Legislative Council,
General Assembly
State of Delaware

Title 2

Transportation

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Part I
Aeronautics
Chapter 1
REGULATION
Subchapter I
General Provisions

§ 101 Purpose of chapter.

The purpose of this chapter is to further the public interest and aeronautical progress by providing for the protection and promotion of safety in aeronautics; by cooperating in effecting a uniformity of the laws relating to the development and regulation of aeronautics in the several states; by granting to a state agency such powers and imposing upon it such duties that the State may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, may assist in the promotion of a statewide system of airports, may cooperate with and assist the political subdivisions of this State and others engaged in aeronautics, and may encourage and develop aeronautics; by establishing uniform regulations, consistent with federal regulations and those of other states, in order that those engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others; and by providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this State by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions properly in the province of federal agencies.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 2; 2 Del. C. 1953, § 101.)

§ 102 Definitions.

For the purpose of this part or any other laws of this State relating to aeronautics, unless otherwise specifically defined, or unless another intention clearly appears or the context requires a different meaning:

(1) “Aeronautics” or “aviation” means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction.

(2) “Aeronautics instructor” means any individual engaged in giving instruction, or offering to give instruction, in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising such occupation, without calling the facilities an “air school” or anything equivalent thereto, and without employing or using other instructors; but it does not include any instructor in any public school or university of this State, or any institution of higher learning duly accredited and approved for carrying on collegiate work, while engaged in the duties as such instructor.

(3) “Air instruction” means the imparting of aeronautical information by any aeronautics instructor or in or by any air school or flying club.

(4) “Air navigation” means the operation or navigation of aircraft in the air space over this State, or upon any airport or restricted landing area within this State.

(5) “Air navigation facility” means any facility other than one owned or controlled by the federal government, used in, available for use in, or designed for use in, aid of air navigation, including airports, restricted landing areas, and any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area, and any combination of any or all of such facilities.

(6) “Air school” means any person engaged in giving, or offering to give, instruction, in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising, representing, or holding such person out as giving or offering to give such instruction; but it does not include any public school or university of this State, or any institution of higher learning duly accredited and approved for carrying on collegiate work.

(7) “Aircraft” means any contrivance known, or invented, used or designed for navigation of or flight in the air.

(8) “Airman” means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; and (excepting individuals employed outside the United States, any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, and any individual performing inspection or mechanical duties in connection with aircraft owned or operated by such individual) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

(9) “Airport” means any area, of land or water, except a restricted landing area, which is designed for the landing and takeoff of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way.

(10) “Airport approach area” means all that area lying within and below an inclined plane as defined in Federal Aviation Regulation (FAR) Part 77.

(11) “Airport hazard” means any structure, object of natural growth, or use of land, which obstructs the air space required for the flight of aircraft in landing or taking off at any airport or restricted landing area or is otherwise hazardous to such landing or taking off.

(12) “Airport protection privileges” means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to insure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof.

(13) “Airport purposes” means and includes airport, restricted landing area, and other air navigation facility purposes.

(14) “Civil aircraft” means any aircraft other than a public aircraft.

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

(16) “Flying club” means any person other than an individual, which, neither for profit nor reward, owns, leases or uses 1 or more aircraft for the purpose of instruction or pleasure or both.

(17) “Helicopter landing site” means a heliport, helistop or helipad or any other surface used or usable for helicopter operations as defined in FAR Part 77.

(18) “Municipality” means any “political subdivision,” as defined in this section.

(19) “Navigable air space” means air space above the minimum altitudes of flight prescribed by the laws of this State or by regulations of the Department consistent therewith.

(20) “Obstruction” means any physical hazard to flight constructed, installed or planted by humans, whether real or artificial, including, but not limited to, buildings, trees, towers, smokestacks and overhead transmission lines.

(21) “Operation of aircraft” or “operate aircraft” means the use of aircraft for the purpose of air navigation, and includes the navigation or piloting of aircraft.

(22) “Person” or “whoever” means any individual, firm, partnership, corporation, company, association, joint stock association or body politic; and includes any trustee, receiver, assignee or other similar representative thereof.

(23) “Political subdivision” means any county, hundred, city, village, town or borough of this State and any other public corporation, authority or district in this State authorized by law to acquire, establish, construct, maintain, improve and operate airports and other air navigation facilities.

(24) “Public aircraft” means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory or possession of the United States or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(25) “Public use airport” means an airport open for use by the public for general aviation purposes.

(26) “Restricted landing area” means any area of land, water or both which is used or is made available for the landing and takeoff of aircraft, the use of which shall, except in case of emergency, be only as provided from time to time by the Department.

(27) “Runway approach area” means an imaginary trapezoidal shape, beginning at the end of a runway with an initial width parallel to the runway end extending for a distance of 500 feet from each side of the runway centerline, running lengthwise from the runway end along said centerline for a distance of 3000 feet and ending with a line parallel to the runway end extending for a distance of 875 feet from each side of said runway centerline, pursuant to FAA Advisory Circular 150/5300-13.

(28) “Secretary” means the Secretary of Transportation.

(29) “State airway” means a route in the navigable air space over and above the lands or water of this State, designated by the Department as a route suitable for air navigation.

(36 Del. Laws, c. 249, § 1; Code 1935, § 5764; 45 Del. Laws, c. 300, § 1; 45 Del. Laws, c. 301, § 1; 2 Del. C. 1953, § 102; 56 Del. Laws, c. 268, § 3; 57 Del. Laws, c. 671, §§ 11A, B; 60 Del. Laws, c. 503, § 25; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 575, § 1; 74 Del. Laws, c. 201, § 1; 84 Del. Laws, c. 42, § 1.)

§ 103 Delaware Aviation Advisory Council.

In accordance with the intent and purpose of this chapter, as set forth therein, the Department is authorized to appoint and select members of a Delaware Aviation Advisory Council (DAAC), to assist the Department in furthering and promoting the interests of aviation in Delaware, as defined by Part I of this title. The Delaware Aviation Advisory Council shall serve in an advisory capacity and in that role shall have such power and authority as may be granted by the Secretary to recommend measures consistent with the intent and purposes set forth in this chapter. Such measures may include but are not limited to: supporting the Department in the planning and implementation of aviation system enhancements; supporting and promoting aviation education; recommending new or improvements to existing locations, facilities, programs, projects, equipment; and recommending other related activities to support and improve aviation. The Delaware Aviation Advisory Council shall consist of 9 members, which shall include at the least 1 representative from each of the following:

(1) A Fixed Base Operator (FBO);

(2) The Delaware River & Bay Authority (DRBA);
(3) An aviation education representative;
(4) A representative from corporate aviation;
(5) One representative each from New Castle, Kent and Sussex Counties; and
(6) Two at large members selected by the Secretary.
(74 Del. Laws, c. 201, § 2.)

Subchapter II

Department of Transportation; Powers and Duties

§ 131 General powers and duties.

The Department shall have general supervision over aeronautics within this State. It shall encourage, foster, and assist in the development of aeronautics in this State and encourage the establishment of airports and other air navigation facilities.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 6(1); 2 Del. C. 1953, § 131; 57 Del. Laws, c. 671, § 11D.)

§ 132 Coordination of aeronautics matters and activities with and between the federal government, political subdivisions and others.

The Department shall cooperate with and assist the federal government, the political subdivisions of this State and others engaged in aeronautics or the promotion of aeronautics, and shall seek to coordinate the aeronautical activities of these bodies. To this end, the Department may confer with or hold joint hearings with any federal aeronautical agency in connection with any matter arising under this chapter or relating to the sound development of aeronautics, and may avail itself of the cooperation, services, records and facilities of such federal agencies, as fully as may be practicable, in the administration and enforcement of this chapter. It shall reciprocate by furnishing to the federal agencies its cooperation, services, records and facilities, insofar as may be practicable.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 6(2); 2 Del. C. 1953, § 132; 57 Del. Laws, c. 671, § 11D; 70 Del. Laws, c. 575, § 2.)

§ 133 Reports to federal agencies; preservation of aircraft involved in accidents.

The Federal Aviation Administration has primary responsibility for investigating aircraft accidents. Initial reports of accidents may be directed by state and/or local police agencies that report such aeronautical accident information to the Department through the Office of Aeronautics. The Office of Aeronautics shall report to the appropriate federal agency all aeronautical accidents of which it is informed and shall cooperate with and assist federal agencies in the conduct of any investigation. Police agencies involved in any accident investigation shall preserve, protect and prevent removal of component parts of any aircraft involved in an accident until the investigating agency or Office of Aeronautics gives clearance for removal of the wreckage.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 6(2); 2 Del. C. 1953, § 133; 57 Del. Laws, c. 671, § 11D; 70 Del. Laws, c. 575, § 3.)

§ 134 Rules, regulations, and standards.

(a) The Department may perform such acts, issue and amend such orders, and make, promulgate, and amend such reasonable general or special rules, regulations, and procedure, and establish such minimum standards, consistent with this chapter, as it deems necessary to carry out the provisions of this chapter and to perform its duties hereunder; all commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons receiving instruction concerning, or operating, using or traveling in aircraft, and of persons and property on land or water, and to develop and promote aeronautics in this State.

(b) No rule or regulation of the Department shall apply to airports or other air navigation facilities owned or controlled by the federal government within this State.

(c) Rules, regulations and standards for aeronautics are published by the United States Department of Transportation, Federal Aviation Administration. These regulations, as amended from time to time, have nationwide jurisdiction and shall govern all aeronautics in this State, except where the laws of this State provide additional protection.

(d) The Department shall keep on file with the Secretary of State, and at the principal office of the Department, a copy of all its rules and regulations, for public inspection.

(Code 1935, c. 167; 45 Del. Laws, c. 301, §§ 6(3)-(5); 2 Del. C. 1953, § 134; 57 Del. Laws, c. 671, § 11D; 70 Del. Laws, c. 575, § 4.)

§ 135 State airways system.

The Department may designate, design, and establish, expand, or modify a state airways system which will best serve the interests of the State. It may chart such airways system and arrange for publication and distribution of such maps and charts and notices and bulletins relating to such airways as may be required in the public interest. The system shall be supplementary to and coordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, whether publicly or privately owned, if such facilities conform to federal safety standards.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 6(6); 2 Del. C. 1953, § 135; 57 Del. Laws, c. 671, § 11D.)

§ 136 Technical services to public use airports and political subdivisions.

The Department may, insofar as is reasonably possible, offer its technical services and advice to any political subdivision or public use airport desiring those services in connection with the actual or proposed construction, maintenance or operation of an airport.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 6(7); 2 Del. C. 1953, § 136; 57 Del. Laws, c. 671, § 11D; 70 Del. Laws, c. 575, § 5.)

§ 137 Legislation; representation of State before federal agencies.

The Department may draft and recommend necessary legislation to advance the interest of the State in aeronautics and represent the State in aeronautical matters before federal agencies and other state agencies.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 6(8); 2 Del. C. 1953, § 137; 57 Del. Laws, c. 671, § 11D.)

§ 138 Participation in litigation or other proceedings.

The Department may participate as party plaintiff or defendant, or as intervenor on behalf of the State or any political subdivision or citizen thereof in any controversy having to do with any claimed encroachment by the federal government or any foreign state upon any state or individual rights pertaining to aeronautics.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 6(9); 2 Del. C. 1953, § 138; 57 Del. Laws, c. 671, § 11D.)

§ 139 Enforcement of aeronautics laws.

The Department, its members and employees, the Secretary of Transportation, and every state, county and municipal officer charged with the enforcement of state and municipal laws shall enforce and assist in the enforcement of this chapter and of all rules and regulations issued under this chapter, and of all other laws of this State relating to aeronautics, and, in the aid of such enforcement, general police powers are conferred upon the Department, each of its members, the Secretary of Transportation, and such of the officers and employees of the Department designated by it to exercise such powers. Further, the Department may, in the name of this State, enforce this chapter and the rules and regulations issued under this chapter by injunction in the courts of this State. Political subdivisions may cooperate with the Department in the development of aeronautics and aeronautics facilities in this State. The Department may use the facilities and services of other agencies of the State to the utmost extent possible, and such agencies shall make available such facilities and services.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 6(10); 2 Del. C. 1953, § 139; 57 Del. Laws, c. 671, §§ 11D, E; 60 Del. Laws, c. 503, § 25.)

§ 140 Conduct of investigations, inquiries and hearings.

The Department, any member thereof, the Secretary of Transportation, or any officer or employee of the Department designated by it may hold investigations, inquiries and hearings concerning matters covered by the provisions of this chapter and orders, rules and regulations of the Department, and concerning accidents in aeronautics within this State. All hearings so conducted shall be open to the public. The Secretary of Transportation, and every officer or employee of the Department designated by it to hold any inquiry, investigations or hearing may administer oaths and affirmations, certify to all official acts, issue subpoenas and compel the attendance and testimony of witnesses and the production of papers, books and documents. In case of failure to comply with any subpoena or order issued under authority of this chapter, the Department, or its authorized representative, may invoke the aid of any court of this State of general jurisdiction. The court may thereupon order the witness to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 6(11); 2 Del. C. 1953, § 140; 57 Del. Laws, c. 671, §§ 11D-F; 60 Del. Laws, c. 503, § 25.)

§ 141 Reports of investigations.

In order to facilitate the making of investigations by the Department, in the interest of public safety and promotion of aeronautics, the public interest requires, and it is, therefore, provided that the reports of investigations or hearings, or any part thereof, shall not be admitted in evidence or used for any purpose in any suit, action or proceeding, growing out of any matter referred to in the investigation, hearing or report thereof, except in case of criminal or other proceedings instituted in behalf of the Department or this State under the provisions of this chapter and other laws of this State relating to aeronautics, nor shall the Secretary of Transportation, or any officer or employee of the Department be required to testify to any facts ascertained in, or information gained by reason of, such person’s official capacity, or be required to testify as an expert witness in any suit, action or proceeding involving any aircraft. Subject to the foregoing provisions, the Department may make available to appropriate federal and state agencies information and material developed in the course of its hearings and investigations.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 6(12); 2 Del. C. 1953, § 141; 57 Del. Laws, c. 671, §§ 11D, E, G; 60 Del. Laws, c. 503, § 25; 84 Del. Laws, c. 42, § 2.)

§ 142 Financial assistance to political subdivisions, public use airports and education programs.

The Department may, through the Office of Aeronautics, render assistance in the acquisition, development, operation or maintenance of airports and aviation projects of political subdivisions and public use airports and in the provision of training for formal educational programs from funds generated through fees, taxes and other sources applicable to aeronautics and administered by the Office of Aeronautics.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 6(13); 2 Del. C. 1953, § 142; 57 Del. Laws, c. 671, § 11D; 70 Del. Laws, c. 575, § 6.)

§ 143 Authority to contract.

The Department may enter into any contracts necessary to the execution of the powers granted it by this chapter.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 6(14); 2 Del. C. 1953, § 143; 57 Del. Laws, c. 671, § 11D.)

§ 144 Grant of exclusive rights prohibited.

The Department shall grant no exclusive right for the use of any airway, airport, restricted landing area, or other air navigation facility under its jurisdiction. This section shall not prevent the making of leases in accordance with other provisions of this chapter.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 6(15); 2 Del. C. 1953, § 144; 57 Del. Laws, c. 671, § 11D.)

§ 145 Cooperation with federal government.

The Department may cooperate with the government of the United States, and any agency or department thereof, in the acquisition, construction, improvement, maintenance and operation of airports and other air navigation facilities in this State, and may comply with the provisions of the laws of the United States and any regulations made thereunder for the expenditure of federal moneys upon such airports and other navigation facilities.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 7(1); 2 Del. C. 1953, § 145; 57 Del. Laws, c. 671, § 11D.)

§ 146 Receipt of federal moneys for airports.

The Department may accept, receive, and receipt for federal moneys and other moneys, either public or private, for and in behalf of this State, or any political subdivision, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether such work is to be done by the State or by such political subdivisions, or jointly, aided by grants of aid from the United States, upon terms and conditions prescribed by the laws of the United States and any rules or regulations made thereunder. The Department may act as agent of any political subdivision upon the request of such political subdivision, in accepting, receiving, and receipting for such moneys in its behalf for airports or other air navigation facility purposes, and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed either in whole or in part by federal moneys. The governing body of any such political subdivision may designate the Department as its agent for such purposes and enter into an agreement with it prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations and with this chapter. All moneys so paid over by the United States government shall be retained by the State or paid over to the political subdivision under terms and conditions imposed by the United States government in making such grants.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 7(2); 2 Del. C. 1953, § 146; 57 Del. Laws, c. 671, § 11D.)

§ 147 Disposition of federal moneys for airports.

All moneys accepted for disbursement by the Department under § 146 of this title shall be deposited in the State Treasury, and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the moneys were made available, and held by the State in trust for such purposes. All such moneys are appropriated for the purposes for which the same were made available, to be expended in accordance with federal laws and regulations and with this chapter. The Department may, whether acting for this State or as the agent of any political subdivision, or when requested by the United States government or any agency or department thereof, disburse such moneys for the designated purposes, but this shall not preclude any other authorized method of disbursement.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 7(4); 2 Del. C. 1953, § 147; 57 Del. Laws, c. 671, § 11D.)

§ 148 Contracts for air navigation facilities.

All contracts for the acquisition, construction, improvement, maintenance, and operation of airports, or other air navigation facilities made by the Department, either as the agent of this State or as the agent of any political subdivision, shall be made under the laws of this State governing the making of like contracts. Where the acquisition, construction, improvement, maintenance, and operation of any airport, landing strip, or other air navigation facility is financed wholly or partially with federal moneys, the Department, as agent of the State or of any municipality thereof, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 7(3); 2 Del. C. 1953, § 148; 57 Del. Laws, c. 671, § 11D.)

Subchapter III

Registration and Licenses

§ 161 Declaration of policy.

(a) The Federal Aviation Regulations (promulgated by the Federal Aviation Administration pursuant to Part A of Subtitle VII of Title 49 of the United States Code, as amended) prescribe uniform rules and regulations pertaining to aviation. These regulations, as may be amended, are hereby adopted as the aeronautics regulations of the State. They shall be augmented and supplemented as necessary to regulate matters peculiar to this State.

(b) When authorized by the General Assembly, the Department of Transportation shall procure and operate transport-type aircraft to

satisfy the needs of the State. Other state agencies may own and operate specialized light planes and helicopters required for special needs such as police work.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 9(1); 2 Del. C. 1953, § 161; 57 Del. Laws, c. 671, § 11D; 70 Del. Laws, c. 575, § 7.)

§ 162 Airports, landing areas and other air navigation facilities.

The Department, through the Office of Aeronautics, may approve and license airports and helicopter landing sites or other air navigation facilities in accordance with regulations it adopts pertaining to such approval and licensure. Licenses granted under this section shall be renewed annually in conjunction with the Federal Aviation Administration sponsored airport survey program.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 9(1); 2 Del. C. 1953, § 164; 57 Del. Laws, c. 671, § 11D; 70 Del. Laws, c. 575, § 8.)

§ 163 Refusal and revocation of license; registration or approval.

The Department, through the Office of Aeronautics, may suspend or revoke any certificate of approval or license issued by it when it determines that an airport, restricted landing area or other navigation facility is not being maintained or used in accordance with the provisions of this chapter and the rules and regulations lawfully promulgated by it pursuant thereto.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 9(1), (10); 2 Del. C. 1953, § 165; 57 Del. Laws, c. 671, § 11D; 70 Del. Laws, c. 575, § 8.)

§§ 164,165 [Reserved.]

§§ 166-169 [Reserved.]

§ 170 Operation of airport, landing area, etc. without license; approval of site required before acquisition.

(a) All proposed airports, restricted landing areas, and other air navigation facilities shall be first licensed by the Department before they, or any of them, shall be used or operated.

(b) Any political subdivision or person acquiring property for the purpose of constructing or establishing an airport or restricted landing area shall, prior to the acquisition, make application to the Department for a certificate of approval of the site selected and the general purpose or purposes for which the property is to be acquired, to insure that the property and its use shall conform to minimum standards of safety and shall serve public interest.

