any structure or facility adapted for public use in crossing the Delaware River or Bay between the states, whether by bridge, tunnel, ferry or other device, and by any vehicle or means of transportation of persons or property, as well as all approaches thereto and connecting and service routes and all appurtenances and equipment relating thereto.

"Transportation facility" and "terminal facility" mean any structure or facility other than a crossing, as herein defined, adapted for public use within each of the states party hereto in connection with the transportation of persons or property, including railroads, motor vehicles, watercraft, airports and aircraft, docks, wharves, piers, slips, basins, storage places, sheds, warehouses and every means or vehicle of transportation now or hereafter in use for the transportation of persons and property or the storage, handling or loading of property, as well as all appurtenances and equipment related thereto.

"Commerce facility or development" means any structure or facility adapted for public use or any development for a public purpose within each of the states party hereto in connection with recreational and commercial fishery development, recreational marina development, aquaculture (marine farming), shoreline preservation and development (including wetlands and open-lands acquisition, active recreational and park development, beach restoration and development, dredge spoil disposal and port-oriented development), foreign trade zone site development, manufacturing and industrial facilities, and any other facility or activity designed, directly or indirectly, to promote business or commerce which, in the judgment of the Authority, is required for the sound economic development of the area.

"Appurtenances" and "equipment" mean all works, buildings, structures, devices, appliances and supplies, as well as every kind of

mechanism, arrangement, object or substance related to and necessary or convenient for the proper construction, equipment, maintenance, improvement and operation of any crossing, transportation facility or terminal facility, or commerce facility or development.

"Project" means any undertaking or program for the acquisition or creation of any crossing, transportation facility or terminal facility, or commerce facility or development, or any part thereof, as well as for the operation, maintenance and improvement thereof.

"Major project" means any project, other than a crossing, having or likely to have significant environmental impacts on the Delaware River and Bay, its shorelines or estuaries, or any other area in the state of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester, and Salem, as determined in accordance with state law by the environmental agency of the State in which the major project is to be located.

"Tunnel" means a tunnel of one or more tubes.

"Governor" means any person authorized by the Constitution and law of each State to exercise the functions, powers and duties of that office.

"Authority" means the Authority created by this Compact or any agency successor thereto.

The singular whenever used in this Compact shall include the plural, and the plural shall include the singular.

ARTICLE III FAITHFUL COOPERATION

They agree to and pledge, each to the other, faithful cooperation in the effectuation of this Compact and any future amendment or supplement thereto, and of any legislation expressly in implementation thereof hereafter enacted, and in the planning, development, financing, construction, operation, maintenance and improvement of all projects entrusted to the authority created by this Compact.

ARTICLE IV ESTABLISHMENT OF AGENCY; PURPOSES

The 2 states agree that there shall be created and they do hereby create a body politic, to be known as "The Delaware River and Bay Authority" (for brevity hereinafter referred to as the "Authority"), which shall constitute an agency of government of the state of Delaware and the state of New Jersey for the following general public purposes, and which shall be deemed to be exercising essential government functions in effectuating such purposes, to wit:

(a) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of crossings between the states of Delaware and New Jersey across the Delaware River or Bay at any location south of the boundary line between the state of Delaware and the commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said River, together with such approaches or connections thereto as in the judgment of the Authority are required to make adequate and efficient connections between such crossings and any public highway or other routes in the state of Delaware or in the state of New Jersey; and

(b) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of any transportation or terminal facility within the state of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester and Salem, which facility, in the judgment of the Authority, is required for the sound economic development of the area; and

(c) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of any commerce facility or development within the state of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester and Salem, which in the judgment of the Authority is required for the sound economic development of the area; and

(d) The performance of such other functions as may be hereafter entrusted to the Authority by concurrent legislation expressly in implementation hereof.

The Authority shall not undertake any major project or part thereof without having first secured such approvals as may be required by legislation of the State in which the project is to be located.

The Authority shall not undertake any major project, or part thereof to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without having first secured approval thereof by concurrent legislation of the 2 states expressly in implementation thereof.

The Authority shall not undertake any major project or part thereof without first giving public notice and holding a public hearing, if requested, on any proposed major project, in accordance with the law of the state in which the major project is to be located. Each state shall provide by law for the time and manner for the giving of such public notice, the requesting of a public hearing and the holding of such public hearings.

ARTICLE V COMMISSIONERS

The Authority shall consist of twelve Commissioners, 6 of whom shall be residents of and qualified to vote in and shall be appointed from the state of Delaware, and 6 of whom shall be residents of and qualified to vote in and shall be appointed from the state of New Jersey; not more than 3 of the Commissioners of each state shall be of the same political party; the Commissioners for each state shall be appointed in the manner fixed and determined from time to time by the law of each state respectively. Each Commissioner shall hold office for a term of 5 years, and until a successor shall have been appointed and qualified, but the terms of the first Commissioners shall be so designated that the term of at least 1 Commissioner from each state shall expire each year. All terms shall run to July 1. Any vacancy, however created, shall be filled for the unexpired term only. Any Commissioner may be suspended or removed from office as provided by law of the state from which the Commissioner shall be appointed.

Commissioners shall be entitled to reimbursement for necessary expenses to be paid only from revenues of the Authority and may not receive any other compensation for services to the Authority except such as may from time to time be authorized from such revenues by concurrent legislation.

ARTICLE VI BOARD ACTION

The Commissioners shall have charge of the Authority's property and affairs and shall, for the purpose of doing business, constitute a Board, but no action of the Commissioners shall be binding or effective unless taken at a meeting at which at least 4 Commissioners from each state are present, and unless at least 4 Commissioners from each state shall vote in favor thereof. The vote of any 1 or more of the Commissioners from each state shall be subject to cancellation by the Governor of such state at any time within 10 days (Saturdays, Sundays and public holidays in the particular state excepted) after receipt at the Governor's office of a certified copy of the minutes of the meeting at which such vote was taken. Each state may provide by law for the manner of delivery of such minutes and for notification of the action thereon.

ARTICLE VII GENERAL POWERS

For the effectuation of its authorized purposes, the Authority is hereby granted the following powers:

(a) To have perpetual succession.

(b) To adopt and use an official seal.

(c) To elect a chairman and a vice-chairman from among the Commissioners. The chairman and vice-chairman shall be elected from different States and shall each hold office for 2 years. The chairmanship and vice-chairmanship shall be alternated between the 2 states.

(d) To adopt bylaws to govern the conduct of its affairs by the Board of Commissioners, and it may adopt rules and regulations and may make appropriate orders to carry out and discharge its powers, duties and functions, but no bylaw or rule, regulation or order shall take effect until it has been filed with the secretary of state of each state or in such other manner in each state as may be provided by the law thereof. In the establishment of rules, regulations and orders respecting the use of any crossing, transportation or terminal facility or commerce facility or development owned or operated by the Authority, including approach roads, it shall consult with appropriate officials of both states in order to insure, as far as possible, uniformity of such rules, regulations and orders with the laws of both states.

(e) To appoint or employ such other officers, agents, attorneys, engineers and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, compensation, pensions, terms of office and all other conditions and terms of employment and retention.

(f) To enter into contracts and agreements with either state or with the United States, or with any public body, department or other agency of either state or of the United States or with any individual, firm or corporation deemed necessary or advisable for the exercise of its purposes and powers.

(g) To accept from any government or governmental department, agency or other public or private body, or from any other source, grants or contributions of money or property as well as loans, advances, guarantees or other forms of financial assistance which it may use for or in aid of any of its purposes.

(h) To acquire (by gift, purchase or condemnation), own, hire, lease, use, operate and dispose of property, whether real, personal or mixed, or of any interest therein, including any rights, franchise and property for any crossing, facility or other project owned by another and which the Authority is authorized to own and operate.

(i) To designate as express highways, and control public and private access thereto, all or any approaches to any crossing or other facility of the Authority for the purpose of connecting the same with any highway or other route in either state.

(j) To borrow money and to evidence such loans by bonds, notes or other obligations, either secured or unsecured, and either in registered or unregistered form, and to fund or refund such evidences of indebtedness, which may be executed with facsimile signatures of such persons as may be designated by the Authority and by a facsimile of its corporate seal.

(k) To procure and keep in force adequate insurance or otherwise provide for the adequate protection of its property, as well as to indemnify it or its officers, agents or employees against loss or liability with respect to any risk to which it or they may be exposed in carrying out any function hereunder.

(*l*) To grant the use of by franchise, lease or otherwise, and to make charges for the use of any crossing, facility or other project or property owned or controlled by it.

(m) To exercise the right of eminent domain to acquire any property or interest therein.

(n) To determine the exact location, system and character of and all other matters in connection with any and all crossings, transportation or terminal facilities, commerce facilities or developments or other projects which it may be authorized to own, construct, establish, effectuate, operate or control.

(o) To exercise all other powers not inconsistent with the Constitutions of the 2 states or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

ARTICLE VIII ADDITIONAL POWERS

For the purpose of effectuating the authorized purposes of the Authority, additional powers may be granted to the Authority by legislation of either state without the concurrence of the other, and may be exercised within such state, or may be granted to the Authority by Congress and exercised by it; but no additional duties or obligations shall be undertaken by the Authority under the law of either state or of Congress without authorization by the law of both states.

ARTICLE IX EMINENT DOMAIN

If the Authority shall find and determine that any property or interest therein is required for a public use in furtherance of the purposes of the Authority, said determination shall not be affected by the fact that such property has theretofore been taken over or is then devoted to a public use, but the public use in the hands or under the control of the Authority shall be deemed superior to the public use for which it has theretofore been taken or to which it is then devoted. The Authority shall not exercise the power of eminent domain granted herein to acquire any property, other than a crossing, devoted to a public use, of either state, or of any municipality, local government, agency, public authority or commission, or of 2 or more of them, for any purpose other than a crossing, without having first secured the authorization of the holder of the title to the land in question and such other approvals as may be required by legislation of the state in which the project is to be located. The Authority shall not exercise the power of eminent domain in connection with any commerce facility or development.

In any condemnation proceedings in connection with the acquisition by the Authority of property or property rights of any character in either state and the right of inspection and immediate entry thereon, through the exercise by it of its power of eminent domain, any existing or future law or rule of court of the state in which such property is located with respect to the condemnation of property for the construction, reconstruction and maintenance of highways therein shall control. The Authority shall have the same power and authority with respect thereto as the state agency named in any such law, provided that nothing herein contained shall be construed as requiring joint or concurrent action by the 2 states with respect to the enactment, repeal or amendment of any law or rule of court on the subject of condemnation under which the Authority may proceed by virtue of this Article.

If the established grade of any street, avenue, highway or other route shall be changed by reason of the construction by the Authority of any work so as to cause loss or injury to any property abutting on such street, avenue, highway or other route, the Authority may enter into voluntary agreements with such abutting property owners and pay reasonable compensation for any loss or injury so sustained, whether or not it be compensable as damages under the condemnation law of the state.

The power of the Authority to acquire property by condemnation shall be a continuing power, and no exercise thereof shall be deemed to exhaust it.

ARTICLE X REVENUE AND APPLICATION

The Authority is hereby authorized to establish, levy and collect such tolls and other charges as it may deem necessary, proper or desirable in connection with any crossing, transportation or terminal facility, commerce facility or development or other project which it is or may be authorized at any time to construct, own, operate or control, and the aggregate of said tolls and charges shall be at least sufficient (1) to meet the combined expenses of operation, maintenance and improvement thereof, (2) to pay the cost of acquisition or construction, including the payment, amortization and retirement of bonds or other securities or obligations assumed, issued or incurred by the Authority, together with interest thereon and (3) to provide reserves for such purposes; and the Authority is hereby authorized and empowered, subject to prior pledges, if any, to pledge such tolls and other revenues or any part thereof as security for the repayment with interest of any moneys borrowed by it or advanced to it for its authorized purposes and as security for the satisfaction of any other obligations assumed by it in connection with such loans or advances. There shall be allocated to the cost of the acquisition, construction, operation, maintenance and improvement of such facilities and projects such proportion of the general expenses of the Authority as it shall deem properly chargeable thereto.

ARTICLE XI COVENANT WITH BONDHOLDERS

The 2 said states covenant and agree with each other and with the holders of any bonds or other securities or obligations of the Authority, assumed, issued or incurred by it and as security for which there may be pledged the tolls and revenues or any part thereof of any crossing, transportation or terminal facility, commerce facility or development or other project, that the 2 said states will not, so long as any of such bonds or other obligations remain outstanding and unpaid, diminish or impair the power of the Authority to establish, levy and collect tolls and other charges in connection therewith, and that neither of the 2 said states will, so long as any of such bonds or other obligations remain outstanding and unpaid, authorize any crossing of the Delaware River or Delaware Bay south of the line mentioned in Article IV(a) of this Compact by any person or body other than the Authority, unless, in either case, adequate provision shall be made by law for the protection of those advancing money upon such obligations.