(c) No political subdivision or officer or employer thereof, or person, shall operate an airport, restricted landing area, or other air navigation facility unless an annual license therefor has been issued by the Department.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 9(6); 2 Del. C. 1953, § 170; 57 Del. Laws, c. 671, § 11D.)

§ 171 Hearings for approval of airport sites or for licensing airports.

Whenever the Department makes an order granting or denying a certificate of approval of an airport or a restricted landing area site, or an original license to use or operate an airport, restricted landing area or other air navigation facility, and the applicant or any interested political subdivision, within 15 days after notice of such order has been sent to the applicant by registered mail, demands a public hearing, or whenever the Department desires to hold a public hearing before making an order, such a public hearing in relation thereto shall be held in the political subdivision applying for the certificate of approval or license, or in case the application was made by anyone other than a political subdivision, at the county seat of the county in which the proposed airport, restricted landing area or other air navigation facility is proposed to be situated, at which hearing parties in interest and other persons shall have an opportunity to be heard. Notice of the hearing shall be published, at least twice, by the Department in a legal newspaper of general circulation in the county in which the hearing is to be held, the first publication to be at least 15 days prior to the date of hearing. After a proper and timely demand has been made the order shall be stayed until after the hearing, when the Department may affirm, modify or reverse it, or make a new order. If no hearing is demanded as herein provided, the order shall become effective upon the expiration of the time permitted for making a demand. Where a certificate of approval of an airport or restricted landing area site has been issued by the Department, it may grant a license for operation and use, and no hearing shall be demanded thereon.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 9(7); 2 Del. C. 1953, § 171; 57 Del. Laws, c. 671, § 11D.)

§ 172 Standards for approving airport sites and licensing airports.

In determining whether it shall issue a certificate of approval of a site or license for the use or operation of any proposed airport or restricted landing area, the Department shall take into consideration its proposed location, size and layout, the relationship of the proposed airport or restricted landing area to a comprehensive plan for statewide and nationwide development, whether there are safe areas available for expansion purposes, whether the adjoining area is free from obstructions based on a proper glide ratio, the nature of the terrain, the nature of the uses to which the proposed airport or restricted landing area will be put, and the possibilities for future development.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 9(8); 2 Del. C. 1953, § 172; 57 Del. Laws, c. 671, § 11D.)

§ 173 Exceptions from approval and licensing requirements.

Sections 170 through 172 inclusive of this title shall not apply to restricted landing areas designed for personal use or to any airport, restricted landing area or other air navigation facility owned or operated by the federal government within this State.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 9(9), (11); 2 Del. C. 1953, § 173.)

§ 174 Orders of Department refusing or revoking license, registration or approval.

In any case where the Department refuses to issue a certificate of approval of or license or renewal of license for an airport, restricted landing area or other air navigation facility, or refuses to permit the registration of any license, certificate or permit, or refuses to grant a license to an air school or to an aeronautics instructor in ground subjects, or in any case where it issues any order requiring certain things to be done, or revoking any license or certificate, it shall set forth its reasons therefor and shall state the requirements to be met before such approval will be given, registration permitted, license granted or order modified or changed. Any order made by the Department under this chapter shall be served upon the interested persons by registered mail or in person. To carry out this chapter the Department, any member thereof, the Secretary of Transportation or officers or employees of the Department and any officers, state or municipal, charged with the duty of enforcing this chapter may inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where airports, restricted landing areas, air schools, flying clubs or other air navigation facilities or aeronautical activities are operated or carried on.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 10(1); 2 Del. C. 1953, § 174; 57 Del. Laws, c. 671, §§ 11D, E; 60 Del. Laws, c. 503, § 25.)

§ 175 Review of Department's action.

Any person aggrieved by an order of the Department, or by the granting or denial of any license, certificate, or registration may have the action of the Department reviewed by the Superior Court in the manner provided for the review of the orders of other administrative bodies of the State, and the rules of law applicable to such reviews shall apply.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 10(2); 2 Del. C. 1953, § 175; 57 Del. Laws, c. 671, § 11D.)

Subchapter IV

Penalties

§ 181 Penalties.

Whoever violates this chapter or any of the rules, regulations, or orders issued pursuant thereto shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

(Code 1935 c. 167; 45 Del. Laws, c. 301, § 13; 2 Del. C. 1953, § 181.)

Subchapter V

Flight Instruction/Aircraft Rental

§ 191 Insurance notice.

All contracts for flight instruction and/or the rental or leasing of aircraft in the State shall contain a written statement notifying the student, renter, lessee or bailee of the extent of insurance coverage applicable to the lessor and lessee. The student, renter, lessee or bailee shall sign such statement to signify that he/she is aware of the extent of such insurance coverage.

(70 Del. Laws, c. 575, § 10.)

Part I
Aeronautics
Chapter 3
UNIFORM STATE AERONAUTICS LAW

§ 301 Definitions.

When used in this chapter:

(1) "Airperson" includes aviator, pilot, balloonist and every other person having any part in the operation of aircraft while in flight.

(2) "Aircraft" includes balloon, airplane, hydroplane and every other vehicle used for navigation through the air. However, a hydroplane, while at rest on water and while being operated on or immediately above water, shall be governed by the rules regarding water navigation; but while being operated through the air otherwise than immediately above water, it shall be treated as an aircraft.

(3) "Laser pointer" means any device designed or used to amplify electromagnetic radiation by stimulated emission that emits a beam designed to be used by the operator as a pointer or highlighter to indicate, mark, or identify a specific position, place, item or object.

(4) "Passenger" includes any person riding in an aircraft but having no part in its operation.

(33 Del. Laws, c. 199, § 1; Code 1935, § 5776; 2 Del. C. 1953, § 301; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 575, § 13; 80 Del. Laws, c. 70, § 1.)

§ 302 Sovereignty in space.

Sovereignty in the space above the lands and waters of this State rests in the State, except where granted to and assumed by the United States pursuant to a constitutional grant from the people of this State.

(33 Del. Laws, c. 199, § 2; Code 1935, § 5777; 2 Del. C. 1953, § 302.)

§ 303 Ownership of space.

The ownership of space above the lands and waters of this State is vested in the several owners of the surface beneath, subject to the right of flight described in § 304 of this title.

(33 Del. Laws, c. 199, § 3; Code 1935, § 5778; 2 Del. C. 1953, § 303.)

§ 304 Lawfulness of flight and landings.

Flight in aircraft over the lands and waters of this State is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water beneath.

No person shall land an aircraft on the lands or waters of another, without the owner's consent, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the airperson shall be liable, as provided in § 305 of this title.

(33 Del. Laws, c. 199, § 4; Code 1935, § 5779; 2 Del. C. 1953, § 304; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 575, § 13.)

§ 305 Damage on land; liability.

The owner of every aircraft which is operated over the lands or waters of this State is absolutely liable for injuries to persons or property on the land or water beneath, caused by the ascent, descent or flight of the aircraft, or the dropping or falling of any object therefrom, whether such owner was negligent or not, unless the injury is caused in whole or in part by the negligence of the person injured, or of the owner or bailee of the property injured. If the aircraft is leased at the time of the injury to person or property, both owner and lessee shall be liable, and they may be sued jointly, or either or both of them may be sued separately. An airman who is not the owner or lessee shall be liable only for the consequences of the airman's own negligence. The injured person, or owner or bailee of the injured property, shall have a lien on the aircraft causing the injury to the extent of the damage caused by the aircraft or objects falling from it.

(33 Del. Laws, c. 199, § 5; Code 1935, § 5780; 2 Del. C. 1953, § 305; 70 Del. Laws, c. 186, § 1.)

§ 306 Collision of aircraft; law governing liability.

The liability of the owner of 1 aircraft to the owner of another aircraft, or to airpersons or passengers on either aircraft, for damage caused by collision on land or in the air, shall be determined by the rules of law applicable to torts on land.

(33 Del. Laws, c. 199, § 6; Code 1935, § 5781; 2 Del. C. 1953, § 306; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 575, § 14.)

§ 307 Crimes and torts in flight; law governing.

All crimes, torts and other wrongs committed by or against an airperson or passenger while in flight over this State shall be governed by the laws of this State; and the question whether damage occasioned by or to an aircraft while in flight over this State constitutes a tort, crime or other wrong by or against the owner of such aircraft, shall be determined by the laws of this State.

(33 Del. Laws, c. 199, § 7; Code 1935, § 5782; 2 Del. C. 1953, § 307; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 575, § 13.)

§ 308 Contracts in flight.

All contractual and other legal relations entered into by aeronauts or passengers while in flight over this State shall have the same effect as if entered into on the land or water beneath.

(33 Del. Laws, c. 199, § 8; Code 1935, § 5783; 2 Del. C. 1953, § 308.)

§ 309 Dangerous flying; penalty.

Whoever, being an airperson or passenger, while in flight over a thickly inhabited area or over a public gathering within this State, engages in trick or acrobatic flying, or in any acrobatic feat, or, except while in landing or taking off, flies at such a low level as to endanger the persons on the surface beneath, or drops any object except loose water or loose sand ballast, shall be fined not more than $500 or imprisoned not more than 1 year, or both.

(33 Del. Laws, c. 199, § 9; Code 1935, § 5784; 2 Del. C. 1953, § 309; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 575, § 13.)

§ 310 Hunting from aircraft; penalty.

Whoever, being an airperson or passenger, while in flight within this State, intentionally kills or attempts to kill any birds or animals, shall be fined not more than $100 or imprisoned not more than 6 months, or both.

(33 Del. Laws, c. 199, § 10; Code 1935, § 5785; 2 Del. C. 1953, § 310; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 575, § 13.)

§ 311 Uniformity of interpretation.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of aeronautics.

(33 Del. Laws, c. 199, § 11; Code 1935, § 5786; 2 Del. C. 1953, § 311.)

§ 312 Aiming the beam of a laser pointer at an aircraft prohibited; unclassified misdemeanor.

(a) A person is guilty of aiming the beam of a laser pointer at an aircraft when the person knowingly shines, points, or focuses the beam of a laser pointer at an aircraft while it is in the process of taking off, in flight, or landing.

(b) This section does not prohibit aiming the beam of a laser pointer at an aircraft by any of the following:

(1) An individual conducting research and development or flight testing for an aircraft manufacturer or the Federal Aviation Administration.

(2) A member of the United States Department of Defense or the United States Department of Homeland Security acting in an official capacity during an activity related to research and development, flight testing, or training.

(3) A law-enforcement officer acting in an official capacity.

(4) Individuals playing laser tag, utilizing paintball guns, or other similar games or devices using light emitting diode (LED) technology.

(5) An individual attempting to make the individual's location known.

(6) An individual attempting to give a warning signal.

(c) Aiming the beam of a laser pointer at an aircraft is an unclassified misdemeanor. The mandatory fine shall not exceed $575. This fine shall not be suspended.

(d) The venue for the issuance of an arrest warrant for and the prosecution of a violation of this section is the county in which the aircraft took off prior to such violation, in or over which the violation occurred, or in which the aircraft lands subsequent to such violation. The jurisdiction for a violation of this section is as stated in § 204 of Title 11.

(80 Del. Laws, c. 70, § 2.)

Part I
Aeronautics
Chapter 5
AIRCRAFT OPERATION

§ 501 Adoption of Federal Aviation Regulations governing aircraft operations.

The federal government has enacted laws (Part A of Subtitle VII of Title 49 of the United States Code, as amended) and promulgated regulations concerning the operation of aircraft. The rules and regulations governing aviation are published in the Federal Aviation Regulations issued by the Federal Aviation Administration of the U.S. Department of Transportation. These regulations, as published and as subsequently amended, are hereby accepted and adopted as the laws of Delaware governing aircraft operation.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 1(11); 2 Del. C. 1953, § 501; 70 Del. Laws, c. 575, § 15.)

§ 502 Use of alcohol or drugs in connection with aircraft operations.

The State recognizes the serious hazard to safe aircraft operations and to the public resulting from the impairment of an airperson's faculties due to the use of alcohol or drugs. In conformity with Parts 61, 65 and 91 of the Federal Aviation Regulations, upon reasonable suspicion that an airperson may be acting under the influence of alcohol or drugs or be in possession of illegal drugs, the airperson shall submit to alcohol and/or drug testing administered by the Delaware State Police. Test results shall be forwarded to the Federal Aviation Administration by the Department.

(70 Del. Laws, c. 575, § 16; 70 Del. Laws, c. 186, § 1.)

§ 503 Penalties; jurisdiction.

Violations under this chapter shall be referred by the Department, through the Office of Aeronautics, to the Federal Aviation Administration for enforcement action and/or imposition of sanctions.

(70 Del. Laws, c. 575, § 16.)

§§ 504-508 [Reserved.]

Part I
Aeronautics
Chapter 6
OBSTRUCTIONS IN AIRPORT APPROACH AREAS

§ 601 Jurisdiction.

The Department may enforce this chapter by the filing of a complaint in a court of appropriate jurisdiction, including a complaint for injunctive relief.

(70 Del. Laws, c. 575, § 17.)

§ 602 Erection or maintenance of obstructions; prohibitions.

(a) A building permit issued by the county or municipality having land use jurisdiction, after review and approval as provided herein, shall be required for the construction, erection, placement or alteration of any smokestack, tree, silo, flagpole, elevated tank, power line, radio or television tower, antenna, building, structure or other improvement to real property which meets any of the following conditions:

(1) Is greater than 200 feet in height above ground level;

(2) Is greater in height than an imaginary trapezoidal shape, beginning at the end of a runway of a public use airport, at an initial width of 50 feet, and extending outward and upward at a slope of 100:1 for a distance of 20,000 feet, to a width of 3,000 feet at its ending point;

(3) Is located within the runway approach area of each public use airport in the State; or

(4) Otherwise constitutes an obstruction as defined in this title or acts as an obstruction to the operation of aircraft as those terms are defined by Federal Aviation Regulation (FAR) Part 77.

(b) Such building permit for each such object or structure will not be issued until such time as the Department of Transportation through the Office of Aeronautics has reviewed and approved the application. The Department of Transportation, through the Office of Aeronautics, shall respond to the county or municipality having land use jurisdiction regarding any objections it has to the issuance of a building permit within 30 days of receipt of such permit for review.

(c) In order to provide safe aircraft approach areas to airport runways, the Department may, after notice and a hearing, enter upon any lands or improvements located thereon which are situated in said airport approach areas and may remove obstructions to aviation. Owners of obstructions that were erected prior to the enactment of or in compliance with this chapter are entitled to compensation for the removed obstruction and/or any damages incurred in the removal thereof from funds applicable to aeronautics and administered by the Office of Aeronautics. The process for condemnation of real property or improvements thereon under this chapter as required by applicable law and constitutional provisions shall be governed by the procedures set forth in Chapter 61 of Title 10 and Chapter 95 of Title 29.

(d) In order to ensure that new structures are not erected that pose potential obstruction hazards, it shall be unlawful to erect any new structure or add to any existing structure if such structure is thereby made to extend more than 200 feet above ground level at its site without giving prior notice to and obtaining prior approval from the Department.

(70 Del. Laws, c. 575, § 17.)

§ 603 Erection or maintenance of obstructions; penalties.

Whoever constructs, erects, places or alters any obstruction without first obtaining a building permit as required in this chapter shall, upon being found liable therefore in a civil proceeding, be fined an amount not exceeding $1,000. Each day’s continuation of a violation of this section shall be deemed a separate and distinct offense, all of which may be brought together in a single action.

(70 Del. Laws, c. 575, § 17.)

Part I
Aeronautics
Chapter 7
STATE AIRPORTS

§ 701 Authority to establish, acquire and operate.

(a) The Department may, on behalf of and in the name of this State, within the limitation of available appropriations, acquire by purchase, gift, devise, lease, condemnation proceedings, or otherwise, property real or personal, for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities, and acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police such airports, restricted landing areas, and other air navigation facilities, either within or without this State. It may make, prior to any such acquisition, investigations, surveys, and plans; and may erect, install, construct, and maintain at such airports facilities for the servicing of aircraft and for the comfort and accommodation of air travelers, and may dispose of any such property, airport, restricted landing area, or any other air navigation facility, by sale, lease, or otherwise, in accordance with the laws of this State governing the disposition of other like property of the State.

(b) The Department shall not, however, acquire or take over any airport, restricted landing area or other air navigation facility owned or controlled by a political subdivision without the consent of such political subdivision.

(c) The Department may erect, equip, operate, and maintain on any airport buildings and equipment necessary and proper to establish, maintain, and conduct such airport and air navigation facilities connected therewith.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 11(1); 2 Del. C. 1953, § 701; 57 Del. Laws, c. 671, § 12.)

§ 702 Acquisition of easements and airport protection privileges.

Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under this chapter, the Department may acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas, and such other airport protection privileges as are necessary to insure safe approaches to the landing areas of the airports and restricted landing areas, and the safe and efficient operation thereof. It may also acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit the right, power, or authority of the State or any political subdivision to zone property adjacent to any airport or restricted landing area pursuant to any law of this State.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 11(2); 2 Del. C. 1953, § 702; 57 Del. Laws, c. 671, § 12.)

§ 703 Joint operations.

The Department may engage in all the activities specified in §§ 701 and 702 of this title jointly with the United States, other states, and with political subdivisions or other agencies of this State.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 11(3); 2 Del. C. 1953, § 703; 57 Del. Laws, c. 671, § 12.)

§ 704 Condemnation.

(a) The Department may exercise the right of eminent domain, in the name of the State, for the acquisition of real property for public purposes, for the purpose of acquiring any property which it is authorized by this title to acquire by condemnation. In such cases, whenever the Department cannot agree with the owner of any land, building, franchise, easement, or other property necessary to be taken, it may institute condemnation proceedings in accordance with Chapter 61 of Title 10.

(b) The right of eminent domain herein granted extends to and includes the right to acquire the fee simple title to land, or an easement, or a right-of-way in, to, over or above such land or property as the Department deems necessary in making adequate and practical provisions for the removal of obstructions of any nature whatsoever in approaches to an airport or landing field.

(c) In the determination of the compensation to be paid in any condemnation proceeding authorized by this section, there shall be paid either the value of the property and facilities taken or the cost of any changes in or relocation of the property and facilities, whichever is higher.

(d) The fact that the property so needed has been acquired by the owner under power of eminent domain shall not prevent its acquisition by the Department by the exercise of the right of eminent domain herein conferred.

(e) For the purpose of making surveys and examinations relative to any condemnation proceeding, it is lawful to enter upon any land, doing no unnecessary damage.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 11(4); 2 Del. C. 1953, § 704; 57 Del. Laws, c. 671, § 12.)

§ 705 Leases and sales.

(a) The Department may lease for a term not exceeding 10 years, such airports, or other air navigation facilities or real property acquired

or set apart for airport purposes, to private parties, any municipal or state government or the national government, or any department of either thereof, for operation or use consistent with the purposes of this chapter.

(b) The Department may lease or assign for a term not exceeding 10 years to private parties, any municipal or state government or the national government, or any department of either for operation or use consistent with the purposes of this chapter, space, area, improvements or equipment on such airports.

(c) The Department may sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto.

(d) The Department may confer the privilege of concessions of supplying upon the airports, goods, commodities, things, services and facilities.

(e) No lease, sale, assignment or privilege conferred under this section shall deprive the public of its rightful, equal and uniform use thereof.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 11(5); 2 Del. C. 1953, § 705; 57 Del. Laws, c. 671, § 12.)

§ 706 Charges and rentals; lien.

The Department may determine the charges or rental for the use of any properties and the charges for any service or accommodations under its control and the terms and conditions under which these properties may be used. No charge or rental under this section shall deprive the public of its rightful, equal, and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the State. The State shall have and the Department may enforce liens, as provided by law for liens and the enforcement thereof, for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 11(6); 2 Del. C. 1953, § 706; 57 Del. Laws, c. 671, § 12.)

§ 707 Department’s functions and powers governmental.

The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of any airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports and other air navigation facilities, whether by the State separately or jointly with any political subdivision or subdivisions; the assistance of this State in any such acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation; and the exercise of any other powers herein granted to the Department are public and governmental functions, exercised for a public purpose, and matters of public necessity, and such lands and other property and privileges acquired and used by the State in the manner and for the purposes enumerated in this chapter shall and are to be acquired and used for public and governmental purposes and as a matter of public necessity.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 12(1); 2 Del. C. 1953, § 707; 57 Del. Laws, c. 671, § 12.)