ARTICLE XII SECURITIES LAWFUL INVESTMENTS

The bonds or other securities or obligations which may be issued by the Authority pursuant to this Compact, or any amendments hereof or supplements hereto, are hereby declared to be negotiable instruments, and are hereby made securities in which all state and municipal officers and bodies of each state, all banks, bankers, trust companies, savings banks, building and loan associations, saving and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of either state may properly and legally invest any funds, including capital, belonging to them or within their control, and said obligations are hereby made securities which may properly and legally be deposited with and shall be received by any state or municipal officer or agency of either state for any purpose for which the deposit of bonds or other obligations of such state is now or may hereafter be authorized.

ARTICLE XIII TAX STATUS

The powers and functions exercised by the Authority under this Compact and any amendments hereof or supplements hereto are and will

be in all respects for the benefit of the people of the states of Delaware and New Jersey, the region and nation, for the increase of their commerce and prosperity and for the enhancement of their general welfare. To this end, the Authority shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this compact and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by either state or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange. The bonds or other securities or obligations issued by the Authority, their transfer and the interest paid thereon or income therefrom, including any profit from a sale or exchange, shall at all times be free from taxation by either state or any subdivision thereof.

ARTICLE XIV JURISDICTION; USE OF LANDS

Each of the 2 states hereby consents to the use and occupancy by the Authority of any lands and property of the Authority in such state for the construction, operation, maintenance or improvement of any crossing, transportation or terminal facility, commerce facility or development, or other project which it is or may be authorized at any time to construct, own or operate, including lands lying under water.

ARTICLE XV REVIEW AND ENFORCEMENT OF RULES

Judicial proceedings to review any bylaw, rule, regulation, order or other action of the Authority or to determine the meaning or effect thereof may be brought in such court of each state, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such state might be brought.

Each state may provide by law what penalty or penalties shall be imposed for violation of any lawful rule, regulation or order of the Authority, and, by law or rule of court, for the manner of enforcing the same.

ARTICLE XVI NO PLEDGE OF CREDIT

The Authority shall have no power to pledge the credit or to create any debt or liability of the state of Delaware, of the state of New Jersey or of any other agency or of any political subdivision of said states.

ARTICLE XVII LOCAL COOPERATION AND AGREEMENTS

(a) All municipalities, political subdivisions and every department, agency or public body of each of the states are hereby authorized and empowered to cooperate with, aid and assist the Authority in effectuating the provisions of this Compact and of any amendment hereof or supplement hereto.

(b) The Authority is authorized and empowered to cooperate with each of the states, or any political subdivision thereof, and with any municipality, local government, agency, public authority or commission of the foregoing, in connection with the acquisition, planning, rehabilitation, construction or development of any project, other than a crossing, and to enter into an agreement or agreements, subject to compliance with the laws of the state in which the project is to be located, with each of the states, or any political subdivision thereof, and with any municipality, county, local government, agency, public authority or commission or with 2 or more of them, for or relating to such purposes.

(c) The Authority and the city, town, municipality or other political subdivision in which any project, other than a crossing, is to be located are hereby authorized and empowered, subject to compliance with the laws of the state in which the project is to be located, to enter into an agreement or agreements to provide which local laws, resolutions, ordinances, rules and regulations, if any, of the city, town, municipality or other political subdivision affected by such project shall apply to such project. All other existing local laws, resolutions, ordinances or rules and regulations not provided for in the agreement shall be applicable to the project, other than a crossing. All local laws, resolutions, ordinances or rules and regulations enacted after the date of the agreement shall not be applicable to such projects unless made applicable by the agreement or any modification thereto.

ARTICLE XVIII DEPOSITARIES

All banks, bankers, trust companies, savings banks and other persons carrying on a banking business under the laws of either state are authorized to give security for the safekeeping and prompt payment of moneys of the Authority deposited by it with them, in such manner and form as may be required by and may be approved by the Authority, which security may consist of a good and sufficient undertaking with such sureties as may be approved by the Authority, or may consist of the deposit with the Authority or other depository approved by the Authority as collateral of such securities as the Authority may approve.

ARTICLE XIX AGENCY POLICE

Members of the police force established by the Authority, regardless of their residence, shall have in each state, on the crossings, transportation or terminal facilities, commerce facilities or developments and other projects and the approaches thereto, owned, operated or controlled by the Authority, and at such other places and under such circumstances as the law of each state may provide, all the powers of investigation, detention and arrest conferred by law on peace officers, sheriffs or constables in such state or usually exercised by such officers in each state.

ARTICLE XX REPORTS AND AUDITS

The Authority shall make annual reports to the Governors and Legislatures of the state of Delaware and the state of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports from time to time to the governors and legislatures as it may deem desirable.

It shall, at least annually, cause an independent audit of its fiscal affairs to be made, and shall furnish a copy of such audit report together with such additional information or data with respect to its affairs as it may deem desirable to the governors and legislatures of each state.

It shall furnish such information or data with respect to its affairs as may be requested by the governor or legislature of each state.

ARTICLE XXI BOUNDARIES UNAFFECTED

The existing territorial or boundary lines of the states or the jurisdiction of the 2 states established by said boundary lines shall not be changed hereby.

ARTICLE XXII ENVIRONMENTAL PROTECTION

(a) The planning, development, construction and operation of any project, other than a crossing, shall comply with all environmental protection laws, regulations, directives and orders, including, without limitation, any coastal zone laws, wetlands laws, or subaqueous land laws or natural resources laws, now or hereinafter enacted, or promulgated by the state in which the project, or any part thereof, is located.

(b) The planning, development, construction and operation of any project, other than a crossing, to be located in the Delaware River and Bay shall comply with all environmental protection laws, regulations, directives and orders, including, without limitation, any coastal zone laws, wetlands laws, subaqueous land laws or natural resource laws now or hereinafter enacted or promulgated by either state.

(c) The planning, development, construction and operation of any project, other than a crossing, located in the coastal zone of Delaware (as defined in Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989), shall be subject to the same limitations, requirements, procedures and appeals as apply to any other person under the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989. Nothing in this Compact shall be deemed to pre-empt, modify or supersede any provision of the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989. The interpretation and application of this paragraph shall be governed by the laws of the state of Delaware and be determined by the courts of the state of Delaware.

(d) The planning, development, construction and operation of any project, other than a crossing, located in New Jersey, shall be subject to the provisions of New Jersey law, when applicable, including but not limited to the Wetlands Act of 1970, N.J.S.A. 13:9A-1, et seq. and the Coastal Area Facility Review Act, N.J.S.A. 13:19-1, et seq.