§ 708 Tort liability.

No action or suit sounding in tort shall be brought or maintained against the State or any political subdivision, or the officers, agents, servants or employees of the State or any political subdivision, on account of any act done in or about the construction, maintenance, enlargement, operation, superintendence or management of any airport or other air navigation facility.

(Code 1935, c. 167; 45 Del. Laws, c. 301, § 12(1); 2 Del. C. 1953, § 708.)

Part I
Aeronautics
Chapter 9
AIRPORTS OF POLITICAL SUBDIVISIONS
Subchapter I
Establishment and Administration

§ 901 Interpretation and construction.

This chapter shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this State and other states and of the government of the United States having to do with the subject of aeronautics.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 16; 2 Del. C. 1953, § 901.)

§ 902 Public purpose and necessity.

The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports and other air navigation facilities, and the exercise of any other powers herein granted to political subdivisions, are public, governmental, county and municipal functions, exercised for a public purpose, and matters of public necessity, and such lands and other property, easements and privileges acquired and used by such political subdivisions in the manner and for the purposes enumerated in this chapter shall and are to be acquired and used for public, governmental, county and municipal purposes and as a matter of public necessity.

(Code 1935, c. 167; 45 Del. Laws, c. 300, §§ 3, 13; 2 Del. C. 1953, § 902.)

§ 903 Authority to establish, acquire and operate airports.

Every political subdivision may, through its governing body, acquire property, real or personal, for the purpose of establishing, constructing and enlarging airports and other air navigation facilities and may acquire, establish, construct, enlarge, improve, maintain, equip, operate and regulate such airports and other air navigation facilities and structures and other property incidental to their operation, either within or without the territorial limits of the political subdivision and within or without this State; may make, prior to any such acquisition, investigations, surveys and plans; may construct, install and maintain airport facilities for the servicing of aircraft and for the comfort and accommodation of air travelers; and may purchase and sell equipment and supplies as an incident to the operation of its airport properties. It may not, however, acquire or take over any airport or other air navigation facility owned or controlled by any other political subdivision of the State without the consent of such political subdivision. It may use for airport purposes any available property that is now or may at any time hereafter be owned or controlled by it. Such air navigation facilities as are established on airports shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 2(1); 2 Del. C. 1953, § 903.)

§ 904 Establishment of airports on waters and reclaimed land.

(a) The powers granted in this chapter to a political subdivision to establish and maintain airports shall include the power to establish and maintain such airports in, over and upon any public waters of this State within the limits or jurisdiction of or bordering on the political subdivision, any submerged land under such public waters, and any artificial or reclaimed land which before the artificial making or reclamation thereof constituted a portion of the submerged land under such public waters, and as well the power to construct and maintain terminal buildings, landing floats, causeways, roadways and bridges for approaches to or connecting with the airport, and landing floats and breakwaters for the protection of any such airport.

(b) All the other powers granted in this chapter to political subdivisions with reference to airports on land are granted to them with reference to such airports in, over and upon public waters, submerged land under public waters, an artificial or reclaimed land.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 10; 2 Del. C. 1953, § 904.)

§ 905 Means of acquiring airport property.

(a) Property needed by a political subdivision for an airport or restricted landing area, or for the enlargement of either, or for other airport purposes, may be acquired by purchase, gift, devise, lease or other means if such political subdivision is able to agree with the owners of the property on the terms of the acquisition, and otherwise by condemnation in the manner provided in § 906 of this title. Full power to exercise the right of eminent domain for such purposes is granted every political subdivision both within and without its territorial limits.

(b) The right of eminent domain granted in this section extends to and includes the right to acquire the fee simple title to land, or an easement, or a right-of-way in, to, over or above such land or property as the political subdivision deems necessary in making adequate and practical provisions for the removal of obstructions of any nature in approaches to an airport or landing field.

(c) The fact that the property needed has been acquired by the owner under power of eminent domain shall not prevent its acquisition by the political subdivision by the exercise of the right of eminent domain herein conferred.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 2(2); 2 Del. C. 1953, § 905.)

§ 906 Condemnation.

(a) Whenever the political subdivision cannot agree with the owner of any land, building, franchise, easement or other property necessary to be taken, the political subdivision may institute condemnation proceedings in accordance with Chapter 61 of Title 10.

(b) In the determination of the compensation to be paid in any condemnation proceeding authorized by this section, there shall be paid either the value of the property and facilities taken or the cost of any changes in or relocation of the property and facilities, whichever is higher.

(c) For the purpose of making surveys and examinations relative to any condemnation proceedings, it shall be lawful to enter upon any land, doing no unnecessary damage.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 2(2); 2 Del. C. 1953, § 906.)

§ 907 Acquisition of easements and airport protection privileges.

Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports or restricted landing areas acquired or operated under the provisions of this chapter, every political subdivision may acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air spaces over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas and such other airport protection privileges as are necessary to insure safe approaches to the landing areas of the airports or restricted landing areas and the safe and efficient operation thereof. Every political subdivision may also acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards, for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit any right, power or authority to zone property adjacent to airports and restricted landing areas under any laws of this State.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 2(3); 2 Del. C. 1953, § 907.)

§ 908 Validation of prior acquisition of airport property.

Any acquisition of property within or without the limits of any political subdivision for airports and other air navigation facilities, or of airport protection privileges, heretofore made by any political subdivision in any manner, together with the conveyance and acceptance thereof, is valid and effective.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 4; 2 Del. C. 1953, § 908.)

§ 909 Specific powers of political subdivisions.

In addition to the general powers in this chapter conferred, and without limitation thereof, a political subdivision which has established or may hereafter establish airports, restricted landing areas or other air navigation facilities, or which has acquired or set apart or may hereafter acquire or set apart real property for such purpose or purposes may:

(1) *Delegations of authority.* — Vest authority for the construction, enlargement, improvement, maintenance, equipment, operation and regulation thereof in an officer, a board or body of the political subdivision by ordinance or resolution which shall prescribe the powers and duties of the officer, board or body. The expense of construction, enlargement, improvement, maintenance, equipment, operation and regulation shall be a responsibility of the political subdivision.

(2) *Rules, regulations and ordinances.* — Adopt and amend all needful rules, regulations and ordinances for the management, government and use of any properties under its control, whether within or without the territorial limits of the political subdivision; may appoint airport guards or police, with full police powers; may fix by ordinance or resolution, as may be appropriate, penalties for the violation of its rules, regulations and ordinances, and enforce the penalties in the same manner in which penalties prescribed by other rules, regulations and ordinances of the political subdivision are enforced. For the purposes of such management and government and direction of public use, such part of all highways, roads, streets, avenues, boulevards and territory as adjoins, or lies within 100 feet of the limits of any airport or restricted landing area acquired or maintained under this chapter shall be under like control and management of the political subdivision. It may also adopt and enact rules, regulations and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within the political subdivision or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Rules, regulations and ordinances shall be published as provided by general law or the charter of the political subdivision for the publication of similar rules, regulations and ordinances. They must conform to and be consistent with the laws of this State and the rules and regulations of the Department of Transportation and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and rules and standards issued from time to time pursuant thereto.

(3) *Leases and sales.* — Lease under such terms and conditions as it shall decide such airports or other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government or the national government, or any department of either thereof, for operation; may lease or assign under such terms and conditions as it shall decide to private parties,

any municipal or state government or the national government, or any department of either thereof, for operation or use consistent with the purposes of this chapter, space, area, improvements or equipment on such airports; may sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto and may confer the privileges of concessions of supplying upon its airports goods, commodities, things, services and facilities. In no case in so doing may the public be deprived of its rightful, equal, and uniform use thereof.

(4) *Disposition of unnecessary property.* — Sell or lease any property, real or personal, acquired for airport purposes and belonging to the political subdivision, which, in the judgment of its governing body, may not be required for aeronautic purposes, in accordance with the laws of this State, or the provisions of the charter of the political subdivision, governing the sale or leasing of similarly owned property.

The proceeds of sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the sinking fund from which funds have been authorized to be taken to finance such bonds. In the event all the proceeds of the sale are not needed to pay the principal of the bonds remaining unpaid, the remainder shall be paid into the airport fund of the political subdivision. The proceeds of sales of property the purchase price of which was paid from appropriations shall be paid into the airport fund of the political subdivision.

(5) *Charges and rentals; liens.* — Determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used. In no case may the public be deprived of its rightful, equal and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the political subdivision. The political subdivision shall have and may enforce liens, as provided by law for liens and enforcement thereof, for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.

(6) *Incidental powers.* — Exercise all powers necessarily incidental to the exercise of the general and special powers herein granted.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 8; 2 Del. C. 1953, § 909; 51 Del. Laws, c. 225; 57 Del. Laws, c. 671, § 13; 60 Del. Laws, c. 503, § 26.)

§ 910 Encroachment upon airport protection privileges; abatement.

No person shall build, rebuild, create, or cause to be built, rebuilt or created any object, or plant, cause to be planted or permit to grow higher any tree or trees or other vegetation, which shall encroach upon any airport protection privileges acquired pursuant to this chapter. Any such encroachment is a public nuisance and may be abated in the manner prescribed by law for the abatement of public nuisances, or the political subdivision in charge of the airport or restricted landing area for which airport protection privileges have been acquired under this chapter may go upon the land of others and remove any such encroachment without being liable for damages in so doing.

(45 Del. Laws, c. 300, § 2(4); 2 Del. C. 1953, § 910.)

§ 911 Assistance to other political subdivisions.

Whenever the governing body of any political subdivision determines that the public interest and the interests of the political subdivision will be served by assisting any other political subdivision in exercising the powers and authority granted by this chapter, the first-mentioned political subdivision is expressly authorized and empowered to furnish such assistance by gift, or lease with or without rental, of real property, by the donation, lease with or without rental, or loan, of personal property, and by the appropriation of moneys, which may be provided for by taxation or the issuance of bonds in the same manner as funds might be provided for the same purposes if the political subdivision were exercising the powers granted in its own behalf.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 12; 2 Del. C. 1953, § 911.)

§ 912 Exclusiveness of jurisdiction.

Every airport and other air navigation facility controlled and operated by any political subdivision, or jointly controlled and operated pursuant to this chapter, shall, subject to federal and state laws, rules and regulations, be under the exclusive jurisdiction and control of the political subdivision or subdivisions controlling and operating it and no other political subdivision in which such airport or air navigation facility may be located shall have any police jurisdiction of the same or any authority to charge or exact any license fees or occupation taxes for the operations thereon. Such political subdivision or subdivisions shall have concurrent jurisdiction over the adjacent territory described in subdivision (2) of § 909 of this title.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 14; 2 Del. C. 1953, § 912.)

Subchapter II

Financing and Taxation

§ 921 Exemption of airport property and income from taxation.

Any property acquired by a political subdivision pursuant to this chapter shall be exempt from taxation to the same extent as other property used for public purposes. All income received in connection with the operation by a political subdivision of any airport or other

air navigation facility shall also be exempt from taxation.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 5; 2 Del. C. 1953, § 921.)

§ 922 Payment of purchase price and improvement costs; definition of "cost."

The cost of investigating, surveying, planning, acquiring, establishing, constructing, enlarging or improving or equipping airports and other air navigation facilities, and the sites therefor, including structures and other property incidental to their operation, in accordance with this chapter may be paid for by appropriation of moneys available therefor, or wholly or partly from the proceeds of bonds of the political subdivision, as the governing body of the political subdivision shall determine.

As used in this section "cost" includes awards in condemnation proceedings and rentals where an acquisition is by lease.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 6(1); 2 Del. C. 1953, § 922.)

§ 923 Bond issues.

(a) Any bonds to be issued by any political subdivision pursuant to this chapter shall be authorized and issued in the manner and within the limitation, except as herein otherwise provided, prescribed by the laws of this State or the charter of the political subdivision for the issuance and authorization of bonds thereof for public purposes generally.

(b) Irrespective of any limitation, by general or special law or charter, as to the amount of bonds which may be issued, a political subdivision may issue bonds for the purposes defined by this chapter in excess of such limitation, in such amount as may be authorized by an ordinance or resolution referred to and approved by the voters of such political subdivision by popular vote, at any general election or special election called for that purpose.

(c) The amount of all bonds issued by any political subdivision for the purposes defined in this chapter shall not be counted or included in the net indebtedness of the political subdivision or in any computation of the outstanding indebtedness of the political subdivision for the purpose of determining the limit of net indebtedness thereof.

(Code 1935, c. 167; 45 Del. Laws, c. 300, §§ 6(2)-(4); 2 Del. C. 1953, § 923.)

§ 924 Validation of prior bonds.

In all cases where a political subdivision has issued any bonds for the purpose of investigating, surveying, planning, acquiring, establishing, constructing, enlarging, equipping, or improving any airport, or other air navigation facility, or site therefor, or to meet the cost of structures or other property incidental to their operation, whether such airport or other air navigation facility was termed under the law existing at the time of the issuance of such bonds an airport, a landing field, a landing strip, an aviation field or a flying field, or has incurred any other indebtedness, or entered into any lease or other contract in connection with the acquisition, establishment, construction, ownership, enlargement, control, leasing, equipment, improvement, maintenance, operation or regulation of any such airport or other air navigation facility, or site therefor, or structure or other property incidental to its operation, the proceedings heretofore taken in all such cases are in all respects validated and confirmed. Any bonds already issued thereunder are validated and made legal obligations of such political subdivision and the political subdivision is authorized and empowered, pursuant to such proceedings, to issue further bonds for such purposes up to the limit fixed in the original authorization thereof, without limitation of the general power granted in this chapter to all political subdivisions in this State, which bonds when issued shall be legal obligations of the political subdivision according to their terms.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 6(5); 2 Del. C. 1953, § 924.)

§ 925 Authority to appropriate and expend moneys and to levy taxes.

(a) The governing bodies having power to appropriate moneys within the political subdivisions in this State acquiring, establishing, constructing, enlarging, improving, maintaining, equipping or operating airports and other air navigation facilities under this chapter may appropriate and cause to be raised by taxation or otherwise in such political subdivisions moneys sufficient to carry out therein the provisions of this chapter.

(b) Irrespective of any limitation, by general or special law or charter, as to the amount or total of taxes that may be levied, a political subdivision may levy taxes for the purposes authorized by this chapter, in excess of such limitations, in such amount as may be authorized by an ordinance or resolution referred to and approved by the voters of such political subdivision by popular vote.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 7(1), (2); 2 Del. C. 1953, § 925.)

§ 926 Use of airport revenues.

The revenues obtained from the ownership, control and operation of any airport or other air navigation facility shall be used, first, to finance the maintenance and operating expenses thereof, and, second, to make payments of interest on and current principal requirements of any outstanding bonds or certificates issued for the acquisition or improvement thereof, and to make payment of interest on any mortgage heretofore made. Revenues in excess of the foregoing requirements may be applied to finance the extension or improvement of the airport or other air navigation facilities.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 7(3); 2 Del. C. 1953, § 926.)

Subchapter III

Federal Aid

§ 931 Receipt of aid; expenditure of moneys.

Every political subdivision may accept, receive and receipt for federal moneys, and other moneys, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment or operation of airports and other air navigation facilities, and sites therefor, and comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon such airports and other air navigation facilities.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 9(1); 2 Del. C. 1953, § 931.)

§ 932 Department of Transportation as agent; conditions of grant.

(a) The governing body of any political subdivision may designate the Department of Transportation as its agent to accept, receive and receipt for federal moneys in its behalf for airport purposes and to contract for the acquisition, construction, enlargement, improvement, maintenance, equipment or operation of such airports, or other air navigation facilities, and may enter into an agreement with the Department of Transportation prescribing the terms and conditions of the agency in accordance with federal laws, rules and regulations and applicable laws of this State.

(b) The moneys that are paid over by the United States government shall be paid over to the political subdivision under such terms and conditions as may be imposed by the United States government in making the grant.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 9(2); 2 Del. C. 1953, § 932; 57 Del. Laws, c. 671, § 13; 60 Del. Laws, c. 503, § 26.)

§ 933 Contracts; law governing.

(a) All contracts for the acquisition, construction, enlargement, improvement, maintenance, equipment or operation of airports or other air navigation facilities, made by the political subdivision itself or through the agency of the Department of Transportation, shall be made pursuant to the laws of this State governing the making of like contracts.

(b) Where the acquisition, construction, improvement, enlargement, maintenance, equipment or operation is financed wholly or partly with federal moneys, the political subdivision, or the Department of Transportation as its agent, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 9(3); 2 Del. C. 1953, § 933; 57 Del. Laws, c. 671, § 13; 60 Del. Laws, c. 503, § 26.)

Subchapter IV

Joint Operations

§ 941 Definitions.

For purposes of this subchapter, unless another intention appears or the context otherwise requires:

(1) “Governing body” of a political subdivision means, as to the State, the Department of Transportation.

(2) “This State” is included in “political subdivision.”

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 11(2); 2 Del. C. 1953, § 941; 57 Del. Laws, c. 671, § 13; 60 Del. Laws, c. 503, § 26.)

§ 942 Power, rights and authority.

(a) All powers, rights and authority granted to any political subdivision in this chapter may be exercised and enjoyed by 2 or more of them, or by this State and 1 or more political subdivisions, acting jointly, either within or without the territorial limits of either or any of them and within or without this State, or by this State or any political subdivision acting jointly with any other state or political subdivision thereof, whether within or without this State, provided the laws of the other state permit such joint action.

(b) All the powers conferred upon political subdivisions in this chapter, if not otherwise conferred by law, are conferred upon this State when acting jointly with any political subdivision or subdivisions.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 11(1), (2); 2 Del. C. 1953, § 942.)

§ 943 Agreement for; contents.

(a) Any 2 or more political subdivisions may enter into agreements with each other, duly authorized by ordinance or resolution, as may be appropriate, for joint action pursuant to this subchapter. Concurrent action by the governing bodies of the political subdivisions involved shall constitute joint action.

(b) Each such agreement shall specify its term; the proportionate interest which each political subdivision shall have in the property, facilities and privileges involved, and the proportion of preliminary costs, costs of acquisition, establishment, construction, enlargement, improvement and equipment, and of expenses of maintenance, operation and regulation to be borne by each, and make such other provisions as may be necessary to carry out this subchapter. It shall provide for amendments thereof and for conditions and methods of termination; for the disposition of all or any part of the property, facilities and privileges jointly owned if the property, facilities and privileges, or any part thereof, shall cease to be used for the purposes herein provided or if the agreement shall be terminated, and for the distribution of the proceeds received upon any such disposition, and of any funds or other property jointly owned and undisposed of, and

the assumption or payment of any indebtedness arising from the joint venture which remains unpaid, upon any such disposition or upon a termination of the agreement.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 11(3), (4); 2 Del. C. 1953, § 943.)

§ 944 Governing board; membership, organization and powers.

(a) Political subdivisions acting jointly as authorized in this subchapter shall create a board from the inhabitants of such political subdivisions for the purpose of acquiring property for, establishing, constructing, enlarging, improving, maintaining, equipping, operating and regulating the airports and other air navigation facilities and airport protection privileges to be jointly acquired, controlled and operated. The board shall consist of members to be appointed by the governing body of each political subdivision involved, the number to be appointed by each to be provided for by the agreement for the joint venture. Each member shall serve for such time and upon such terms as to compensation, if any, as may be provided for in the agreement.

(b) Each board shall organize, select officers for terms to be fixed by the agreement, and adopt and from time to time amend rules of procedure.

(c) Each board may exercise, on behalf of the political subdivisions acting jointly by which it is appointed, all the powers of each of such political subdivisions granted by this chapter, except as herein provided. Real property, airports, restricted landing areas, air protection privileges or personal property costing in excess of a sum to be fixed by the joint agreement, may be acquired, and condemnation proceedings may be instituted, only by authority of the governing bodies of each of the political subdivisions involved. The total amount of expenditures to be made by the board for any purpose in any calendar year shall be determined by the political subdivisions involved by the approval by each on or before the preceding December 1st of a budget for the ensuing calendar year. Rules and regulations provided for by paragraph (2) of § 909 of this title shall become effective only upon approval of each of the appointing governing bodies. No real property and no airport, other air navigation facility, or air protection privilege, owned jointly, shall be disposed of by the board, by sale, lease or otherwise, except by authority of all the appointing governing bodies, but the board may lease space, area or improvements and grant concessions on airports for aeronautical purposes or purposes incidental thereto, subject to subdivision (3) of § 909 of this title.