(17 Del. C. 1953, § 1701; 53 Del. Laws, c. 145; 67 Del. Laws, c. 252, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, 1st Sp. Sess., c. 258,, § 52; 84 Del. Laws, c. 42, § 1.)

Subchapter II

Effectuation; Commissioners

§ 1711 Commissioners; appointment.

The Commissioners from this State, provided for in Article V of the Delaware-New Jersey Compact set out in § 1701 of this title, shall be appointed by the Governor with the advice and consent of the Senate. Immediately upon enactment of this chapter, the Governor may so appoint the first Commissioners from this State, notwithstanding that the said Compact may not have yet taken effect. The persons nominated by the Governor to serve as the first Commissioners shall be authorized to sign duplicate originals of said Compact on the part of this State, to apply to Congress for such consent thereto as may be required by law, and to seek an amendment of 60 Stat. 553 having the effect of eliminating the requirement that the Delaware Memorial Bridge shall become toll free upon payment of the outstanding revenue bonds, although said persons may not then have been confirmed or have taken their oath of office.

(17 Del. C. 1953, § 1711; 53 Del. Laws, c. 145; 70 Del. Laws, c. 186, § 1.)

§ 1712 Effective date; terms of Commissioners.

If the state of New Jersey enacts legislation agreeing to the exact terms of the Delaware-New Jersey Compact, Congress consents thereto and Congress amends 60 Stat. 553 to eliminate the present requirement that the Delaware Memorial Bridge shall become toll free upon payment of the outstanding revenue bonds on or before July 1, 1962, then the said Compact shall become effective on July 1, 1962; but if these events shall not all be completed until after July 1, 1962, then the said Compact shall take effect on the date of the last required event. The first Commissioners from Delaware may take office on or after the date on which said Compact takes effect, but the designation of their terms shall be such that the term of at least 1 Commissioner shall expire each year and each such term shall be computed from July 1, 1962, notwithstanding that the Compact may not become effective until after that date.

(17 Del. C. 1953, § 1712; 53 Del. Laws, c. 145; 67 Del. Laws, c. 251, § 1.)

§ 1713 Holding over of Commissioners.

Each Commissioner from this State shall continue to hold office after the expiration of the term for which the Commissioner is appointed and until the Commissioner’s respective successor is appointed and qualified; but no period during which any such Commissioner shall hold over shall be deemed to be an extension of the Commissioner’s term of office for the purpose of computing the date on which said successor’s term expires.

(17 Del. C. 1953, § 1713; 53 Del. Laws, c. 145; 70 Del. Laws, c. 186, § 1.)

§ 1714 Successors.

After the expiration of the term of each Delaware Commissioner and each succeeding Commissioner thereafter, the Governor shall, by and with the advice and consent of the Senate, appoint a successor, who shall hold office for a term of 5 years or until the Commissioner’s successor has been appointed and qualified. In making such appointments, the Governor shall endeavor to appoint as Commissioners a

representative number of women and minorities.

(17 Del. C. 1953, § 1714; 53 Del. Laws, c. 145; 67 Del. Laws, c. 251, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1715 Vacancies.

In the event a vacancy occurs in the office of a Commissioner from this State by death, resignation, removal or otherwise, the Governor shall, by and with the advice and consent of the Senate, appoint a successor, who shall hold office for the unexpired term.

(17 Del. C. 1953, § 1715; 53 Del. Laws, c. 145.)

§ 1716 Removal of Commissioner.

Any Commissioner from this State may be suspended or removed from office upon specific written charges filed with the Secretary of State and after hearing by the Senate.

(17 Del. C. 1953, § 1716; 53 Del. Laws, c. 145.)

§ 1717 Political representation.

No more than 4 of the 6 Commissioners from this State shall be of the same political party at any 1 time.

(17 Del. C. 1953, § 1717; 53 Del. Laws, c. 145; 67 Del. Laws, c. 251, § 1.)

§ 1718 Compensation of Commissioners.

For the period during which any Commissioner shall hold office, the Commissioner shall be entitled to reimbursement for any necessary expenses incurred on the business of the Delaware River and Bay Authority, which shall be paid only from revenues received by the Authority and available for administrative expenses.

(17 Del. C. 1953, § 1718; 53 Del. Laws, c. 145; 70 Del. Laws, c. 186, § 1.)

§ 1719 The Delaware River and Bay Authority.

The Commissioners appointed pursuant to this chapter shall have the authority, powers and duties and be subject to the limitations provided for in this chapter and in the said Compact between the 2 states, and together with the 6 Commissioners appointed from the state of New Jersey shall form and constitute “the Delaware River and Bay Authority” pursuant to the Delaware-New Jersey Compact.

(17 Del. C. 1953, § 1719; 53 Del. Laws, c. 145; 67 Del. Laws, c. 251, § 1.)

§ 1720 Veto by Governor.

(a) Except, as provided by this chapter, no action taken at any meeting of the Delaware River and Bay Authority by a Commissioner appointed from the state of Delaware shall have any force or effect until the Governor of this State shall have an opportunity to approve or veto the same under Article VI of the Delaware-New Jersey Compact.

(b) For the purpose of procuring such approval or veto, the secretary or other officer of the Delaware River and Bay Authority in charge of the minutes of the proceedings of that body shall transmit to the Governor at the Governor’s office in Dover a certified copy of the minutes of every meeting of the Delaware River and Bay Authority as soon after the holding of such meeting as such minutes can be written out. The Governor shall within 10 days (Saturdays, Sundays and public holidays of this State excepted), after such minutes shall have been received at the Governor’s office aforesaid, cause the same to be returned to the Delaware River and Bay Authority either with the Governor’s approval or the Governor’s veto of any action therein recited as having been taken by any Commissioner appointed from this State; provided, however, that if the Governor shall not return the said minutes within the said period, then at the expiration thereof any action therein recited will have full force and effect according to the wording thereof.

(c) If the Governor within the said period returns the said minutes with a veto against the action of any Commissioner from this State as recited therein, then such action of said Commissioner shall be null and void.

(d) The Governor may by order filed with the secretary of the Delaware River and Bay Authority relieve the Commissioners from the duty of procuring the Governor’s approval of their action upon any particular matter or class of matters, and thereupon the secretary or other officer in charge of the minutes of the proceedings of that body shall be relieved of reporting the same to the Governor.

(17 Del. C. 1953, § 1720; 53 Del. Laws, c. 145; 70 Del. Laws, c. 186, § 1.)

§ 1721 Audit.

The Authority shall furnish each year an independent audit of its fiscal affairs, in which items of current and capital nature shall be separately set forth, and shall cause a copy of the report on such audit to be delivered to the Governor.