(Code 1935, c. 167; 45 Del. Laws, c. 300, §§ 11(5)-(7); 2 Del. C. 1953, § 944.)

§ 945 Ordinances.

Each political subdivision, acting jointly with another, pursuant to this chapter, may enact, concurrently with the other political subdivisions involved, such ordinances as are provided for by subdivision (2) of § 909 of this title, and to fix by such ordinances penalties for the violation thereof, which ordinances, when so concurrently adopted, shall have the same force and effect within the political subdivisions and on any property jointly controlled by them or adjacent thereto, whether within or without the territorial limits of either or any of them, as ordinances of each political subdivision involved, and may be enforced in any one of the political subdivisions in like manner as are its individual ordinances. The consent of the Department of Transportation to any such ordinance, where the State is a party to the joint venture, shall be equivalent to the enactment of the ordinance by a political subdivision. The publication provided for in subdivision (2) of § 909 of this title, shall be made in each political subdivision involved in the manner provided by law or charter for publication of its individual ordinances.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 11(8); 2 Del. C. 1953, § 945; 57 Del. Laws, c. 671, § 13; 60 Del. Laws, c. 503, § 26.)

§ 946 Condemnation.

Condemnation proceedings shall be instituted, in the names of the political subdivisions jointly, and the property acquired shall be held by the political subdivisions as tenants in common. Sections 905 and 906 of this title shall apply to such proceedings.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 11(9); 2 Del. C. 1953, § 946.)

§ 947 Joint funds.

(a) For the purpose of providing funds for necessary expenditures in carrying out the joint operations, a joint fund shall be created and maintained, into which each of the political subdivisions involved shall deposit its proportionate share as provided by the joint agreement, such funds to be provided for by bond issues, tax levies and appropriations made by each political subdivision in the same manner as though it were acting separately under the authority of this chapter, and into which shall be paid the revenues obtained from the ownership, control and operation of the airports and other air navigation facilities jointly controlled, to be expended as provided in § 926 of this title. Revenues in excess of cost of maintenance and operating expenses of the joint properties shall be divided as provided in the original agreement for the joint venture.

(b) All disbursements from the joint fund shall be made by order of the board in accordance with such rules and regulations and for such purposes as the appointing governing bodies, acting jointly, shall prescribe.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 11(10), (11); 2 Del. C. 1953, § 947.)

§ 948 Specific performance of joint agreements.

Specific performance of the provisions of any joint agreement entered into as provided for in § 943 of this title may be enforced as against any party thereto by the other party or parties thereto.

(Code 1935, c. 167; 45 Del. Laws, c. 300, § 11(12); 2 Del. C. 1953, § 948.)

Part II
Transportation Department
Chapter 13
DELAWARE TRANSPORTATION AUTHORITY

§ 1301 Short title.

This chapter shall be known as the Delaware Transportation Authority Act.

(62 Del. Laws, c. 164, §§ 1, 2.)

§ 1302 Legislative findings and determinations.

(a) The General Assembly finds that:

(1) There is a continuing need to apply the resources of the State to implement plans for air, water, vehicular, public and specialized transportation in the State;

(2) There is a continuing need to implement such plans on a comprehensive and integrated basis for the benefit of all people in the State and the users of those facilities from other states in order to obtain an economical, efficient and unified system of air, water, vehicular, public and specialized transportation;

(3) There is a continuing need to provide methods for financing existing and future transportation facilities in the State to maintain and develop such economical transportation systems for the health, welfare, convenience and safety of the people of the State and the users of those facilities from other states; and

(4) Air, water, vehicular, public and specialized transportation facilities form a unified system of transportation because, among other reasons:

a. Such facilities, as a whole, contribute to the commerce of the State and unification of the planning for and financing of such facilities will increase the economic vitality of the State;

b. The use of 1 form of or facility for transportation will reduce congestion in the use of another form of or facility for transportation; and

c. The use of public and specialized transportation will reduce environmental pollution and conserve energy for the benefit of all users of transportation facilities and for the benefit of the people of this State and such unified system of transportation is of grave concern to the State.

(b) The General Assembly hereby determines that in order to remedy such conditions and to implement the purposes of this chapter, there shall be created an authority which shall be a body politic and corporate constituting a public instrumentality having the powers, duties and functions provided in this chapter; that the creation of the authority and the powers conferred on such authority under this chapter and the expenditure of moneys pursuant to this chapter constitute a valid public purpose and the performance of a valid public function; that the enactment of the provisions hereinafter set forth is in the public interest and for the public benefit and welfare and is hereby so declared to be as a matter of express legislative determination.

(60 Del. Laws, c. 503, § 8; 62 Del. Laws, c. 164, §§ 1, 2; 63 Del. Laws, c. 179, § 28.)

§ 1303 Definitions.

(a) “Delaware Transit Corporation” means a corporation created pursuant to this chapter which is the parent corporation of subsidiaries created pursuant to this chapter the purpose of which is to provide public transit services.

(b) “Airport facility” means an air transportation facility, including but not limited to terminal improvements, air cargo facilities, airfield improvements and general aviation facilities, and necessary or incidental site improvements, utilities, roads, parking lots, land or rights in land, machinery, equipment, apparatus and appurtenances for use in handling air carrier service and general aviation activities.

(c) “Authority” means the Delaware Transportation Authority and its successors.

(d) “Bond” means bonds, notes or other obligations issued by the Authority pursuant to this chapter.

(e) “Cost” means the cost of constructing, reconstructing, improving, extending, altering, modernizing, repairing, operating and maintaining a transportation facility, including but not limited to the costs of acquisition of land and rights in land, demolition of structures on such land, machinery, equipment, furnishings and apparatus, financing charges including interest on borrowed money for a transportation facility for a period ending 1 year after commencement of operations of such transportation facility, the funding of reserves, estimates, plans, reports, specifications and studies, legal, financial, architectural, consulting, engineering, administrative and other expenses deemed necessary or incident to the construction, reconstruction, improvement, extension, alteration, modernization, repair, operation or maintenance of a transportation facility by the Authority.

(f) “Council” means the Council on Transportation reestablished by this chapter.

(g) “Delaware Turnpike” means the toll express highway designated Delaware Interstate 95 extending from a point in the vicinity of Farnhurst, Delaware, to a point at or near the boundary line between the State and the State of Maryland.

(h) “Department” means the Department of Transportation and its successors.

(i) “Director” means the Director of the Delaware Transit Corporation.

(j) “Division of Highway Operations” means the Division of the Department created by 57 Del. Laws, c. 514, § 1 (§ 8406 of Title 29, as amended).

(k) “General Assembly” means the Senate and the House of Representatives of the State.

(*l*) “Operating expenses” means the reasonable and necessary current expenses of operating, repairing and maintaining transportation facilities, including administrative expenses incurred in maintenance and operation of the Delaware Turnpike, but not the administrative expenses of the Authority.

(m) “Person” means any person, including individuals, firms, partnerships, associations, societies, trusts, public or private corporations, not for profit corporations or other legal entities, including public or governmental bodies as well as natural persons and subsidiaries created pursuant to this chapter.

(n) “Port facility” means any water port, including but not limited to piers, docks, wharves, warehouses, sheds, elevators, compressors, refrigeration and other storage structures, terminals, land or rights in land and site improvements used or to be used in the handling, storage, loading and unloading of freight, the embarking and disembarking of passengers, or both, at a water port.

(o) “Public transportation facility” means a bus, rail or other facility, owned or operated by the Delaware Transit Corporation, which provides general service to the public on a regular and continuing basis.

(p) “Revenues” means charges, fares, fees, gifts, receipts, rentals, tolls or other payments or moneys derived from or with respect to the operation, lease, sale or other disposition of transportation facilities by the Authority, including, but not limited to, proceeds from insurance covering transportation facilities, investment income from revenues, the proceeds of bonds and investment income therefrom, gifts, grants or appropriations from any person, and including motor fuel taxes and annual motor carrier registration fees imposed pursuant to § 5211(a) of Title 30, as amended, pledged and assigned by this chapter.

(q) “Secretary” means the Secretary of the Department of Transportation.

(r) “Specialized transportation facility” means a transportation facility designed or intended to be utilized by persons who are disabled by reason of physical or mental infirmity or age.

(s) “State” means the State of Delaware.

(t) “Subsidiary” means a corporation created by the Authority pursuant to this chapter.

(u) “Transportation facility” means any facility used in connection with the performance of a transportation service, including but not limited to an airport facility, turnpike, port facility, road, highway, bridge, tunnel, subway or parking facility, and all equipment, machinery, fixtures, buildings and structures, land or rights in land incidental to or required in connection with the performance of transportation services.

(v) “Turnpike” means any express toll road, or part or parts thereof, including but not limited to land and rights in land, bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, exits, approaches, service stations, restaurants, administration, lodging, storage and other buildings and facilities which the Authority may deem necessary or appropriate for the construction, reconstruction, improvement, extension, alteration, modernization, repair, operation and maintenance of a turnpike.

(w) [Repealed.]

(60 Del. Laws, c. 503, § 8; 62 Del. Laws, c. 164, §§ 1, 2; 63 Del. Laws, c. 179, § 29; 63 Del. Laws, c. 387, § 42(b); 69 Del. Laws, c. 435, §§ 1-6.)

§ 1304 Established; Director.

(a) There is hereby established a body corporate and politic, to be known as the “Delaware Transportation Authority.” The Authority shall be a public instrumentality of the State exercising public and essential governmental functions, and the exercise by the Authority of the powers conferred by this chapter is hereby determined to be an essential governmental function of the State in order to create an economical, efficient and unified system of air, water, vehicular, public and specialized transportation in the State. The exercise of power by the Authority pursuant to this chapter is hereby mandated by the State as sovereign, it being the intention of the State to displace competition with regulation or monopoly public service.

(b) All action by the Authority shall be taken by resolution of the Secretary, the Director of the Office of Financial Management and Budget and the Administrator of the Transportation Trust Fund.

(c) The Authority may be dissolved by an act of the General Assembly on condition that the Authority has no debts or obligations outstanding or that provision has been made for the payment or retirement of such debts or obligations. Upon any such dissolution of the Authority, all property, funds and assets thereof shall be vested in the State.

(d) The Authority shall make an annual report of its activities to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate of the General Assembly, the Controller General and the Auditor of Accounts. Each such report shall contain a complete operating and financial statement covering the Authority’s operations during the past fiscal year of the Authority and shall include copies of the audits required to be obtained by the Authority pursuant to this chapter.

(e) No director, officer, employee or agent of the Authority shall be interested, either directly or indirectly, in any project or in any contract, sale, purchase, lease or transfer of real or personal property to which the Authority is a party. The existence of any such interest shall not affect the validity of bonds issued pursuant to this chapter.

(f) No director, officer, employee or agent of the Authority shall be deemed to have forfeited or shall forfeit any other state office or

employment or any benefits or emoluments thereof by reason of acceptance of an office of the Authority or services therefor, subject to this chapter.

(62 Del. Laws, c. 164, §§ 1, 2; 69 Del. Laws, c. 435, §§ 7, 8.)

§ 1305 Turnpike maintenance and operations.

The Authority is authorized to make appropriate provisions for the maintenance and operation of the Delaware Turnpike including, but not limited to, assignment of the responsibility for maintenance and operation by the Division of Highway Operations, subject however, to the requirement that at all times the Authority shall retain the ultimate responsibility for operation and maintenance of the Delaware Turnpike in accordance with the terms and conditions of any trust agreement with bondholders. The assignment of responsibilities for maintenance and operation of the Delaware Turnpike to an entity other than the Authority shall not include the authority to adjust in any manner charges, fares, fees, rentals and/or tolls.

(62 Del. Laws, c. 164, §§ 1, 2; 69 Del. Laws, c. 435, § 9.)

§ 1306 Aeronautics within the Department.

Administration of the laws of this State appearing in Chapters 1, 3, 5, 7 and 9 of this title shall be administered by the Office of Aeronautics within the Department. The Secretary of the Department may appoint a person of suitable qualifications to administer the Office of Aeronautics.

(62 Del. Laws, c. 164, §§ 1, 2; 69 Del. Laws, c. 435, § 10.)

§ 1307 Subsidiaries.

(a) The Authority may create or abolish 1 or more subsidiary corporations and grant to such subsidiaries any or all of the powers to perform the duties, functions or activities granted by this chapter to the Authority necessary or convenient to execute the powers and duties and to undertake the functions and activities granted by this chapter to the Authority with respect to any transportation facilities including but not limited to public transportation facilities and specialized transportation facilities except as proscribed by this section.

The Authority is authorized to create or abolish a subsidiary corporation called the "Delaware Transit Corporation" to be the parent corporation of all subsidiaries created pursuant to this section to provide public transit services. The Delaware Transit Corporation is declared to be a public benefit corporation constituting a public instrumentality of the State exercising public and essential governmental functions. The Delaware Transit Corporation and its public transportation services subsidiaries shall be under the direction and supervision of a Director who shall be appointed by the Secretary, with the written approval of the Governor, and who shall serve at the pleasure of the Secretary. The Director of the Delaware Transit Corporation may appoint a Deputy Director.

Each subsidiary shall have all the privileges, immunities, tax exemptions and other exemptions of the Authority. A subsidiary shall be created by filing with the Secretary of State a certificate of incorporation. Such certificate shall be filed by the Secretary. Such certificate shall set forth (1) the name of the subsidiary; (2) the address of the subsidiary; (3) the term of existence of the subsidiary; (4) the name of the original administrator of the subsidiary; (5) the purposes of the subsidiary; (6) the powers of the subsidiary granted by the Authority; and (7) such other matters as the Secretary may deem appropriate. If the Authority shall determine that 1 or more of its subsidiaries shall be a public benefit corporation, constituting a public instrumentality of the State exercising public and essential governmental functions, such certificate shall make such recital and such subsidiary shall be a body politic and corporate of the State.

The Authority shall have no power or right (1) to grant any subsidiary the power to issue bonds, notes or other obligations of the subsidiary evidencing an obligation of the subsidiary to repay borrowed money, except that any subsidiary may borrow money for operating expenses for no more than 12 months in such amounts as may be approved in writing by the Secretary; or (2) to grant, donate, pledge, assign or otherwise transfer or create an obligation to transfer any revenues of the Authority derived from the operation of the Delaware Turnpike.

Chapter 69 of Title 29 shall not apply to any contracts between any subsidiary and an agency or department of the State or any of its political subdivisions. Except as otherwise provided by law, all agencies and departments of the State and any of its political subdivisions that contract with subsidiaries for service shall provide payment for such services at least 1 month prior to the rendering of such service. Subsidiaries will provide such agencies a status of their respective accounts on a monthly basis.

(b) (1) All subsidiaries operating any public transportation facility or specialized transportation facility shall have authority to bargain collectively with labor organizations representing employees and may enter into agreements with such organizations relative to wages, salaries, hours, working conditions, health benefits, pensions and retirement allowances of such employees.

(2) In the case of any labor dispute between such a subsidiary and its employees where collective bargaining does not result in a settlement, the same may be submitted at the written request of either party to final and binding arbitration pursuant to any agreement entered into between the subsidiary and the employees so providing, or, in the absence of such provisions, with the written consent of both parties to an arbitration board composed of 3 persons, 1 appointed by the subsidiary, 1 appointed by the labor organization representing the employees and a third member to be agreed upon by the subsidiary and the labor organization or, if no such third member is mutually acceptable, selected from a list of 5 persons, to be furnished by the American Arbitration Association at the request of either party, by alternately striking 1 name until only 1 name remains.

(3) The determination of the majority of the board of arbitration thus established shall be final and binding on all matters in dispute.

(4) No employee of such a subsidiary shall strike while in the performance of official duties.

(62 Del. Laws, c. 164, §§ 1, 2; 63 Del. Laws, c. 179, §§ 36-38; 69 Del. Laws, c. 435, §§ 11-15; 70 Del. Laws, c. 186, § 1.)

§ 1308 Termination of local and specialized transportation authorities [Repealed].

Repealed by 69 Del. Laws, c. 435, § 16, eff. July 14, 1994.

§ 1309 Powers.

The Authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, to be exercised through the written approval of the Secretary, including, but without limiting the generality of the foregoing, the power to:

(1) Adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) Prescribe rules, regulations and policies in connection with the performance of its functions and duties, and to provide penalties for the violation of such rules and regulations and to provide for the enforcement of state law in or on any transportation facility owned or operated by the Authority or a subsidiary;

(3) Adopt an official seal and to alter the same at pleasure;

(4) Sue in its own name;

(5) Acquire in the name of the Authority, without the approval of the Public Service Commission or any other public body, by purchase, lease, assignment, gift or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain, any land or interest therein or personal property for any transportation facility; however, no facility of the Greater Wilmington Airport, owned by New Castle County, the Sussex County Airport, owned by Sussex County, the Port of Wilmington, owned by the City of Wilmington, or any facility of the Wilmington Parking Authority may be acquired by the Authority unless specifically authorized to do so by an act of the General Assembly;

(6) Supervise or contract for the supervision of all engineering work for any transportation facility appointing such deputies as may be necessary to assist the Authority in such supervision;

(7) Employ consulting engineers, architects, attorneys in accordance with § 2507 of Title 29, real estate counselors, appraisers, accountants, construction and financial experts, superintendents, managers and such other consultants and employees or to enter into contracts with a person, upon such terms and conditions as the Secretary shall determine to be reasonable, to effect the purposes of this chapter including but not limited to payment or reimbursement for planning, designing, financing, constructing, reconstructing, improving, extending, altering, modernizing, repairing, operating and maintaining a transportation facility, to fix their compensation from funds available to the Authority, and to compromise any claims arising therefrom;

(8) Construct, reconstruct and maintain an administration office or offices or such other facilities at such places within the State as it may determine for the effective and efficient operation of the Authority;

(9) Construct, reconstruct, improve, extend, alter, modernize, repair, operate and maintain transportation facilities;

(10) Manage, operate, sell, lease, convey, enter into management contracts, grant options or exclusive licenses, or otherwise dispose of real and personal property acquired by the Authority, for such consideration and upon such terms as the Authority may determine to be reasonable;

(11) Provide for the removal of abandoned, wrecked or disabled motor vehicles and other objects from transportation facilities; provided that only such persons as the Authority may designate shall be permitted to enter any transportation facility owned or operated by the Authority for the purpose of such removal; or, to provide any assistance to any person for compensation;

(12) Fix and revise from time to time, and to charge and collect charges, fares, fees, rentals and tolls, for use of transportation facilities as the Authority may deem necessary, proper, desirable or reasonable and to apply such charges, fares, fees, rentals and tolls, and other revenues, to the cost of any transportation facility without regard to the source of such revenues to assist in financing an economical, efficient and unified system of air, water, vehicular, public and specialized transportation in the State subject to this chapter;

(13) Designate the locations and to establish, limit and control the points of ingress and egress from a turnpike as may be necessary or desirable in the judgment of the Authority to ensure the proper operation and maintenance of a turnpike, and to prohibit entrance to a turnpike from any point or points not so designated;

(14) Contract for and to receive and accept gifts, grants or loans of funds or property or financial or other aid from any person for the purposes of this chapter and to comply, subject to this chapter, with the terms and conditions thereof; and to make grants or loans to any person for any transportation purpose approved by the Authority;

(15) Issue bonds for the purposes of this chapter;

(16) Appoint and fix the salary of the administrator of any administration or subsidiary created pursuant to this chapter;

(17) Purchase, acquire and take assignments of notes, mortgages and other forms of security and evidences of indebtedness;

(18) Establish and maintain reserve and insurance funds with respect to any transportation facility;

(19) Invest any funds or money of the Authority pending the application of such funds or moneys to the purposes of this chapter;

(20) Procure insurance against any losses in connection with its property, operations or assets of any of its administrations or subsidiaries in such amounts and from such insurers as it deems desirable;

(21) Change the location of any portion of any public highway, or to vacate or relocate any highway affected by construction of transportation facilities, provided that the Authority reconstruct such relocated highway at such location as the Authority shall deem most favorable, of substantially the same type and in as good condition as the existing highway at the time the Authority changed the

location of such highway, provided further that the cost of such reconstruction and any damage incurred in changing the location of any such highway shall be paid by the Authority;

(22) Construct, reconstruct, maintain or improve grade separations at intersections with public highways and to change and adjust the lines and grades of such highways so as to accommodate the same to the design of such grade separation, provided that the cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways shall be paid by the Authority;

(23) Enter upon any lands, waters and premises in the State for the purpose of making such surveys, soundings, drillings and examinations as the Authority may deem necessary or convenient for the purposes of this chapter, such entry not being deemed a trespass, nor shall an entry for such purposes be deemed entry under any condemnation proceedings which may be then pending; provided that the Authority shall make reimbursement for any actual damage resulting from such activities;

(24) Grant easements for the installation, construction, reconstruction, maintenance, repair, renewal, relocation and removal of tracks, pipes, pipelines, mains, conduits, cables, wires, towers, poles and other equipment and appliances to any person owning or operating such facilities in, on, along, over or under any transportation facility provided that if the Authority shall determine that it is necessary that any such facilities which now are, or after July 12, 1979, may be located in, on, along, over or under any transportation facility should be relocated or should be removed from such transportation facility, the person owning or operating such facilities shall relocate or remove the same in accordance with the order of the Authority; provided further that the person owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such facilities in their former location or locations; provided, however, that the cost of removal or relocation of such facilities, or of installing such facilities in a new location, and the cost of any lands, or any rights or interests in lands, and any other rights acquired to accomplish such relocation, removal or installation, shall be paid by the Authority;

(25) Take by eminent domain such land abutting a transportation facility, subject to this chapter, as the Authority may deem necessary or desirable for the purpose of removing or relocating all or any part of the facilities of a public utility and may thereafter lease the same or convey an easement or any other interest therein to such person upon such terms as the Authority, in its sole discretion, may determine; provided that the relocation of such facilities of any public utility, in accordance herewith, shall be valid subject to the filing of the plans thereof, as may be required by law, with the Public Service Commission, and no other general laws or other special laws or parts thereof shall be applicable to such relocation;

(26) Place and maintain, or to grant permission by easement or otherwise to any person to place and maintain, on or under or within a transportation facility ducts, pipes, pipelines, wires or other structures or fixtures, to be so located as not to interfere with the safe and convenient operation and maintenance of such transportation facility, and may contract with any such person for such permission on such terms and conditions as may be fixed by the Authority; provided that the construction, reconstruction, maintenance, improvement and repairs of such ducts, pipes, pipelines, wires or other structures or fixtures shall be subject to such directions and regulations as the Authority may impose;

(27) Create or abolish subsidiaries, as provided in this chapter;

(28) Delegate to the Delaware Transit Corporation the rights and responsibilities to:

a. Develop plans and programs:

1. To foster efficient and economical public transportation; and

2. To serve citizens requiring specialized transportation.

b. Fix from time to time, without approval of the Public Service Commission or any other agency or political subdivision of the State, schedules, routes, rates or fares, and charges for use of public transportation services furnished or operated by the Delaware Transit Corporation ("Corporation") pursuant to this chapter, subject to the following provisions:

1. The Corporation will provide an opportunity for a public hearing or public meeting whenever it proposes either to increase the basic fare structure or a major reduction in service (defined herein as affecting 15 percent or more of the ridership within the county for which the reduction is proposed, or at least 15 percent of the service miles currently operating in the affected county, or at least 25 percent of the revenue service trips of any 1 route). The Corporation shall publish a legal notice in 2 newspapers of general circulation announcing the opportunity for a public hearing or public meeting at least 20 days prior to any such proposed public hearing or meeting, as well as post on-board passenger notices of the proposed changes, directing those interested to the location where the details of the proposals can be reviewed. A verbatim transcript will be made of all comments made for the record at any such public hearing or meeting. The Corporation must first review this transcript and all other received comments before it makes a final decision whether to approve such proposals, make an adjustment in such proposals to respond to received public comments, or reject such proposals.

2. For other changes not subject to sub-subparagraph 1 of this subparagraph, including, by way of example and not by way of limitation, adjustments to running times to reflect current travel times, decreases in fares or additions to service, at least 2 weeks prior to the implementation date the Corporation shall publish statewide a legal notice in at least 1 newspaper of general circulation, as well as post on-board passenger notices of, the proposed changes on all normally scheduled bus service, directing those interested to the location where the details of the proposals can be reviewed and where comments concerning the change can

be sent.

3. No public comment period shall be required when making a change in service to avoid hazardous or potentially hazardous conditions that may exist along a route or to initiate a temporary service or customer benefit for a defined period or for a service that is designed to change its routing and pickup times with fluctuating demands; provided that the rate of fare or charge for individuals 65 years of age or older shall be not more than 40 percent of the regular fare charged per zone.

4. No less than twice per year, the Corporation will publish all route, schedule and fare information for public transit routes operated by the Corporation for use and review by the public and third parties in generally accepted open data formats. For the purposes of this paragraph, "publish" shall mean to make available for anonymous download on a publicly maintained website of the Corporation, and "open data format" shall mean machine-readable data formats adhering to a generally accepted specification commonly used by transit agencies to publish schedule, route and fare information for third-party use. Such route information shall be available for download by members of the public and third parties at no charge.

c. Provide specialized transportation services to those persons contracting for such services by pooling and coordinating the resources of public transportation including the Delaware Transit Corporation's facilities and private services including taxicabs and other privately owned transportation services; provided, that no reduction in service area, span of service hours, increase in basic fares or changes in rules (not mandated by federal regulations) on eligibility that would reduce the ability of those that qualify as being disabled by reason of physical or mental infirmity from utilizing available specialized transportation (except in cases where the individual engages in violent, seriously disruptive or illegal conduct) shall be implemented by the Corporation without first providing an opportunity for a public hearing or public meeting; further provided that all such public hearings or public meetings shall be preceded by the Corporation publishing a legal notice in 2 newspapers of general circulation announcing the opportunity for a public hearing or public meeting at least 20 days prior to such proposed public hearing or meeting, as well as posting on-board passenger notices of the proposed changes, directing those interested to the location where all details of the proposal can be reviewed; and further provided that a verbatim transcript shall be made of all comments made for the record at any such public hearings or meetings and that the transcript and all other received comments shall be reviewed by the Corporation prior to making a final decision on whether to approve such proposals, make an adjustment in such proposals that respond to received public comments, or reject such proposals;

d. Provide service without charge to all blind citizens of the State on any public transportation facility operated by the Delaware Transit Corporation, provided that an identification card issued by the Division for the Visually Impaired shall be sufficient evidence of the qualification of the patron for such free transportation, and provided further that no such service without charge as provided herein shall be offered by the Delaware Transit Corporation beyond the amount of funds specifically appropriated for such purpose by the General Assembly;

e. Provide for the use of contractual advertising on the downstream and back panels of Delaware Transit Corporation's transit shelters to offset the cost of providing these facilities, except that no such advertising shall be permitted in the following locations:

1. Within a residential subdivision, except at its entrance;

2. Within 50 feet of a residence;

3. Within 100 feet of any property designated as a historic resource under federal, state, or local law; or

4. Within 150 feet of areas experiencing continually high incident rates of drug offenses or crimes against persons, measured on a calendar-year basis, as designated by the State Bureau of Identification or the applicable local police agency.

(29) Perform such other acts and duties as are necessary or convenient to carry out the powers expressly granted in this chapter.

(60 Del. Laws, c. 503, § 8; 62 Del. Laws, c. 125, § 7; 62 Del. Laws, c. 164, §§ 1, 2; 63 Del. Laws, c. 179, § 39; 69 Del. Laws, c. 435, §§ 17-25; 72 Del. Laws, c. 72, §§ 1, 2; 75 Del. Laws, c. 98, § 91; 77 Del. Laws, c. 372, § 1; 80 Del. Laws, c. 22, § 1; 83 Del. Laws, c. 455, § 5.)

§ 1310 Revenues.

(a) The Authority may make and enforce such rules and regulations and establish, fix and revise from time to time, and charge and collect (or authorize by contract, franchise, lease or otherwise, the establishment, fixing, revising, changing, charging and collecting of) such charges, fares, fees, rates, rentals and tolls for the use of any transportation facility, or parts or sections thereof, operated by the Authority, as the Authority may deem necessary, proper, desirable or reasonable, subject to this chapter. The Authority may contract with any person desiring the use of any part of such transportation facilities, including rights-of-way for placing thereon, telephone, telegraph, electric light or power lines, gas stations, garages, restaurants and advertisements or for any other purposes, and fix the terms, conditions, charges, fares, fees, rates, rentals and tolls for such use. Such charges, fares, fees, rates, rentals and tolls shall be so fixed and changed from time to time in respect to the aggregate of charges, fares, fees, rates, rentals and tolls from any such transportation facility in order to provide a fund sufficient with other available revenues, if any:

(1) To pay the operating expenses of the Authority with respect to such transportation facility;

(2) To pay the principal of premium, if any, and interest on bonds of the Authority issued under this chapter, including bonds issued to refund such bonds at or prior to maturity thereof, and bond financing costs, with respect to such transportation facility; and

(3) To provide operating and debt service reserve funds of such character and amount as the Authority shall determine to be necessary to ensure proper maintenance of such transportation facility and to protect the holders of such bonds.

(b) The State hereby irrevocably pledges and assigns the motor fuel taxes imposed pursuant to Chapter 51 of Title 30, as amended, and the annual motor carrier registration fees imposed pursuant to § 5211(a) of Title 30, as amended, collected by the State and deposited to the credit of the Authority to pay principal of, premium, if any, and interest on bonds of the Authority issued to finance the cost of transportation facilities as provided below. The State shall transfer all motor fuel taxes, and the annual motor carrier registration fees, as defined herein and in § 5206 of Title 30, as amended, to the Authority for deposit into a motor fuel tax collection fund and a motor carrier registration collection fund. The Authority shall apply motor fuel taxes, and annual motor carrier registration fees, in the following order and for the following purposes, to the extent such revenues are available:

(1) To pay principal of, premium, if any, and interest on bonds of the Authority issued subsequent to the effective date of this section, as amended, to finance costs of transportation facilities described in subdivisions (2) and (3) of § 1312 of this title, as amended;

(2) To pay any amounts that may be owing to a debt service reserve fund established by resolution or trust indenture of the Authority to secure the payment of bonds issued subsequent to the effective date of this section, as amended, for projects described in subdivisions (2) and (3) of § 1312 of this title, as amended; and

(3) To pay the remainder of the motor fuel taxes to the operating fund created by the Authority pursuant to a trust agreement dated as of September 1, 1979, between the Authority and the trustee for bonds issued under that trust agreement for application in the same manner as revenues derived from the Delaware Turnpike.

(c) Prior to the application of revenues derived from the Delaware Turnpike to any other purpose, the Authority shall apply such charges, fares, fees, rates, rentals and tolls collected from or with respect to the operation of the Delaware Turnpike in the following order and for the following purposes, to the extent such revenues are available for such purposes:

(1) To pay the operating expenses of the Delaware Turnpike;

(2) To pay any amounts that may be owing to an operating expense reserve fund established by resolution or trust indenture of the Authority to provide a reserve for operating expense;

(3) To pay principal of, premium, if any, and interest on bonds of the Authority to finance costs of the Delaware interstate system including the Delaware Turnpike, and feeder roads to the Delaware Turnpike;

(4) To pay any amounts that may be owing to a debt service reserve fund established by resolution or trust indenture of the Authority to secure the payment of the Authority's bonds issued to finance costs of the Delaware interstate system including the Delaware Turnpike, and feeder roads to the Delaware Turnpike;

(5) To make payments to an improvement fund to provide for improvements and repairs, other than ordinary annual repairs, to the Delaware Turnpike;

(6) To pay the annual costs of operating and maintaining the Delaware interstate system as part of the unified transportation system of the State, as presently designated by the Secretary with the approval of the Federal Highway Administration, but excluding the Delaware Turnpike, the Delaware Memorial Bridge and roads designated as feeder roads of the interstate system, such amounts to be established by the resolution authorizing the issuance of bonds or the trust indenture securing the bonds which will mandate the allocation of such available revenues at least annually to such purposes;

(7) To make payments to an improvement fund to provide for improvements and repairs, other than ordinary annual repairs, to the Delaware interstate system excluding the Delaware Turnpike and the Delaware Memorial Bridge;

(8) To make payments to a motor fuel tax reimbursement fund. Money shall be transferred by the Authority monthly from the motor fuel tax reimbursement fund to the General Fund of the State in an aggregate amount equal to (i) 9 cents per gallon of motor fuel taxes collected by the State and deposited with the Authority plus (ii) an amount equal to the product of "y" — the refunds payable on motor fuel taxes — and "z" — a fraction, the denominator of which is the applicable motor fuel tax rate and the numerator of which is a number equaling the difference between the applicable motor fuel tax rate and 9 cents per gallon, which amount shall be deemed sufficient to pay refunds by the State pursuant to § 5120 of Title 30, as amended, attributable to the amount of motor fuel taxes levied in excess of 9 cents per gallon;

(9) To make payments to a motor carrier registration reimbursement fund. Money shall be transferred monthly by the Authority from the motor carrier registration reimbursement fund to the General Fund of the State in an aggregate amount equal to $3 for each vehicle registered during the preceding month, pursuant to § 5211(a) of Title 30, as amended;

(10) To make payments to a transportation fund established by a resolution or indenture of the Authority. Money from such transportation fund shall be transferred periodically to a special fund of the State for appropriation by the General Assembly to assist in financing an economical, efficient and unified system of air, water, vehicular, public and specialized transportation in the State;

(11) To make payments to a road improvement fund established by a resolution or indenture of the Authority. Money from such road improvement fund shall be transferred periodically to a special fund of the State for appropriation by the General Assembly to assist in financing road and street improvements throughout the State.

(d) Available money in any of the funds described in paragraphs (5) through (11) of subsection (c), inclusive, of this section may be transferred to meet payments required to be made from any fund described in subsection (c) of this section to which deposits of revenues are required to be made prior to the deposit of money from the fund or funds from which the transfer will be made.

(e) The Authority's power to review and revise such tolls, fares, rents, rates and other charges shall not be subject to supervision or regulation by any department, division, commission, board, council, bureau or agency of the State or any political subdivision thereof. The

Authority will consider the purposes of this chapter when establishing such charges, fares, fees, rates, rentals and tolls.

(62 Del. Laws, c. 164, §§ 1, 2; 63 Del. Laws, c. 179, § 30; 63 Del. Laws, c. 387, §§ 42(c)-(f).)

§ 1311 Bonds.

The Authority is hereby authorized to provide by resolution, at 1 time or from time to time, for the issuance of duly authorized bonds of the Authority for any of its corporate purposes, including the refunding of its bonds. The principal of, premium, if any, and the interest on any issue of bonds shall be payable solely from, and may be secured by, a pledge and assignment of revenues, provided, that the proceeds of any bonds may be used, pledged and assigned for the establishment of any or all reserves for such payment or security or for other corporate purposes as the Authority may authorize in its resolution authorizing the issuance of bonds or in a trust agreement securing the same.

The bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times, may be redeemed before maturity, at the option of the Authority, at such price or prices and under such terms and conditions, all as may be fixed by the Authority prior to the issuance of the bonds. The Authority 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, which may be at any bank or trust company within or without the State. The bonds shall be signed by the Secretary or shall bear the Secretary's facsimile signature and the official seal of the Authority or a facsimile thereof shall be impressed, imprinted, engraved or otherwise reproduced thereon. The official seal or facsimile thereof shall be attested by the Director of the Office of Financial Management and Budget and/or the Administrator of the Transportation Trust Fund or by such other officer or agent as the Authority shall appoint and authorize and any coupons attached to such bonds shall bear the facsimile signature of the Secretary. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes as if the officer had remained in office until such delivery. All bonds issued under this chapter are hereby declared to have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Authority may sell such bonds in such manner, whether at public or private sale, and for such price, as it may determine to be in the best interests of the Authority. Neither the Secretary nor any person executing the bonds shall be personally liable on the bonds or be accountable by reason of execution of any bonds or the issuance thereof in accordance with this chapter.

The proceeds of the bonds of each issue shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, subject to this chapter.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become lost, stolen, mutilated or destroyed. Bonds may be issued under this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions or things which are specifically required by this chapter.

Any bonds issued under this chapter may be secured by a trust agreement by and between the Authority 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 agreement or the resolution providing for the issuance of such bonds may pledge and assign revenues to which the Authority's right then exists or may thereafter come into existence, and the moneys derived therefrom, and the proceeds of such bonds, but shall not convey or mortgage any road, highway, bridge, tunnel, overpass, underpass, interchange, entrance plaza, exit or approach constituting a portion of a turnpike. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the holders of bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the construction, reconstruction, improvement, extension, alteration, modernization, repair, operation and maintenance of transportation facilities, the charges, fares, fees, rates, rentals and tolls to be imposed, the payment, security or redemption of bonds, and the custody, safeguarding and application of all moneys, and provisions for the employment of persons in connection with the undertaking, maintenance or operation of such transportation facilities. Any such trust agreement or resolution may set forth the rights and remedies of the holders of bonds and of the trustee, and may restrict the individual rights of action by holders of bonds. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the holders of bonds, subject to this chapter. All expenses incurred in carrying out such resolution or trust agreement may be treated as a part of the cost of the operation of a transportation facility.

It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority.

This section is intended and shall be construed to authorize the Authority to finance any transportation facility or any combination of transportation facilities by any combination of issues or series of bonds which may be secured by the pledge of revenues derived from any transportation facility or facilities or combination of such facilities designated by the resolution authorizing the issuance of such bonds or by any trust agreement securing such bonds.

(62 Del. Laws, c. 164, §§ 1, 2; 63 Del. Laws, c. 179, § 31; 69 Del. Laws, c. 435, § 26; 70 Del. Laws, c. 186, § 1.)

§ 1312 Authorized projects.

The Authority is hereby authorized to issue bonds to refund outstanding bonds of the Authority and to issue bonds to finance the costs of the following transportation facilities forming part of the unified transportation system of the State:

(1) Reconstructing and improving the Delaware Turnpike;

(2) Constructing and reconstructing the following highways by the Division of Highways:

a. I-95, viaduct widening and Christiana interchange
b. Wilmington Boulevard, interstate portion
c. Wilmington Boulevard, urban portion
d. I-495, Christiana River to Edgemoor Bridge
e. I-95, I-295, I-495, safety and completion projects
f. I-495, Manor Avenue pedestrian crossing
g. I-495, Twelfth Street interchange
h. I-495, Terminal Avenue interchange
i. I-495, additional exit between 12th Street and intersection of I-95, I-495
j. Twelfth Street, Wilmington
k. Edgemoor Bridge
l. Naaman's Road, U.S. 13 to U.S. 202
m. Harvey Road, I-95 to Philadelphia Pike
n. Marsh Road, I-95 to Wilson Road
o. Concord Pike, Augustine cut-off to Pennsylvania line
p. Airport Road
q. Route 7, Stanton to U.S. 13
r. Christiana Bypass, Routes 7 to 273
s. Route 273, Newark through Ogletown
t. Route 896, U.S. 40 to Route 4
u. Otts Chapel Road, I-95 to U.S. 40

(3) Constructing and reconstructing the following transportation facilities by the Division of Highways:

a. Route 4 — SR 2 to SR 7
b. New Churchman's Road — SR 4 to SR 7
c. Alapocas Intersection at New Bridge Road
d. Chapman Road — Salem Church Road to SR 273
e. Route 113, Little Heaven to Dover Air Base
f. Saulsbury Road — Walker Road to Denney's Road
g. Route 72 — U.S. 40 to Sunset Lake
h. U.S. 13 — Boyd's Corner, weigh station, rest area, Laurel to Seaford II
i. Route 41 — SR 2 to Milltown Road
j. Red Mill Road — SR 2 to Darwin Drive
k. Stein Highway — Bradford to Front
l. Route 8 — Dover to Pearsons Corner
m. Denney's Road — Saulsbury Road to U.S. 13
n. Old Baltimore Pike — SR 896 to Christiana
o. U.S. Route 113A — U.S. 13 to Route 113
p. Route 88 and CR 334 — U.S. 13 to SR 9
q. Route 141 — Route 2 to Route 202
r. Paving and rehabilitation program (statewide)
s. Bridge replacement and rehabilitation program (statewide)
t. Community transportation fund and drainage, intersections and miscellaneous projects program (statewide)
u. DTA capital and equipment (statewide)
v. Corridor/non-corridor
w. Road maintenance

The Authority may issue bonds for the purposes set forth in subdivision (1) above including bonds to fund reserves and to pay costs of issuing such bonds without the approval of the General Assembly; provided, however, that the proceeds of such bonds are not applied to the costs of financing feeder roads.