(17 Del. C. 1953, § 1721; 53 Del. Laws, c. 145.)

§ 1722 Geographical representation.

Of the Commissioners from this State to be appointed in accordance with this subchapter, 2 Commissioners shall be appointed from New Castle County, no more than 1 of whom shall be of the same political party, 2 Commissioners shall be appointed from Kent County, no more than 1 of whom shall be from the same political party, and 2 Commissioners shall be appointed from Sussex County, no more than 1 of whom shall be of the same political party.

(17 Del. C. 1953, § 1724; 53 Del. Laws, c. 145; 67 Del. Laws, c. 251, § 1.)

§ 1723 Proposals for commerce facilities or developments.

The Delaware River and Bay Authority shall not initiate any commerce facility or development (as defined in Article II of the Delaware-New Jersey Compact set out in § 1701 of this title) to be located in the State unless a proposal for such commerce facility or development has been first submitted to the Governor by the Department of State and then approved and submitted to the Authority by the Governor. The Department of State shall, before submitting such proposal to the Governor, notify all members of the General Assembly and the local governmental officials of the area in which the proposed project is to be located.

(67 Del. Laws, c. 253, § 1; 69 Del. Laws, c. 458, § 1; 81 Del. Laws, c. 49, § 16; 81 Del. Laws, c. 374, § 45.)

§ 1724 Project review by Department of Natural Resources and Environmental Control.

(a) (1) Whenever the Delaware River and Bay Authority proposes or agrees to undertake a project (as defined in Article II of the Delaware-New Jersey Compact set out in § 1701 of this title), to be located in the State or in the Delaware River or Bay, the Authority shall submit an environmental impact statement (as defined in § 7002(c) of Title 7) with respect to the project for review by the Department of Natural Resources and Environmental Control. The Department of Natural Resources and Environmental Control shall make a determination of whether said project could comply with the environmental laws and regulations of the State and shall utilize standards and criteria as called for in § 6036 of Title 7 to determine if said project shall be considered to be a project of state significance. Any project reviewed by the Department of Natural Resources and Environmental Control which is to be located in the Delaware River or Bay shall be deemed to be a major project. Any commerce facility or development located in the State shall also be deemed to be a major project.

(2) Any project determined to be a project of state significance shall be deemed to be a major project (as defined in Article II of the Delaware-New Jersey Compact set out in § 1701 of this title). The Secretary of the Department of Natural Resources and Environmental Control shall convey this determination to the Executive Director of the Delaware River and Bay Authority.

(b) The Department of Natural Resources and Environmental Control shall give public notice and hold a public meeting at which the proposed project will be reviewed. The public notice shall provide a description of the nature of the project and shall be publicized in a newspaper of general circulation in each of the counties at least 15 business days prior to the scheduled meeting date. A public notice and public hearing by the Department of Natural Resources and Environmental Control at the state level shall not be required where the Department of Natural Resources and Environmental Control upon initial review of the proposed project determines that the project is a major project or that the project will not require any permit or approval from any state agency.

(c) The Department of Natural Resources and Environmental Control project review process provided for in this section shall be completed prior to the date of publication of the notice relating to the project provided for by § 1725 of this title.

(d) The Department of Natural Resources and Environmental Control may undertake its obligations hereunder through its Development Advisory Service or such other unit of the Department of Natural Resources and Environmental Control as its Secretary may designate.

(e) The provisions of this section shall not apply to any project undertaken by the Delaware River and Bay Authority in connection with a crossing (as defined in Article II of the Delaware-New Jersey Compact set out in § 1701 of this title).

(f) The provisions of this section shall not apply to any transportation facility, terminal facility or commerce facility or development project (as defined in Article II of the Delaware New Jersey Compact set out in § 1701 of this title) undertaken by the Delaware River and Bay Authority in the state of Delaware which has been proposed to the Delaware River and Bay Authority by the Governor and has received legislative approval pursuant to § 1726 of this title.

(67 Del. Laws, c. 253, § 1; 72 Del. Laws, 1st Sp. Sess., c. 258,, § 50.)

§ 1724A Appeal to Board.

(a) Any person, as that term is defined in § 6002 of Title 7, whose interest is substantially affected by the determination of the Department of Natural Resources and Environmental Control that a proposed project is or is not a project of state significance may appeal to the Environmental Appeals Board (the "Board") within 20 days after the Secretary of the Department of Natural Resources and Environmental Control has conveyed the determination to the Executive Director of the Delaware River and Bay Authority.

(b) Whenever a determination of the Department of Natural Resources and Environmental Control concerning a proposed project is appealed, the Board shall hold a public hearing in accordance with § 6006 of Title 7.

(c) If the determination of the Department of Natural Resources and Environmental Control is overruled by the Board, then the Board shall state its reasons for its decision.

(d) No decision of the Board shall be valid unless signed by a minimum of 5 members.

(e) No appeal shall operate to stay automatically the effect of any determination by the Department of Natural Resources and Environmental Control, but upon application, and for good cause, the Secretary of the Department of Natural Resources and Environmental Control or the Court of Chancery may stay the action pending disposition of the appeal.

(67 Del. Laws, c. 253, § 1.)

§ 1724B Appeal from Board's decision.

(a) Any person, as defined in § 6002 of Title 7, or persons, jointly or severally, or any taxpayer, or any officer, department, board or bureau of the State, or the Delaware River and Bay Authority, may appeal to the Superior Court in and for the county in which the proposed project in question is wholly or principally located by filing a petition, duly verified, setting forth that such decision of the Board is illegal in whole or in part, specifying the grounds of the illegality. Any such appeal shall be perfected within 20 days of the decision of the Board.

(b) The Court may affirm, reverse or modify the Board's decision. The Board's findings of fact shall not be set aside unless the Court determines that the record contains no substantial evidence that would reasonably support the findings. If the Court finds that additional evidence should be taken, the Court may remand the case to the Board for completion of the record.

(c) No appeal shall operate to stay automatically the effect of any determination by the Department of Natural Resources and Environmental Control, but upon application, and for good cause, the Board or the Court of Chancery may stay the action pending disposition of the appeal.

(67 Del. Laws, c. 253, § 1.)

§ 1725 Notice and public hearing.