The Authority shall not issue bonds for the purposes set forth in subdivision (2) or (3) above without the approval of the General Assembly. The proceeds of bonds authorized to be applied to purposes described in subdivisions (2) and (3) above shall be: (i) Limited to amounts authorized or to be authorized by the General Assembly from time to time in an annual capital improvements project schedule

forming part of the State's capital improvement act; and (ii) transferred periodically by the Authority to the applicable special funds of the State to meet the costs of such projects. The approval of amounts to be expended for such purposes in an annual capital improvements project schedule shall constitute the approval of the issuance of bonds in such amounts for such purposes. Bond issued for such purposes may include additional amounts necessary to fund reserves and to pay costs of issuing the bonds.

The Authority may issue bonds to refund any bonds previously issued by the Authority for any purpose and to fund reserves and pay costs of issuing bonds without the approval of the General Assembly.

No bonds shall be issued by the Authority for any purpose, including any refunding bonds, unless the Authority has obtained an independent report from a qualified firm stating, on the basis of revenues transferred to and/or collected by the Authority in the fiscal year next prior to the year in which the report is prepared, that it is reasonable to assume, after giving effect to the issuance of bonds proposed to be issued (assuming that the principal and interest payments on such bonds will be the principal and interest payments on those bonds in the fiscal year in which the greatest amount of principal and interest will be payable on those bonds), that sufficient revenues will be available to make the reimbursements from the motor fuel tax reimbursement fund and the motor carrier registration reimbursement fund required by this chapter to be made for the next 5 fiscal years including the fiscal year of the issuance of such bonds. The report may assume that the amount of revenues deposited in the turnpike improvement fund, the interstate operations fund, and the interstate improvement fund, as defined in the trust agreement dated September 1, 1979, between the Authority and the trustee for certain outstanding bonds of the Authority, will not be increased during that 5 year period. A determination by the Authority that the report satisfied the requirements of this paragraph shall be conclusive.

(62 Del. Laws, c. 164, §§ 1, 2; 63 Del. Laws, c. 179, § 32; 64 Del. Laws, c. 343, § 45(j); 65 Del. Laws, c. 212, § 15; 73 Del. Laws, c. 95, § 84(e)(1).)

§ 1313 Projects transferred to Authority; cancellation of state general obligation bond authority.

There is hereby repealed the authorization to issue bonds, to which the State has been authorized to pledge its faith and credit, the proceeds of which were appropriated to the Department of Transportation, by the following laws, for the following projects and in the following amounts:

Volume and Chapter	Project Account Code	Amount
60-271	55-05-000-76-80	$ 1,800,000
60-271	55-05-000-76-81	1,100,000
60-691	55-05-000-77-80	3,202,000
61-376	55-05-000-78-80	1,498,000
61-376	55-05-000-78-81	80,000
61-408	55-05-000-79-80	3,547,000
61-408	55-05-000-79-81	315,000
	TOTAL	$11,542,000

Such projects, described in subdivision (2) of § 1312 of this title, are hereby transferred to the Authority. Such transfer shall be effective on the date the Authority issues bonds to finance such transportation facilities. The proceeds of such bonds shall be deposited, from time to time, in a special fund of the State and applied to the purposes for which such bonds are issued in order to meet payments due under executed contracts for such projects. The Division of Highway Operations shall continue to supervise construction and to maintain and operate such projects. It is the intention of the General Assembly that the Authority issue bonds within a reasonable period after the adoption of this chapter in order to permit the uninterrupted pace of construction of such projects.

(62 Del. Laws, c. 164, §§ 1, 2; 69 Del. Laws, c. 435, § 27.)

§ 1314 Authorization of state highway projects.

(a) In order to assist the program of highway construction and reconstruction authorized in §§ 1312 and 1313 of this title, and in connection with the construction and reconstruction of the State's unified transportation system, the State hereby authorizes the issuance of $9,145,000 bonds by the State to which the State pledges its full faith and credit. Bonds authorized to be issued by this subsection shall mature not later than 20 years from their date of issuance. The proceeds of such bonds are hereby appropriated to the Department of Transportation for the purposes and in the amounts as set forth in the capital projects schedule attached to 62 Del. Laws, c. 164, and made a part thereof.

(b) In addition to such bonds, and in order to further assist such program of highway construction and reconstruction, the State hereby authorizes the issuance of $2,397,000 bonds by the State to which the State pledges its full faith and credit. Bonds authorized to be issued by this subsection shall mature not later than 10 years from their date of issuance. The proceeds of such bonds are hereby appropriated to the Department of Transportation for the following purposes and in the amounts as set forth in the capital projects schedule attached to 62 Del. Laws, c. 164, and made a part thereof.

(c) Bonds issued pursuant to this section shall be issued by the State pursuant to Chapter 74 of Title 29.

(62 Del. Laws, c. 164, §§ 1, 2.)

§ 1315 Credit of State not pledged to Authority bonds.

Bonds issued by the Authority under this chapter shall not constitute a debt or liability of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but such bonds, unless refunded by bonds of the Authority authorized by this chapter, shall be payable solely from funds and property pledged, assigned or available for their payment as specifically authorized in the resolution authorizing such bonds or in the trust indenture securing such bonds. All bonds shall contain on the face thereof a statement to the effect that the Authority is obligated to pay such bonds and the interest thereon only from revenues or other specifically pledged property, and that neither the State nor any political subdivision thereof is obligated to pay the bonds or the interest thereon and that neither the faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds.

All expenses incurred in carrying out this chapter, other than for the issuance of general obligation bonds by the State, shall be payable solely from funds provided under this chapter and nothing in this chapter shall be construed to authorize the Authority to incur indebtedness or any liability on behalf of or payable by the State or any political subdivision thereof.

(62 Del. Laws, c. 164, §§ 1, 2.)

§ 1316 Bonds as legal investments; legal deposit.

Bonds issued pursuant to this chapter are securities in which all state officers and officers of political subdivisions, administrative departments, boards and commissions of the State, all banks, bankers, savings banks and institutions, building and loan associations, trust companies, savings 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 are 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.

Such bonds are obligations which may properly and legally be deposited with and received by any officer of the State, or of any political subdivision or agency of the State, for any purpose for which the deposit of bonds or other obligations of the State is now, or may hereafter be, authorized by law.

(62 Del. Laws, c. 164, §§ 1, 2.)

§ 1317 Revenues as trust funds; pledge or assignment of revenues; security interest.

All moneys received pursuant to this chapter, whether as proceeds from sale of bonds, from grants or other contributions or other revenues, shall be trust funds, to be held and applied solely as provided in this chapter. A resolution authorizing the issuance of bonds and/or the execution and delivery of a trust agreement securing such bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such money and shall hold and apply the same for the purposes hereof subject to such regulations as this chapter and such resolution or trust agreement may provide.

Any pledge or assignment of or other security interest in revenues and any other moneys, earnings, income, accounts, contract rights, general intangibles, instruments, chattel papers or other personal property, including motor fuel taxes, and annual motor carrier registration fees, made or created by the Authority shall be valid, binding and perfected from the time when such pledge, assignment or other security interest is created, without any physical delivery of the collateral or further act. The lien of any such pledge, assignment or other security interest shall be valid, binding and perfected as against all parties having claims of any kind in tort, contract or otherwise against the Authority irrespective of whether or not such parties have notice thereof. No instrument by which such a pledge, assignment or other security interest is created nor any financing statement need be recorded or filed. This paragraph shall apply notwithstanding the Uniform Commercial Code.

(62 Del. Laws, c. 164, §§ 1, 2; 63 Del. Laws, c. 179, § 33; 63 Del. Laws, c. 387, § 42(g).)

§ 1318 Certain contract with bondholders.

The State hereby pledges to and agrees with the holders of bonds issued pursuant to this chapter that the State will not limit or restrict the rights granted to the Authority by this chapter to construct, reconstruct, improve, extend, alter, modernize, repair, operate and maintain any transportation facilities, or to establish and collect such charges, fares, fees, rates, rentals and tolls as may be convenient or necessary to produce sufficient revenue to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds authorized by this chapter or in any way impair the rights or remedies of the holders of such bonds until the principal of, premium, if any, and interest on such bonds are fully paid and discharged.

(62 Del. Laws, c. 164, §§ 1, 2.)

§ 1319 Exemption from taxation.

The State covenants with the purchasers and with all subsequent holders, owners and transferees of bonds, in consideration of the acceptance of and payment for the bonds, that the bonds (which include interest thereon), and their transfer, shall be exempt from taxation by the State and its political subdivisions, except for estate, inheritance or gift taxes.

Notwithstanding the foregoing, the Authority may elect to issue bonds, the interest on which is subject to federal income taxation.

Any real or personal property of the Authority and all revenues of the Authority shall be exempt from any and all taxation by the State or any political subdivision thereof for any purpose.

(62 Del. Laws, c. 164, §§ 1, 2; 63 Del. Laws, c. 179, § 34.)

§ 1320 Special provisions relating to Delaware Turnpike.

(a) The Authority and the State shall always maintain and keep in good condition and operating repair the Delaware Turnpike.

(b) The Authority may provide or make provision for an adequate police force to enforce the laws of the State and the rules and regulations established by the Authority and governing the use of the Delaware Turnpike.

(c) Any operator of a vehicle using the Delaware Turnpike who refuses to pay the toll prescribed by the Authority, or who evades or attempts to evade payment of the toll prescribed by the Authority, may be arrested without a warrant. The fine for such offense shall be not less than $10 and not more than $100 in addition to costs.

(d) The Authority may incorporate in the Delaware Turnpike as an integral part thereof any existing state highway or bridge or any partially completed state highway or bridge which it may deem necessary, provided that such incorporation shall not impair the right of the Authority to impose tolls on the Delaware Turnpike.

(e) If any property other than money which has been abandoned, mislaid or lost on the premises of the Delaware Turnpike comes into the possession of the Authority and remains unclaimed in the possession of the Authority for a period of 120 days, the Authority may sell the property at public auction after notice of such sale has been published for 3 successive weeks in a newspaper with general circulation in the county where such property was recovered. The net proceeds of sale, after deducting the cost of storage and the expenses of the sale, and all money unclaimed for such 120 day period, shall be paid into and become the property of the Authority. If, in the opinion of the Authority, any property so abandoned, mislaid or lost, which comes into the possession of the Authority and remains unclaimed in its possession for a period of 120 days, is of value of $10 or less, the Authority may donate the same to a charitable organization without offering such property for sale.

(f) A budget for each fiscal year of the Authority shall be prepared by the Authority and submitted to the General Assembly at the same time the State prepares and submits its annual budget appropriation bill to the General Assembly. The annual budget shall show, among other things, the operating expenses of the Authority for each subsidiary, and the estimated amount required to be deposited in various funds created by any resolution pursuant to which bonds have been issued or any trust indenture securing such bonds, including but not limited to an operating fund. The budget shall be approved by the General Assembly before its adoption by the Authority.

In approving the budget of the Authority, the General Assembly shall not:

(1) Approve an amount for operating expenses of the Delaware Turnpike less than the amount actually incurred as operating expenses for the Delaware Turnpike in the last prior fiscal year of the Authority, plus an inflation factor equal to the United States Consumer Price Index (CPI) or successor indices, annualized at November of the year prior to the year for which such budget is prepared, unless the budget prepared by the Authority requests a lesser amount.

(2) Approve an amount for application to pay debt service on bonds and an amount to meet any debt service reserve fund requirement less than the amounts required, by any resolution of the Authority pursuant to which bonds of the Authority are issued or pursuant to a trust indenture pursuant to which bonds are secured, to pay debt service on bonds and to meet any debt service reserve requirements.

If the General Assembly does not approve the budget of the Authority prior to July 1 for the year such budget is submitted, the budget, as submitted to the General Assembly, shall be adopted by the Authority until such time as a budget is approved by the General Assembly. Any obligations incurred by the Authority pursuant to an adopted budget shall be binding.

(g) The State or the Authority shall neither make nor authorize any appropriation or expenditure of money that would impair the right or power of the Authority to impose tolls on the Delaware Turnpike.

(h) The Authority shall operate only 1 barrier facility on the main line of the Delaware Turnpike for the collection of tolls, and it shall be located on the Delaware Turnpike at or near the boundary between the State and the state of Maryland. The Authority may also operate toll collection facilities for all vehicles other than 2-axle vehicles at such points along the Delaware Turnpike and/or the interstate within Delaware which the Authority shall determine.

(i) The Authority shall, upon request, furnish a user of the Delaware Turnpike a receipt showing the amount of the toll paid, the classification of the vehicle, the date the toll was paid and the name of the Authority.

(62 Del. Laws, c. 164, §§ 1, 2; 63 Del. Laws, c. 179, § 35; 65 Del. Laws, c. 385, § 11; 69 Del. Laws, c. 435, § 28.)

§ 1321 Limitation on jurisdiction of political subdivisions.

No political subdivision of the State shall exercise any power, authority or jurisdiction over property of the Authority including but not limited to the exercise of the police power or the exercise of the power of condemnation, without the consent of the Authority.

(62 Del. Laws, c. 164, §§ 1, 2.)

§ 1322 Conveyance to Authority.

Any political subdivision, agency, department or commission of the State, notwithstanding any contrary provision of law, may lease, grant or convey to the Authority any real property or rights in real property, including but not limited to public roads and other real property already devoted to public use, at the written request of the Authority, upon such terms and conditions as such political subdivision, agency, department or commission may deem reasonable and fair, without the necessity for any advertisement, court order or other action other than the adoption of a resolution of such agency, department or commission, or, in the case of a political subdivision, the adoption of an ordinance or resolution.

Notwithstanding the foregoing, no facilities of the Port of Wilmington, the Sussex County Airport, the Greater Wilmington Airport or the Wilmington Parking Authority may be leased, granted or conveyed to the Authority unless specifically authorized by an act of the General Assembly.

(62 Del. Laws, c. 164, §§ 1, 2.)

§ 1323 Audit of books and accounts.

The office of Auditor of Accounts shall cause an annual audit of the books and accounts of the Authority. The selection of a firm to perform the annual audit of the books and accounts of the Authority shall be mutually agreed upon by the office of the Auditor of Accounts and the Secretary who shall consult and cooperate with each other in the selection, contract, employment and scope of professional services to be rendered, provisions in Chapter 29 of Title 29 notwithstanding. The audit shall be performed by an independent firm of certified public accountants of recognized ability and standing and shall conform in all respects to the covenants contained in all trust agreements entered into by the Authority for the benefit of its bondholders. The Authority shall transfer funds, as requested by the office of Auditor of Accounts, to cover the cost of the audit.

(62 Del. Laws, c. 164, §§ 1, 2; 63 Del. Laws, c. 179, § 40; 69 Del. Laws, c. 434, § 1; 69 Del. Laws, c. 435, § 29.)

§ 1324 Damage to private property.

All private property damaged or destroyed in the exercise by the Authority of the powers granted by this chapter shall either be restored or repaired and placed in its condition prior to such damage or destruction, as nearly as practicable, or adequate compensation made therefor, as determined solely by the Authority from funds available to the Authority.

(62 Del. Laws, c. 164, §§ 1, 2.)

§ 1325 Employees of the Delaware Transit Corporation and subsidiaries.

The Director and Deputy Director of the Delaware Transit Corporation shall be exempt from Chapter 59 of Title 29, as amended. All employees of any public or specialized transportation subsidiary, including persons directly employed by the Delaware Transit Corporation, and any other subsidiaries created pursuant to this chapter, shall also be exempt from the provisions of Chapter 59 of Title 29, as amended. Except as otherwise provided herein, such employees shall not be considered state employees for purposes of wages, salaries, fringe benefits or for purposes of any other benefits which may accrue to state employees whether exempt or merit employees, including benefits that may accrue under Executive Order No. 36 dated November 23, 1977. Such employees shall be considered state employees for the purposes of participating in the group medical insurance, workers' compensation and deferred compensation plans available to state employees. Participation in, and the terms of, medical insurance, workers' compensation and deferred compensation programs available through the State shall not be a subject of collective bargaining.

(60 Del. Laws, c. 503, § 8; 62 Del. Laws, c. 164, §§ 1, 2; 67 Del. Laws, c. 77, § 1; 68 Del. Laws, c. 99, § 1; 69 Del. Laws, c. 435, § 30; 74 Del. Laws, c. 68, § 236.)

§ 1325A Status of former DTA employees.

Any employee of the Delaware Transportation Authority as of June 30, 1994, and retaining merit system status at that time who is transferred to the Delaware Transit Corporation before August 31, 1995, shall be deemed to be employed by the State in the classified service with all the benefits accrued as a merit employee as of July 31, 1995, notwithstanding any provision of § 1325 of this title to the contrary.

(70 Del. Laws, c. 118, § 240.)

§ 1326 John F. Kennedy Memorial Highway.

The Delaware Interstate Highways 295 and 95 leading from the Delaware Memorial Bridge to the Maryland state line shall be known as the "John F. Kennedy Memorial Highway." The Authority shall cause to be erected suitable signs or markers to inform the public of the name of such highway.

(62 Del. Laws, c. 164, §§ 1, 2.)

§ 1327 Operation of service stations.

The Authority may lease a retail fuel outlet or service station to a manufacturer of petroleum products. The manufacturer, its subsidiary or agents may operate such outlet or service station notwithstanding § 2905 of Title 6 [repealed], as amended.

(62 Del. Laws, c. 164, §§ 1, 2; 77 Del. Laws, c. 394, § 4.)

§ 1328 Application of state Freedom of Information Act.

(a) The Authority and its subsidiaries shall be subject to all applicable provisions of the state Freedom of Information Act, Chapter 100 of Title 29.

(b) Written or recorded information concerning employee addresses, work sites, times of travel, salary and other information of a personal nature, having been provided or to be provided by employers working with the Department to develop transportation programs or projects, shall be treated as confidential and shall not be considered as a public record under Chapter 100 of Title 29.

(62 Del. Laws, c. 164, §§ 1, 2; 69 Del. Laws, c. 435, § 31; 70 Del. Laws, c. 402, § 2.)

§ 1329 Liability of Authority.

(a) Any operation, service or program provided by the Delaware Transportation Authority or under its auspices not covered by a general liability policy, self-insurance or other insurance policy as shall be legally established and funded by said Authority shall be covered and protected by the doctrine of sovereign immunity of the State which shall be applicable not only to the Authority but to each of its agencies, administrations, subsidiaries and each of their respective officers and employees; which immunity shall apply to and against any lawsuit or liability arising from any such operation, service or program, except as specifically excepted under this section. No legal or equitable action seeking damages as a result of any operation, service or program described in the preceding sentence shall be permitted or damages recovered except as such activity is and shall be covered by an insurance program procured in accordance with law and for which adequate funding is available. In the event that insurance has been provided, such claim, including any award for damages or costs assessed against the Authority, its administrations, subsidiaries, officers or employees either individually or on behalf of their employer shall not exceed the amount of said insurance covering the risk or loss or the amount of $1,000,000 whichever amount shall be the lesser for any and all claims arising out of a single occurrence.