(a) Whenever the Delaware River and Bay Authority proposes to undertake a major project (as defined in Article II of the Delaware-New Jersey Compact set out in § 1701 of this title) to be located in the State or in the Delaware River or Bay, the Authority shall provide public notice of the proposed major project as follows:

(1) The notice shall describe the nature of the project including a brief synopsis of the project, a statement of whether the project requires the condemnation of public lands and a reference to the legal basis for the Authority's proposed activities;

(2) The notice shall state the manner in which members of the public may present their views in writing, including the address to which such writing should be addressed and the final date by which such writings may be submitted;

(3) The notice shall state the date, time and place where the public hearing, if requested in accordance with subsection (b) of this section, shall be held;

(4) The notice shall be provided at least 30 days prior to the scheduled date of any public hearing requested in accordance with subsection (b) of this section; and

(5) The notice shall be publicized in a newspaper of general circulation in each of the counties.

(b) If requested by the Governor or any member of the General Assembly, or if a meritorious request for a hearing is submitted by any person, within 14 days of the date of publication of the notice, the Authority shall hold a public hearing on any major project, in order to receive information, factual evidence and public reaction subject to the following provisions:

(1) The hearing, if requested, shall be held at least 15 days prior to the date of any vote by the Commissioners relating to the major project.

(2) At the public hearing all interested persons shall be given a fair and reasonable opportunity to be heard, subject to the power of a majority of the Commissioners present to exercise such control over the conduct of the hearing, including, without limitation, the setting of equitable time limitations, as may be in the public interest.

(3) A public hearing request shall be deemed meritorious if it exhibits a familiarity with the proposed major project and a reasoned statement of the major project's probable impact.

(67 Del. Laws, c. 253, § 1.)

§ 1726 Legislative approval of Authority projects.

The Delaware River and Bay Authority shall not undertake any project, except a crossing (as defined in Article II of the Delaware-New Jersey Compact set out in § 1701 of this title), to be located in the State or in the Delaware River or Bay, without having first secured legislative authorization and approval of each specific project or part thereof pursuant to an act of the General Assembly, passed with the concurrence of $^{3}/_{4}$ of all the members elected to each House. Upon the request of any member of the General Assembly, the Delaware River and Bay Authority shall provide copies of all written reports or studies prepared or obtained by the Authority and any written comments submitted by members of the public with respect to the project. In addition to such state legislative approval, any agreement or agreements entered into (pursuant to Article XVII of the Delaware-New Jersey Compact set out in § 1701 of this title) between the Delaware River and Bay Authority and the city, town, municipality or other political subdivision in which any project, other than a crossing, is to be located must:

(1) Be in accordance with and subject to any and all land use laws including, but not limited to, zoning codes and subdivision and land development regulations for the respective political subdivisions, and any other local laws, resolutions, ordinances or rules and regulations which may apply; and

(2) Be approved by the local government, and such approval shall be according to the laws, regulations, standards and practices of such municipality or county government.

(67 Del. Laws, c. 253, § 1; 72 Del. Laws, 1st Sp. Sess., c. 258,, § 51.)

§ 1727 Legislative approval of the condemnation of lands devoted to public use.

The Delaware River and Bay Authority shall not exercise its power of eminent domain to condemn any property, devoted to a public use, of the State, or any municipality, county, local government, agency, public authority or commission thereof, or any 1 or more of them, for any purpose other than a crossing without having first secured legislative authorization and approval of each specific condemnation of property by act of the General Assembly.

(67 Del. Laws, c. 253, § 1.)

§ 1728 Volume discount bridge toll rates.

The Delaware River and Bay Authority shall not increase any rate of bridge toll charged as a volume discount rate from the rate in effect on the earlier of the effective date of the legislation amending the Delaware-New Jersey Compact as adopted by (i) the 135th Delaware General Assembly or (ii) the New Jersey Legislature, for a period of 10 years following such date, if the increase would cause such volume discount rate to exceed 25 percent of the basic toll rate charged by the Authority for individual bridge crossings by passenger automobiles, provided that the Authority may raise such volume discount rate in excess of this 25 percent limitation to the extent that such increase is determined by the Authority to be reasonably necessary for the protection of the Authority's bondholders in accordance with Article XI of the Delaware-New Jersey Compact.

(67 Del. Laws, c. 253, § 1.)

§ 1729 The Delaware River and Bay Authority — Airports.

The General Assembly, acting pursuant to provisions of § 1726 of this title, has authorized the Delaware River & Bay Authority, pursuant to the procedure set forth in the Delaware-New Jersey Compact (§ 1701 of this title) and all other applicable statutory requirements, to lease, develop and operate the New Castle County Airport, the Civil Air Terminal and the Delaware Airpark located in Cheswold, Delaware. Pursuant to Article VII of the Compact, the Authority is authorized to adopt rules and regulations to carry out and discharge its powers, duties and functions, and pursuant to Article XV of the Compact, Delaware may provide by law what penalty or penalties shall be imposed for violation of any lawful rule or regulation of the Authority and for the manner of enforcing the same. Pursuant to these provisions, the following applies to any person's failure to comply with or violation of rules or regulations of the Authority relating to any airports which the Authority leases, acquires, develops or operates with the approval of the General Assembly.

(1) Any person failing to comply with or violating any rule or regulation of the Authority relating to the management and operation of any airport shall be guilty of a violation of law. Upon conviction thereof, a penalty in the form of a fine not less than $10 or more than $1,000 and costs shall be assessed for the first offense. For the second offense occurring within 12 months after the date of the first offense, the penalty shall be a fine of not less than $50 or more than $1,000. For each subsequent offense thereafter, but occurring within 12 months of the date of the first offense, the penalty shall be a fine of not less than $100 or more than $1,000. Each day any violation of the relevant rules and regulations shall continue constitutes a separate offense for which a separate penalty for each day shall be imposed.

(2) Justices of the Peace of this State shall have jurisdiction throughout the State to hear, try and finally determine any violations of any rule or regulation of the Authority. Any person convicted of such violation may be fined not more than $1,000 for violation. Fines collected for the violation of any rule or regulation of the Authority shall inure and be paid to the State Treasurer for the General Fund.

(3) Any person arrested without a warrant for any violation of an Authority rule or regulation shall have such person's case heard and determined by a Justice of the Peace.

(4) A summons in appropriate form to be adopted by the Department of Safety and Homeland Security may be attached to any unattended vehicle found in violation of any rule or regulation of the Authority by any police officer authorized to arrest for violations of any Authority rule or regulation in lieu of arrest of the operator of such vehicle.

(72 Del. Laws, c. 489, § 40; 74 Del. Laws, c. 110, § 138.)

Chapter 18
DELAWARE RIVER AND BAY AUTHORITY

§ 1801 Definitions.

(a) "Authority" means "the Delaware River and Bay Authority," established by compact between the States of Delaware and New Jersey.

(b) "Bridge" means the "Delaware Memorial Bridge," its approaches, appurtenances, property, equipment, revenues, funds and personnel.