(b) For fiscal years beginning July 1, 1997, and thereafter, the annual budget of the Delaware Transit Corporation shall include funding for an insurance program as described in subsection (a) of this section. This insurance program may be provided by either (1) a combination of self-insurance and commercially procured insurance, or (2) entirely commercially procured insurance. The monetary limits of § 1329(a) of this title shall apply to passenger rail carrier operations authorized under § 1332 of this title. For all other operations of the Delaware Transit Corporation, the monetary limits of § 1329(a) of this title shall not apply, and the Corporation shall instead be liable for the amount of its insurance covering the risk or loss; provided, however, that the insurance program shall provide a minimum coverage of $1,000,000 for any and all claims arising out of a single occurrence and $1,000,000 for uninsured and underinsured insurance for any and all claims arising out of single occurrence.

(66 Del. Laws, c. 360, § 68; 71 Del. Laws, c. 215, § 1; 72 Del. Laws, c. 160, § 1; 83 Del. Laws, c. 464, § 1.)

§ 1330 Limitation of actions to recover payments erroneously or illegally collected by the Authority.

No action or claim that is otherwise permitted against the State or an agency or authority of the State to recover any charges, fares, fees, rentals or tolls or other payments erroneously or illegally collected by or paid to the Authority may be commenced or otherwise asserted after expiration of 1 year from the earlier of:

(1) The date of the payment; or

(2) The date the payment was required to be made.

(68 Del. Laws, c. 156, § 55(f).)

§ 1331 Motor fuel tax.

The provisions of Chapters 51 and 52 of Title 30 and Chapter 29 of Title 6 shall be administered by the Department of Transportation in the Office of Motor Fuel Tax. The Director of the Office of Motor Fuel Tax shall be transferred to the Department of Transportation and, notwithstanding any provision of § 1325 of Title 2 to the contrary shall be deemed to be employees of the State in the classified service with all the benefits accrued as merit employees as of July 1, 1992.

(68 Del. Laws, c. 290, § 189; 69 Del. Laws, c. 435, § 32.)

§ 1332 Passenger rail carriers.

(a) The General Assembly has determined as a matter of public policy that it is in the best interests of the citizens of Delaware to apply a limitation of liability for any passenger rail carrier, not otherwise protected under State law, in order to financially enable the Authority acting through the Delaware Transit Corporation and such rail carriers to provide such service. No legal or equitable action seeking damages for personal injury or death as a result of any operation, service or program shall be permitted, maintained or recovered against the owner and/or operator of passenger rail service within State boundaries which has contracted with the Authority acting through the Delaware Transit Corporation to provide such service except as otherwise indicated herein.

(b) It is the expressed intent of the General Assembly, as a matter of public policy, to extend the immunity of the State to all owners and operators of rail facilities and/or providing such rail operations pursuant to an agreement with the Delaware Transportation Authority acting through the Delaware Transit Corporation specifically referencing this section. Any such waiver of immunity from lawsuit or liability whether by operation of law or contract shall be strictly limited to the terms of this section.

(c) The Delaware Transportation Authority acting through the Delaware Transit Corporation is expressly given authority to contract with 1 or more rail service operators hereinafter referred to as “contractors” to maintain and operate rail service between points in Pennsylvania and Delaware, within Delaware and/or between points in Maryland and Delaware, and to indemnify and save harmless said contractors from any and all liability to the extent such indemnification shall be covered by insurance either through a commercially procured policy or through a self-insurance fund as shall be determined by the Authority acting through the Delaware Transit Corporation and approved by the General Assembly and in conformance with § 1329 of this title. For the purposes of this section, rail service operators shall include but not be limited to SEPTA (Southeastern Pennsylvania Transportation Authority), AMTRAK (National Railroad Passenger Corporation), MARC (Mass Transit Administration, Maryland Commuter Rail) and CONRAIL (Consolidated Rail Corporation).

(69 Del. Laws, c. 77, § 68; 69 Del. Laws, c. 435, § 33.)

§§ 1333, 1334 [Reserved.]

§ 1335 Maintaining adequate supplies of road materials [Operation of this statute was suspended by 85 Del. Laws, c. 341, § 112].

(a) *Legislative findings.* — The General Assembly finds that the interests of the State are not well served when its ability to obtain a ready supply and competitive prices for critical materials used in its transportation projects, such as asphalt and concrete, is impeded due to the consolidation of ownership of facilities for the processing and/or manufacture of such materials in specific geographic areas. This situation has arisen in Kent and Sussex Counties, and may potentially occur in New Castle County. Therefore, the General Assembly determines that the State should be empowered to enter into appropriate arrangements to reduce the impacts of these consolidations.

(b) Any provision of the Delaware Code notwithstanding, the Department of Transportation is hereby authorized and directed to develop and implement a program to obtain a ready supply of critical road-building materials, including but not limited to asphalt and/or concrete, for its highway construction and reconstruction projects. This program may include the acquisition of land, raw materials, and equipment to operate facilities for the processing and manufacture of road materials. The Department may also contract with private entities for the operation of such facilities, pursuant to Chapter 69 of Title 29.

(c) The provisions of §§ 1309, 1319, 1321, and 1329 of this title shall apply to the Department's actions pursuant to this section, including any contractual arrangements for these facilities, as if conducted under the auspices of the Delaware Transportation Authority, except that during its planning process the Department shall meet and confer with the land use officials in the county in which such facilities will be located, to obtain their comments on the proposal.

(d) Notwithstanding subsection (c) of this section, the authorities granted to the Department in aforementioned section, the Department shall not contract for any additional capacity with a private firm or firms without first securing the approval of the State Representative and Senator in whose legislative districts the proposed road materials facility would be located.

(74 Del. Laws, c. 308, § 109; 76 Del. Laws, c. 288, § 101; 77 Del. Laws, c. 87, § 92; 77 Del. Laws, c. 329, § 100; 78 Del. Laws, c. 76, § 103; 78 Del. Laws, c. 292, § 88; 79 Del. Laws, c. 79, § 98; 79 Del. Laws, c. 292, § 106; 80 Del. Laws, c. 78, § 106; 80 Del. Laws, c. 299, § 96; 81 Del. Laws, c. 59, § 97; 81 Del. Laws, c. 303, § 100; 82 Del. Laws, c. 86, § 96; 82 Del. Laws, c. 244, § 103; 83 Del. Laws, c. 56, § 114; 83 Del. Laws, c. 340, § 112; 84 Del. Laws, c. 83, § 111; 84 Del. Laws, c. 297, § 108; 85 Del. Laws, c. 64, § 113; 85 Del. Laws, c. 341, § 112.)

Part II
Transportation Department
Chapter 14
TRANSPORTATION TRUST FUND

§ 1401 Title.

This chapter shall be known as the "Transportation Trust Fund Act." The word "chapter," as used herein, means this Transportation Trust Fund Act. The phrase "transportation system," as used herein, shall mean all modes and methods of transporting people and goods on land, in the air or on water; provided, however, that no facility of the Greater Wilmington Airport owned by New Castle County, the Sussex County Airport owned by Sussex County, the Port of Wilmington owned by the City of Wilmington or any facility of the Wilmington Parking Authority may be acquired by the Authority unless specifically authorized to do so by an act of the General Assembly.

(66 Del. Laws, c. 87, § 1.)

§ 1402 Legislative findings and determinations.

(a) The General Assembly hereby reaffirms all the findings made by the General Assembly in § 1302(a) of this title.

(b) The General Assembly further finds, that, in addition to the creation of the Delaware Transportation Authority and the grant of powers to the Authority by Chapter 13 of this title, there is a growing urgency to provide additional means to finance the maintenance and development of the integrated highway and air and water transportation system in the State for the economic benefits of the State and for the welfare and safety of the users of this transportation system.

(c) The General Assembly hereby determines that in order to provide additional means to finance this transportation system for the benefit of the State and the users of this transportation system, there shall be created a Transportation Trust Fund in the Authority and the Authority shall be granted the following powers, duties and functions relating to the management and disposition of receipts in the Transportation Trust Fund; and that the powers, duties and functions conferred on the Authority by this chapter constitute a valid public purpose and are necessary and proper for the purposes to be achieved by the Authority under this chapter; and that the expenditure of funds authorized by this chapter are for a valid public purpose and public use.

(66 Del. Laws, c. 87, § 1.)

§ 1403 Application of chapter.

In addition to the powers granted to the Authority by Chapter 13 of this title, the Authority shall have the following powers in addition to those powers granted elsewhere in this chapter:

(1) To issue subordinated indebtedness and to enter into bank loan agreements, lines of credit, letters of credit and other security agreements for the purposes of the Authority;

(2) In its own name or in the name of the State, with the approval of the State, to apply for and receive and accept appropriations or grants of property, money, services or reimbursements for money previously spent and other assistance offered or made available to it by or from any person for any lawful corporate purpose of the Authority including, without limitation, grants, appropriations or reimbursements from the state or federal government with respect to their respective shares under federal aid transportation laws of the costs of planning, acquisition, engineering, construction, reconstruction, repair, resurfacing and rehabilitation of public highways or the costs of planning, acquisition, engineering, construction, reconstruction, repair and rehabilitation of the public transportation systems and other projects, within the transportation system, in the State and the Authority's operating expenses and to apply and negotiate for the same upon such terms and conditions as may be required by any person, government, agency, authority or entity or as the Authority may determine to be necessary, convenient or desirable;

(3) To accept and use any funds appropriated and paid by the State to the Authority, for the purposes for which the appropriations and payments are made;

(4) To purchase, acquire, lease or rent such equipment, materials, vehicles, machinery, office equipment or other items from Authority appropriations for authorized use by the Authority, State or its instrumentalities for their respective purposes, including but not limited to office supplies, tools, construction equipment, utilities, furniture and such other items as the Authority may authorize;

(5) To use funds available in DART operations "public" to cover the expenses, both capital and operating related to public transportation services provided by DART and to consolidate its various accounts consistent with sound accounting principles and practices in order to accomplish the goals of the Authority in accordance with the purposes and programs approved by the General Assembly;

(6) To impose tolls at such places and at such times as it determines on a toll facility system comprised of the Delaware Turnpike, U.S. Route 301 from the Maryland line to the tolled portions of State Route 1, and U.S. 13 Relief Route (also known as State Route 1) subject to the provisions of § 1320(h) of this title relating to the imposition of tolls on the Delaware Turnpike; and to impose tolls on such other highways with the prior approval of the General Assembly;

(7) To do any and all things necessary or appropriate to carry out the purposes of this chapter and the exercise of the powers,

functions and duties granted to the Authority by this chapter.

(66 Del. Laws, c. 87, § 1; 66 Del. Laws, c. 360, § 49; 75 Del. Laws, c. 98, § 119.)

§ 1404 Establishment of Transportation Trust Fund.

There is hereby established in the Authority a fund to be known as the "Transportation Trust Fund." Except as otherwise provided by contract between the Authority and the holders of bonds of the Authority and excluding the receipts and revenues of subsidiary corporations of the Authority, all taxes, fees, charges, tolls, reimbursements and revenues collected or received by or paid or appropriated to the Authority and any amounts received from the Corps of Engineers in connection with the construction or reconstruction of a bridge in the area of the St. Georges Bridge shall be credited to the Transportation Trust Fund. In addition, the proceeds of bonds issued by the Authority and supported by a pledge or other interest in the money in the Transportation Trust Fund shall be held in or for the Transportation Trust Fund. The Transportation Trust Fund shall be deemed to be a special fund. There may be established in the Transportation Trust Fund 1 or more accounts to which shall be credited and from which there shall be paid the taxes, fees, charges, tolls and revenues credited to the Transportation Trust Fund. The Authority may transfer money from the Transportation Trust Fund to a special fund of the State to meet obligations of the State payable from the Transportation Trust Fund. No such money credited to the Transportation Trust Fund, or any account in the Transportation Trust Fund, shall be available to pay any bonds issued by the Authority pursuant to any trust agreement or other contract entered into by the Authority prior to the creation of the Transportation Trust Fund unless the Authority specifically agrees to the contrary after the adoption of this chapter. Nothing in this chapter shall adversely affect the security of any bonds issued by the Authority pursuant to a trust agreement dated as of September 1, 1979, as amended, between the Authority and the trustee for holders of bonds secured thereunder or pursuant to a trust agreement dated as of September 1, 1981, as amended, between the Authority and the trustee for holders of bonds secured thereunder. Notwithstanding other provisions of the Delaware Code, transfers from the Transportation Trust Fund to other public agencies for projects approved in the annual Capital Improvements Act shall not require the approval of the Budget Commission or be subject to Chapter 69 of Title 29. Projects for which Transportation Trust Fund appropriations are provided in the Suburban Street, Drainage and Miscellaneous funding category in the annual Capital Improvements Act shall, whenever the prevailing wage provisions of § 6960 of Title 29 would otherwise be applicable, be subject to the "highway construction" rate developed through the regulatory process implementing § 6960 of Title 29.

Subject to appropriations in the annual Capital Improvements Acts, the Department shall create a special account in the Fund for the purposes of capitalizing the Small Retail Gasoline Station Assistance Loan Fund ("Small Station Fund") established in Chapter 74 of Title 7. This special account shall be subject to the following terms and conditions:

(1) The total authorization in any fiscal year for this Small Station Fund shall not exceed $4 million, including administrative expenses;

(2) The total authorization of moneys for the Small Station Fund shall not exceed $12 million;

(3) All loan repayments under this program shall immediately upon receipt be deposited into accounts of the Transportation Trust Fund; and

(4) A memorandum of understanding shall be executed between the Secretary of the Department of Transportation and the Secretary of the Department of Natural Resources and Environmental Control, which shall include the following:

a. An agreement as to eligibility requirements;

b. A cap on administrative expenses;

c. Provisions for auditing the Small Station Fund Program; and

d. A requirement for a Quarterly Activity Report on the administration of the Small Station Fund Program, showing the loans made, amounts repaid and an itemization of administrative expenses.

(66 Del. Laws, c. 87, § 1; 66 Del. Laws, c. 360, § 49; 68 Del. Laws, c. 156, § 48(f); 69 Del. Laws, c. 77, § 72; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 305, §§ 2, 3; 81 Del. Laws, c. 49, § 4; 81 Del. Laws, c. 374, § 33.)

§ 1405 Bonds secured by Transportation Trust Fund revenues.

(a) The Authority shall have the power and is hereby authorized after July 15, 1987, and from time to time thereafter, to issue its bonds, in principal amounts as in the opinion of the Authority shall be necessary to provide for any of its corporate purposes, including the payment, funding or refunding of the principal of, or interest or redemption premiums on, any bonds issued by the Authority whether the bonds or interest to be funded or refunded have or have not become due; and to provide for the security thereof and for the establishment or increase of reserves to secure or to pay the bonds or interest thereon and all other reserves and all costs or expenses of the Authority incident to and necessary or convenient to carry out its corporate purposes and powers; and in addition to its bonds, the Authority shall have the power to issue subordinated indebtedness which shall be subordinate in lien to the lien of any or all of its bonds. No resolution or other action of the Authority providing for the issuance of bonds, refunding bonds or other obligations shall be adopted or otherwise made effective by the Authority without the prior approval in writing of the bond-issuing officer of the State.

(b) Except as may be otherwise expressly provided by the Authority, issues of bonds of the Authority may be general obligations payable out of any revenues or funds of the Authority, or may be limited obligations, subject to any agreements with the holders of particular bonds and payable out of particular revenues or funds of the Authority. The Authority may provide the security and payment provisions for its bonds as it may determine, including (without limiting the generality of the foregoing) bonds as to which the principal and interest are payable from and secured by all or any portion of the revenues of and payments to the Authority and other moneys or funds

as the Authority shall determine. In addition, the Authority may, in anticipation of the issuance of the bonds or the receipts of appropriations, grants, reimbursements or other funds, including without limitation grants from the federal government for federal aid highways or public transportation systems, issue notes the principal of or interest on which, or both, shall be payable out of the proceeds of notes, bonds or other obligations of the Authority or appropriations, grants, reimbursements or other funds or revenues of the Authority. The Authority may also enter into bank loan agreements, lines of credit and other security agreements and obtain for or on its behalf letters of credit in each case for the purpose of securing its bonds or to provide direct payment of any costs which the Authority is authorized to pay by this chapter and to secure repayment of any borrowings under the loan agreement, line of credit, letter of credit or other security agreement by its bonds or the proceeds thereof or by any or all of the revenues of and payments to the Authority or by any appropriation, grant or reimbursement to be received by the Authority and other moneys or funds as the Authority shall determine.

(c) Whether or not the bonds are of the form and character as to be negotiable instruments under the terms of the Delaware Uniform Commercial Code, the bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the Delaware Uniform Commercial Code.

(d) Bonds of the Authority shall be authorized by a resolution or resolutions of the Authority and may be issued in 1 or more series and shall bear the date, or dates, mature at the time or times, bear interest at the rate or rates of interest per annum, be in the denomination or denominations, be in the form, carry the conversion or registration privileges, have the rank or priority, be executed in the manner, be payable from the sources, in the medium of payment, at the place or places within or without the State, and be subject to the terms of redemption (with or without premium) as the resolution or resolutions may provide. Bonds may be further secured by a trust indenture between the Authority and a corporate trustee within or without the State. All other obligations of the Authority shall be authorized by resolution containing terms and conditions as the Authority shall determine.

(e) Bonds of the Authority may be sold at a price or prices and in a manner as provided in § 1311 of this title.

(f) Bonds may be issued and other obligations incurred under this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceeding or the happening of any other conditions or things other than those proceedings, conditions or things which are specifically required by this chapter.

(g) Bonds of the Authority issued or incurred under this chapter shall not be in any way a debt or liability of the State or of any political subdivision thereof other than the Authority and shall not create or constitute any indebtedness, liability or obligation of the State or of any political subdivision or be or constitute a pledge of the faith and credit of the State or of any political subdivision, but all bonds unless funded or refunded by bonds of the Authority shall be payable solely from revenues or funds pledged or available for their payment as authorized in this chapter. Each bond shall contain on its face a statement to the effect that the Authority is obligated to pay the principal thereof, premium, if any, or the interest thereon only from revenues or funds of the Authority made available for that purpose and that neither the State nor any political subdivision is obligated to pay the principal, premium, if any, or interest thereon and that neither the faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or interest on the bonds. For the purposes of this subsection, “political subdivision” does not include the Authority.

(h) All expenses incurred in carrying out this chapter shall be payable solely from revenues or funds provided or to be provided under or pursuant to this chapter and nothing in this chapter shall be construed to authorize the Authority to incur any indebtedness or liability on behalf of or payable by the State or any political subdivision thereof.

(i) Section 1312 of this title shall not apply to bonds of the Authority issued pursuant to this chapter. However, the Authority shall issue no bonds for any purpose unless the General Assembly by an act passed with the concurrence of three fourths of all the members elected to each House shall approve the purpose for which the bonds are issued and maximum amount of such bonds. No approval of the General Assembly shall be required:

(1) To refund bonds issued to fund the Delaware Turnpike with bonds the payment of principal and interest on which is to be met solely from tolls imposed on or revenues derived from the Delaware Turnpike;

(2) To refund bonds issued pursuant to this chapter provided that the present value of the aggregate principal and interest payments of the refunding bonds are less than the present value of the aggregate principal and interest payments on the bonds to be refunded; or

(3) To issue bonds to fund the costs of the Delaware Turnpike or any other toll road provided that such bonds are payable solely from the tolls imposed and other revenues derived therefrom or from the proceeds of such bonds.

(j) Bonds may be issued with interest thereon free from or subject to federal income taxation.

(66 Del. Laws, c. 87, § 1; 66 Del. Laws, c. 360, § 49.)

§ 1406 Covenants with holders of bonds.