(c) "Compact" means the "Delaware-New Jersey Compact."

(17 Del. C. 1953, § 1801; 53 Del. Laws, c. 146.)

§ 1802 Agent for Bridge.

The Authority shall upon the effective date of this chapter be the agent of the States of Delaware and New Jersey in connection with the construction, operation, maintenance, improvement and control of the said Bridge, which was constructed pursuant to legislation enacted by the states of Delaware and New Jersey and found in Chapter 3 of this title and 45 Laws of Delaware, Chapters 274, 275, 334 and New Jersey Laws of 1946, Chapter 18.

(17 Del. C. 1953, § 1802; 53 Del. Laws, c. 146.)

§ 1803 Successors to the Delaware Interstate Highway Division.

Except as provided in this chapter, the Authority, as agent for said Bridge, shall exercise, succeed to, perform and be bound by all the rights, powers, authority, duties and obligations heretofore exercised by, performed by, or binding upon the Delaware Interstate Highway Division, as successor to the Delaware State Highway Department, insofar as they pertain to the said Bridge.

(17 Del. C. 1953, § 1803; 53 Del. Laws, c. 146.)

§ 1804 Rights of holders of Bridge bonds.

Such agent's control of the said Bridge shall be subject to the rights of the holders of the outstanding Delaware Memorial Bridge Revenue Bonds of the State issued (or in the process of issue prior to the effective date of this chapter) under the authority of § 318 of this title, and the state covenants that the said Bridge shall remain in the said agent's control so long as any of the said bonds shall remain outstanding or unpaid or until all said revenue bonds issued or in the process of issue under the authority of § 318 of this title have been paid in full or provision shall have been made for the payment thereof in the manner provided in the indenture between the State Highway Department of the State and Equitable Trust Company, dated June 1, 1948, and the supplemental indentures thereto, dated June 1, 1951, January 2, 1952, June 1, 1956, and June 1, 1960.

(17 Del. C. 1953, § 1804; 53 Del. Laws, c. 146.)

§ 1805 Control of Bridge.

At such time as all the Delaware Memorial Bridge Revenue Bonds issued pursuant to § 318 of this title have been paid in full or provision has been made for payment thereof as provided in the indenture securing said bonds, the Authority, as agent, shall continue to hold, control, operate, maintain and improve the said Bridge as a crossing, transportation facility or project in accordance with the Compact entered into between the 2 states, establishing the said Authority, and the Authority as such agent shall deal with the Bridge, its tolls and revenues as it is authorized, empowered and obligated to do by said Compact with respect to crossings, transportation facilities and projects as therein defined.

(17 Del. C. 1953, § 1805; 53 Del. Laws, c. 146.)

§ 1806 Audit; assumption of obligations.

In order to provide for an orderly transition of bridge operations, upon the effective date of this chapter, the Authority shall promptly arrange with the Delaware Interstate Highway Division for the preparation of an independent audit and accounting of its assets, liabilities and operations, and for fixing a date upon which the books and records of the said Division shall be closed and from and after which the Authority shall undertake the operation and control of the said Bridge; and it shall at the same time provide for the assumption of all outstanding obligations of the Delaware Interstate Highway Division for the construction, maintenance, improvement and operation of the said Bridge and shall take over all personnel, maps, books, records, revenues, funds and other assets relating thereto.

(17 Del. C. 1953, § 1806; 53 Del. Laws, c. 146.)

Chapter 19
REGULATION OF UNUSED OR UNOCCUPIED AUTOMOTIVE SERVICE STATIONS

§ 1901 Unused or unoccupied automotive service stations.

(a) All automotive service stations within the State shall be maintained as though such property were being used or occupied. The maintenance shall include, but shall not be limited to:

(1) Replacing or boarding-up of areas having broken glass.

(2) Trimming of shrubbery.

(3) Replacing of deteriorated roofing or siding.

(4) Repairing or removing of any accessory building and/or equipment the level of maintenance of which is not less than would be expected if the property were in active use.

(5) Providing reasonable security measures to prohibit the unauthorized and/or illegal use of any buildings or equipment.

(6) Removing or correcting any condition detrimental to the safety of the general public.

(b) Upon discovery that a parcel is not being maintained properly, the Department shall notify the owner or possessor of such land or improved premises. If within 15 days of the above notice by the Department to the owner or possessor of land or improved premises, maintenance to correct the violation has not been undertaken, the Department may cause such violations to be corrected and may incur any expense in the removal thereof.

(c) Any expense incurred by the Department under this section shall be paid by the owner or possessor of the land or improved premises within 10 days after notice thereof by registered mail. If such amount is not paid within such time, such amount, together with a penalty of 10 percent of such expense and interest on such expense of 6 percent per annum shall be assessed against the land or improved premises and shall, until paid, constitute a lien against such land or improved premises in favor of the Department, upon the filing by the Secretary of the Department, in the office of the recorder of deeds for the county where the property is located, of a certificate of lien setting forth the amount of such expense including penalty and interest.

(d) In addition to any other remedy, the county may maintain an action for the recovery of such expense and the penalty and interest against the owner or possessor and shall be awarded reasonable attorneys' fees.

(e) Any contractor or employee engaged by the Department in carrying out this section shall be immune from civil liability in any action brought by the owner or possessor of the subject premises.

(f) The Department may adopt rules and regulations in order to enforce this chapter.

(64 Del. Laws, c. 264, § 1.)

§ 1902 Injunction.

The Department may apply to the Court of Chancery for an injunction to restrain any violation or threatened violation of this chapter.

(64 Del. Laws, c. 264, § 1.)

§ 1903 Penalties; continuing violations.

(a) Whoever violates this chapter or any regulation lawfully adopted pursuant to this chapter shall be fined not less than $25 nor more than $200.

(b) Each day that a violation is allowed to continue after notice of its existence shall constitute a separate offense.

(64 Del. Laws, c. 264, § 1.)

Chapter 20
Permitting of Renewable Energy Interconnection Facilities

§ 2001 Findings of public policy.

The General Assembly finds and declares as follows:

(1) Development of renewable energy sources and their connection to the electric power grid are declared to be matters of statewide concern and interest.

(2) The Delaware Department of Transportation is responsible for the care, management, and control of State-owned roadway rights-of-way.

(3) To foster the development of renewable energy and a clean energy future in this State, responsible and reasonable accommodation of renewable energy interconnection facilities in the State-owned roadway rights-of-way shall be encouraged as an integral part of the State's infrastructure.

(84 Del. Laws, c. 401, § 13.)

§ 2002 Definitions.

For the purposes of this chapter:

(1) "Applicable codes" means laws, rules, regulations, engineering standards, engineering guidance, and established best practices as recognized by the Department of Transportation or the Federal Highway Administration.

(2) "Department" means the Delaware Department of Transportation.

(3) "Eligible energy resource" or "eligible energy resources" shall have the defined meaning in § 352 of Title 26.

(4) "Fair market rental rate" means a recurring rate for the use of the State's roadway rights-of-way based on a fair market appraisal of the use of that land.

(5) "Offshore wind interconnection facilities" shall have the meaning defined in § 203F of Title 26.

(6) "Renewable energy developer" means a person or company, whether acting on its own behalf or acting as the agent of a renewable energy owner or renewable energy operator on a temporary basis, developing or constructing 1 or more eligible energy resources. A renewable energy developer may also be a renewable energy operator or a renewable energy owner.

(7) "Renewable energy entity" means any entity that is either a renewable energy developer, a renewable energy operator, a renewable energy owner, or any combination of these.

(8) "Renewable energy interconnection facilities" shall have the meaning defined in § 203F of Title 26.

(9) "Renewable energy operator" means a person or company, whether acting on its own behalf or acting as the agent of a renewable energy owner on a semi-permanent basis, operating 1 or more renewable energy resources.

(10) "Renewable energy owner" means a person or company who owns the renewable energy interconnection facilities to be located in the State-owned right-of-way.

(11) "Right-of-way" or "ROW" means all those lands owned by the State in fee simple or lesser rights or under the management or control of the Department and operated as a public roadway, whether located within or outside incorporated municipalities. A ROW may include lands owned and operated by the State such as bicycle and pedestrian pathways, and recreational trails or railroads that are separate from State-owned roadway rights of way.

(84 Del. Laws, c. 401, § 13.)

§ 2003 Regulations.

The Secretary of the Department shall have the authority to promulgate regulations to fully define the requirements necessary to implement the provisions of this chapter.

(84 Del. Laws, c. 401, § 13.)

§ 2004 Permits.

(a) A renewable energy entity must first obtain a certificate of public convenience and necessity from the Public Service Commission under the provisions § 203F of Title 26, and thereafter may apply for a permit from the Department prior to constructing, modifying, or maintaining renewable energy interconnection facilities in the State's ROW.

(b) The Department shall receive applications for, process, and issue such permits subject to the following requirements:

(1) The applicant shall, wherever possible, place renewable energy interconnection facilities underground, but the Department can authorize above-ground facilities where safety and other consideration allow such placement.

(2) Within 30 days of receiving an application, the Department will determine and notify the applicant whether the application is complete. If an application is incomplete, the Department must identify the missing information.

(3) The Department will process permits within 90 days either approving the permit request, or denying the permit request for cause based on the Department finding that the permit request fails to comply with any of the following:

a. Protection of the public health, safety and welfare along Delaware's roadways.

b. Minimization of conflicts with the use of the State's ROW for the primary purpose of transportation.

c. Objective, reasonable design standards.

d. Applicable codes including applicable provisions of the Delaware Utilities Manual Regulations, unless or until the Secretary of the Department promulgates regulations specific to accommodation of renewable energy interconnection facilities in the State's ROW.

(84 Del. Laws, c. 401, § 13.)

§ 2005 Use and occupancy agreement.

(a) In conjunction with the issuance of a permit by the Department under § 2004 of this title, the Department is authorized to enter into use and occupancy agreements with renewable energy entities for the locating of renewable energy interconnection facilities in the ROW under terms that:

(1) Protect the public health, safety and welfare along Delaware's roadways.

(2) Minimize conflicts with the use of the State's ROW for the primary purpose of transportation.

(3) May prohibit the renewable energy entity from owning and placing poles as part of renewable energy interconnection facilities in the State's ROW.

(4) Establish a preference that renewable energy interconnection facilities be located underground, but would authorize above-ground facilities in a ROW near a roadway where safety and other considerations allow such facilities.

(5) Ensure that the renewable energy entity entering into a use and occupancy agreement has the financial, technical, organizational, and managerial resources needed to site and operate in the ROW for the full-term of the use and occupancy agreement.

(6) Are competitively neutral and nondiscriminatory.

(7) Charge a fair market rental rate for the use of the State's ROW by renewable energy entities.

(b) Such use and occupancy agreements shall be for a term of 30 years with an option to renew for additional 5-year terms subject to compliance with performance requirements set by the Department, and the authority of the Department to revoke such agreements for cause.

(c) Such use and occupancy agreements shall be nonassignable and nontransferable without the reasonable consent of the Department based on the assignee or transferee having the financial, technical, organizational, and managerial resources needed to operate in the ROW for the term of the use and occupancy agreement and protecting the public health, safety and welfare.

(d) Each renewable energy entity entering into a valid use and occupancy agreement shall comply with the Underground Utility Damage Prevention and Safety Act, Chapter 8 of Title 26, to the extent applicable.

(e) Notwithstanding the provisions hereof related to restrictions on assignment and transfer, a renewable energy entity may pledge and/or collaterally assign its interest in the use and occupancy agreement and associated renewable energy interconnection facilities in the ordinary course of securing financing for any renewable energy interconnection facilities, or associated renewable energy project, without the consent of the Department, provided that no entity may take possession of the renewable energy interconnection facilities in a public right of way, and no entity may receive any interest under a use and occupancy agreement, unless and until the Department has provided its consent to such a transfer under the provisions of subsection (c) of this section.

(84 Del. Laws, c. 401, § 13.)

§ 2006 Removal of renewable energy interconnection facilities.

Any renewable energy entity wanting to decommission an existing renewable energy interconnection facility or cease operations thereof shall first obtain approval from the Public Service Commission. It shall thereafter notify the Department not less than 60 days prior to commencing such decommissioning or ceasing operations as to the disposition of their renewable energy interconnection facilities. Acceptable disposition includes removal of the interconnection facilities from the ROW, or transfer of the interconnection facilities to another renewable energy entity subject to the approval of the Department in accordance with the provisions of § 2005(c) of this title.

(84 Del. Laws, c. 401, § 13.)

§ 2007 Relocation of renewable energy infrastructure.

Whenever it becomes necessary to relocate any renewable energy interconnection facilities due to expansion of the transportation system, or if the renewable energy interconnection facilities are found to interfere unreasonably with ingress and egress to adjacent properties or their development, or for reasons deemed in the public interest by the Department, the renewable energy entity shall relocate its infrastructure at its sole expense to a location mutually agreed upon by the renewable energy entity and the Department.

(84 Del. Laws, c. 401, § 13.)