In any resolution of the Authority authorizing or relating to the issuance of any bonds, or in any trust agreement securing the bonds, the Authority, in order to secure the payment of the bonds, and in addition to its other powers, shall have the power by provisions therein which shall constitute covenants by the Authority and contracts with the holders of the bonds:

(1) To pledge all or any part of its revenues or receipts to which its right then exists or may thereafter come into existence and other moneys, funds or contracts as the Authority shall determine and the moneys derived therefrom and the proceeds of any bonds;

(2) To covenant against pledging all or any part of its revenues or receipts or its agreements and the revenues derived thereunder or the proceeds thereof and other moneys or funds as the Authority shall determine and the moneys derived therefrom or against permitting or suffering any lien on any of the foregoing;

(3) To covenant with respect to limitations on any right to sell, lease or otherwise dispose of any property of any kind;

(4) To covenant as to any bonds, to be issued and the limitations thereof and the terms and conditions thereof and as to the custody, application, investment and disposition of the proceeds thereof;

(5) To covenant as to the issuance of additional bonds or as to limitations on the issuance of additional bonds and on the incurring of other debts by it;

(6) To covenant as to the payment of the principal or premium, if any, or interest on the bonds, as to the sources and methods of payment, as to the rank or priority of any bonds, with respect to any lien or security or as to the acceleration of the maturity of any bonds;

(7) To provide for the replacement of lost, stolen, destroyed or mutilated bonds;

(8) To covenant against extending the time for the payment of bonds or interest thereon;

(9) To covenant as to the redemption of bonds and privileges of exchange thereof for other bonds of the Authority;

(10) Subject to the rights and security interests of the holders from time to time of bonds theretofore or hereafter issued by the Authority, to covenant as to the enforcement of any term in any agreement, entered into pursuant to this chapter, to which the Authority is a party or an assignee, fixing amounts of funds to be paid over to and received by the Authority in each year or other period of time, including any term concerning the fixing of tolls and other charges on turnpikes as shall be necessary to provide the amounts of funds;

(11) To covenant to create or authorize the creation of special funds or moneys to be held in pledge or otherwise for payment or redemption of bond reserves or other purposes and as to the use, investment and disposition of the moneys held in the funds;

(12) To establish the procedure, if any, by which the terms of any contract or covenant with or for the benefit of the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which the consent may be given;

(13) To provide for the release of property, agreements or revenues and receipts from any pledge and to reserve rights and ownership in, or the right to dispose of, property which is subject to a pledge;

(14) To provide for the rights and liabilities, powers and duties arising upon the breach of any covenant, condition or obligation and to prescribe the events of default and the terms and conditions upon which any or all of the bonds of the Authority shall become or may be declared due and payable before maturity and the terms and conditions upon which any declaration and its consequences may be waived;

(15) To vest in a trustee or trustees within or without the State such property, rights, powers and duties in trust as the Authority may determine, and to limit the rights, duties and powers of such trustee;

(16) To execute all bills of sale, conveyances, deeds of trust and other instruments necessary or convenient in the exercise of its power or in the performance of its covenants or duties;

(17) To pay the costs or expenses incident to the enforcement of the bonds or of the resolution or of any covenant or agreement of the Authority with the holders of its bonds;

(18) To limit the rights of the holders of any bonds to enforce any pledge or covenant securing the bonds; and

(19) To make covenants, in addition to the covenants herein expressly authorized, of like or different character, and to make covenants to do or refrain from doing acts and things as may be necessary, or convenient and desirable, in order to better secure bonds or which in the absolute discretion of the Authority will tend to make bonds more marketable, notwithstanding that the covenants, acts or things may not be enumerated herein.

(66 Del. Laws, c. 87, § 1.)

§ 1407 Pledge of revenues.

In addition to the provisions of the 2nd paragraph of § 1317 of this title, which paragraph shall apply to bonds issued by the Authority under this chapter, it is hereby declared that neither the resolution nor any other instrument by which a pledge of revenues, moneys or funds is created need be filed or recorded except in the records of the Authority.

(66 Del. Laws, c. 87, § 1.)

§ 1408 Personal immunity.

Neither the Secretary nor any person executing bonds issued pursuant to this chapter shall be liable personally on the bonds, by reason of the issuance thereof.

(66 Del. Laws, c. 87, § 1.)

§ 1409 No alteration of rights.

The State does hereby pledge to and covenant and agree with the holders of any bonds issued or incurred pursuant to the authorization of this chapter that the State will not limit or alter the rights or powers hereby vested in the Authority in any way that would jeopardize the interest of the holders or inhibit or prevent performance or fulfillment by the Authority of the terms of any agreement made with the holders of the bonds or prevent the Authority from obtaining sufficient revenues which, together with other available funds, shall be sufficient to meet all expenses of the Authority and fulfill the terms of any agreement made with the holders of the bonds together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the holders, or from receiving payment of funds as provided in any agreement, until the bonds together with

interest and premium, if any, thereon, are fully met and discharged or provided for. The failure of the State to appropriate moneys for any purpose of this chapter shall not be deemed or construed to be a violation of this section. However, the laws authorizing the imposition of taxes or fees, the pledge of those taxes and fees to the Authority and the transfer of those taxes and fees to the Authority shall not be repealed and those taxes and fees shall not be reduced or adversely altered until bonds secured by such taxes or fees are paid or provisions for their payment is made. The State shall have no obligation to increase such taxes or fees to meet payments of principal, premium, if any, or interest on any bonds. Neither the use of the Authority's assets for the purposes of this chapter nor the existence of the Authority shall be terminated for any reason prior to the time the principal of, premium, if any, and interest on any bonds of the Authority have been paid or adequate provision for their payment has been made notwithstanding any provision to the contrary if any, in Chapter 102 of Title 29.

(66 Del. Laws, c. 87, § 1; 66 Del. Laws, c. 360, § 49; 67 Del. Laws, c. 285, § 56(g).)

§ 1410 Bonds as legal investments.

The State and all public officers, governmental units and agencies thereof, all banks, trust companies, savings banks and institutions, building and loan associations, savings 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 executors, administrators, guardians, trustees and other fiduciaries, may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds issued pursuant to this chapter, and the bonds shall be authorized security for any and all public deposits.

(66 Del. Laws, c. 87, § 1.)

§ 1411 Property exempt from taxation.

All property of the Authority is declared to be public property devoted to an essential public and governmental function and purpose and shall be exempt from all taxes and special assessments of the State or any political subdivision. All bonds issued pursuant to this chapter are hereby declared to be issued by a body corporate and politic of the State and for an essential public and governmental purpose and the bonds, and the interest thereon and the income therefrom, whether or not the interest on the bonds is subject to federal income taxation, and all funds, revenues, income and other moneys received or to be received by the Authority and pledged or available to pay or secure the payment of the bonds, or interest thereon, shall at all times be exempt from taxation by the State, or any political subdivision, except for transfer, inheritance and estate taxes.

(66 Del. Laws, c. 87, § 1.)

§ 1412 Applicable provisions of Chapter 13.

All provisions of Chapter 13 of this title, not inconsistent with the provisions of this chapter, unless excepted herein, shall be applicable to the Authority and its bonds issued pursuant to this chapter, including, without limitation, §§ 1303, 1305, 1309 and 1320-1328, inclusive, of this title.

(66 Del. Laws, c. 87, § 1.)

§ 1413 Transfers from road improvement fund.

Notwithstanding § 1310(c)(11) of this title, available money in the road improvement fund shall be transferred periodically to the Transportation Trust Fund at the times and in the manner such money was previously transferred to a special fund of the State.

(66 Del. Laws, c. 87, § 1.)

§ 1414 Repeal of §§ 1310 and 1312.

(a) (1) Notwithstanding § 1310(b)(3) of this title, at such time as there are no longer outstanding any bonds secured by the trust agreement dated as of September 1, 1979, between the Authority and the trustee for the holders of said bonds or provisions for the payment thereof have been made in accordance with the terms of said trust agreement, (i) the motor fuel taxes and motor carrier registration fees remaining after said taxes and fees have been applied as required by the trust agreement dated as of September 1, 1981, between the Authority and the trustee for the holders of bonds secured by said trust agreement shall be paid to the Transportation Trust Fund to be applied by the Authority as provided by this chapter and shall thereupon, without the necessity of any further action by the General Assembly, be irrevocably and automatically pledged and assigned and continuously appropriated to the Transportation Trust Fund; (ii) the provisions of § 1310 of this title shall no longer be of any force or effect; and (iii) all revenues derived from or with respect to the operations of the Delaware Turnpike shall be deposited in the Transportation Trust Fund.

(2) Notwithstanding § 1310 of this title, at such time as there are no longer outstanding any bonds secured by the trust agreement dated as of September 1, 1979, or the trust agreement dated as of September 1, 1981, both between the Authority and the trustee for the holders of said bonds, or provisions for the payment thereof have been made in accordance with the respective terms of said trust agreements, motor fuel taxes and motor carrier registration fees shall be paid to the Transportation Trust Fund to be applied by the Authority as provided in this chapter and shall thereupon without the necessity of any further action by the General Assembly, be irrevocably and automatically pledged and assigned and continuously appropriated to the Transportation Trust Fund.

(b) The State hereby irrevocably pledges and assigns and continuously appropriates the proceeds derived from the motor vehicle registration fee imposed by the State pursuant to Chapter 21 of Title 21, as amended from time to time, the motor vehicle document fee imposed by the State pursuant to Chapter 30 of Title 30, as amended from time to time, the motor fuel taxes imposed by the State pursuant to Chapter 51 of Title 30, as amended from time to time, the motor carriers road use taxes and registration fees imposed by the State

pursuant to Chapter 52 of Title 30, as amended from time to time, and the moneys transferred or disbursed to the Transportation Trust Fund pursuant to § 307 of Title 21, as amended from time to time, to the Transportation Trust Fund, subject to the rights of holders of outstanding bonds of the Authority issued pursuant to the Delaware Transportation Authority Act.

(c) At the time § 1310 of this title is repealed and is no longer of any force or effect, § 1312 of this title shall be automatically repealed without any further act of the General Assembly.

(d) Notwithstanding the repeal of said § 1310 of this title, the Authority shall retain the power, granted in said § 1310 of this title, in addition to the general grant of powers contained in § 1309 of this title to make and enforce such rules and regulations and establish, fix and revise from time to time, and charge and collect (or authorize by contract, franchise, lease or otherwise, the establishment, fixing, revising, charging and collection of) such charges, fares, fees, rates, rentals and tolls for the use of any transportation facility, or parts or sections thereof, operated by the Authority, as the Authority may deem necessary, proper, desirable or reasonable, subject to this chapter. The Authority may contract with any person desiring the use of any part of such transportation facilities, including rights-of-way for placing thereon, telephone, telegraph, electric light or power lines, gas stations, garages, restaurants and advertisements or for any other purposes, and fix the terms, conditions, charges, fares, fees, rates, rentals and tolls for such use. The Authority's power to review and revise any tolls, fares, rents, rates and other charges shall not be subject to supervision or regulation by any department, division, commission, board, council, bureau or agency of the State or any political subdivision thereof. The Authority will consider the purposes of this chapter when establishing such charges, fares, fees, rates, rentals and tolls.

(66 Del. Laws, c. 87, § 1; 66 Del. Laws, c. 360, § 49; 67 Del. Laws, c. 46, § 53; 67 Del. Laws, c. 285, § 56(h).)

§ 1415 Transfers of motor fuel tax revenues.

Notwithstanding § 1310(c)(8) of this title, the Authority shall not transfer or disburse available money in the Motor Fuel Tax Reimbursement Fund to the General Fund of the State. The Authority shall reimburse the State from the Transportation Trust Fund an amount equal to the refunds payable by the State on motor fuel taxes pursuant to §§ 5120 and 5214 of Title 30, as amended.

(66 Del. Laws, c. 87, § 1; 66 Del. Laws, c. 360, § 49; 67 Del. Laws, c. 46, § 52.)

§ 1416 Transfer of motor carrier registration fees.

Notwithstanding § 1310(c)(9) of this title, the Authority shall not transfer available money in the motor carrier registration reimbursement fund to the General Fund of the State and shall not otherwise be required to reimburse the State for motor carrier registration fees.

(66 Del. Laws, c. 87, § 1; 66 Del. Laws, c. 360, § 49.)

§ 1417 Budget of Authority.

The expenditures of the Authority from the Transportation Trust Fund, including expenditures required to be made by resolutions or trust agreements made or to be made by the Authority, shall be approved annually by the General Assembly. The obligations under any such resolution or trust agreement shall be met solely from motor fuel taxes, motor vehicle document fees, motor vehicle registration fees, motor carrier road use taxes and registration fees, the moneys transferred or disbursed to the Transportation Trust Fund under § 307 of Title 21, receipts and revenues derived from the Delaware Turnpike and any other receipts and revenues of the Authority pledged and assigned to the holders of bonds of the Authority. The budget for capital and operating expenditures of the Authority payable from the Transportation Trust Fund shall be presented annually by the Authority to the General Assembly. If the General Assembly does not approve the operating budget of the Authority before July 1 for the year such budget is submitted, the operating budget, as submitted to the General Assembly, shall be deemed adopted by the Authority until such time as the budget is approved by the General Assembly, provided that the operating expenditures of the Authority shall not exceed similar expenditures of the Authority for the year before the budget year by more than a factor equal to the Consumer Price Index as defined in § 1320(f) of this title. Any obligations incurred by the Authority under an operating budget deemed adopted by the Authority shall be binding on the Authority. Failure by the General Assembly to approve the capital or operating budget of the Authority shall not affect or impair the obligation of the Authority to meet its obligations to holders of outstanding bonds. The provisions of Chapter 84 of Title 29, including the establishment of priorities for spending state funds, shall apply to available money and bonding capacity in the Transportation Trust Fund for highway projects. The Authority's annual budget as prepared and approved shall reflect that a significant objective of this chapter is to achieve adequate funding and predictable implementation of the Department of Transportation's Capital Transportation Program and other needs of the transportation system.

(66 Del. Laws, c. 87, § 1; 66 Del. Laws, c. 360, § 49; 67 Del. Laws, c. 46, § 54; 67 Del. Laws, c. 285, § 56(i); 83 Del. Laws, c. 37, § 31.)

§ 1418 Deauthorization of funds.

Any funds authorized in a bond and capital improvements act for the Community Transportation Fund but not designated to a specific transportation project by June 30 of the third fiscal year of the appropriation shall be deauthorized; however, no such funds shall be deauthorized prior to July 1, 2005.

(69 Del. Laws, c. 77, § 62; 73 Del. Laws, c. 95, § 84(e)(1); 73 Del. Laws, c. 350, § 85.)

Part II
Transportation Department
Chapter 15
Pedestrian Council

§ 1501 Purpose.

The Pedestrian Council ("Council") is established to assist in the goal of eliminating pedestrian fatalities and make walking a safe, convenient, efficient, and comfortable means of transportation in Delaware.

(84 Del. Laws, c. 58, § 1.)

§ 1502 Appointment; composition; qualifications; term of office; removal; compensation.

(a) The Council is composed of 17 members, as follows:

(1) The Secretary of the Department of Transportation.

(2) The Secretary of the Department of Safety and Homeland Security.

(3) The chair of the State Council for Persons with Disabilities.

(4) The Americans with Disabilities Act Title II [42 U.S.C. § 12131 et seq.] coordinator with the Department of Transportation.

(5) The Americans with Disabilities Act Title II [42 U.S.C. § 12131 et seq.] coordinator with the Department of State.

(6) The chief executive officer of the Delaware Transit Organization.

(7) The general manager of the Department of Land Use of New Castle County.

(8) The director of the Department of Land Use and Planning for the City of Wilmington.

(9) The director of the Department of Planning Services for Kent County.

(10) The director of the Sussex County Planning & Zoning Office.

(11) The executive director of the League of Local Governments.

(12) The Governor shall appoint 6 Delaware citizens with knowledge of pedestrian matters and comprised as follows:

a. A resident of New Castle County.

b. A resident of Kent County.

c. A resident of Sussex County.

d. Three who reside anywhere in Delaware and have a physical disability, developmental disability, or visual impairment.

(b) (1) A member who serves on the Council by virtue of position may appoint a designee to serve in the member's stead and at the member's pleasure.

(2) At least 1 of the members appointed under paragraph (a)(12) of this section must represent the business community of this State.

(3) A member appointed under paragraph (a)(12) of this section serves for a term of 2 years. The Governor may appoint a member under paragraph (a)(12) of this section for a term of less than 2 years to ensure that the members' terms expire on a staggered basis.

(4) A member appointed under paragraph (a)(12) of this section serves until a replacement is appointed under the same process as the member's appointment.

(5) The Governor may remove a member under paragraph (a)(12) of this section for gross inefficiency, misfeasance, nonfeasance, malfeasance, or neglect of duty in office. A member is deemed in neglect of duty if the member is absent from 3 consecutive, regular council meetings without good cause or fails to attend at least 50% of all council meetings in a calendar year. The Governor may consider the member to have resigned and may accept the member's resignation.

(c) A council member receives no compensation but may be reimbursed the member's actual and necessary expenses incurred in the performance of the member's official duties.

(84 Del. Laws, c. 58, § 1.)

§ 1503 Quorum; officers; meetings; staffing and fiscal support.

(a) The number of members who must be present at a council meeting in order to have a quorum and conduct official business is the majority of members. Counting for quorum does not include member positions that are vacant.

(b) The Council shall elect a chair from among its members. A chair serves for a 2-year term.

(c) The Council shall meet at least 4 times per calendar year. The Council shall comply with the Freedom of Information Act (Chapter 100 of Title 29) and post each meeting agenda, each meeting minutes, and other meeting materials on the State Public Meeting Calendar.

(d) The Department of Transportation, through the Planning Division, shall provide reasonable staff and fiscal support to assist the Council in performing its duties under this chapter.

(84 Del. Laws, c. 58, § 1.)

§ 1504 Powers; duties.

(a) The Council shall do all of the following:

(1) Advise the Secretary of the Department of Transportation and the Commissioner of the Department of Safety and Homeland

Security on the following issues:

a. Identifying gaps in the system of pedestrian paths and sidewalks in an effort to create a system of sidewalks and pathways that is continuous and interconnected.

b. Designing standards for crosswalks, sidewalks, and pathways, ensuring compliance with the Americans with Disabilities Act of 1990, as amended, [42 U.S.C. § 12101 et seq.] and considering the practicality of completing projects using the standards.

c. Implementing the Department of Transportation's Sidewalk and Multi-Use Path Maintenance Policy.

d. Reviewing of traffic rules to help support a safe pedestrian environment.

e. Accessibility and connectivity in an effort to make transit a more viable option for all Delaware residents.

f. Developing strategies for pedestrian safety education and awareness.

(2) Assist the Department of Transportation with the periodic reevaluation and implementation of the Department of Transportation's Statewide Pedestrian Action Plan and make recommendations regarding the prioritization of pedestrian infrastructure improvements, especially within Level 1 and Level 2 Investment Areas, as the areas are determined under § 9101 of Title 29.

(3) Provide advice or recommendations to other appropriate agencies or municipalities.

(4) Assist with annual pedestrian safety events and outreach initiatives.

(5) Review facts and circumstances of Delaware pedestrian fatalities on a quarterly basis. The review should identify trends, if any, and make recommendations to improve pedestrian safety.

(6) Submit an annual report of the Council's activities and recommendations to the Governor, General Assembly, and the Director and the Librarian of the Division of Legislative Services. The Council shall also provide copies of the annual report to each affected state agency or municipality and make the report available on the Council's website.

(b) The Council may form a subcommittee or multiple subcommittees to assist in completion of the Council's duties under this chapter. A subcommittee may include members of the public or from another state agency or nongovernmental organization relating to relevant areas of expertise. A subcommittee member is not required to be a council member.

(84 Del. Laws, c. 58, § 1; 84 Del. Laws, c. 255, § 2.)

Part II
Transportation Department
Chapter 16
[Reserved.]

Part II
Transportation Department
Chapter 17
[Reserved.]

Part II
Transportation Department
Chapter 18
PUBLIC CARRIER

§ 1801 Definitions.

As used in this chapter:

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

(2) "Secretary" means the Secretary of the Department of Transportation.

(3) "Authority" shall mean the Transportation Authority.

(4) [Repealed.]

(5) "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, taxicab, limousine, motor bus or electric trackless trolley coach service, system, plan or equipment for public use other than transportation authorities created pursuant to Chapter 13 of this title.

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

(7) "Limousine service" means the providing of transportation of passengers for hire with a driver by a limousine as defined in subdivision (13) of this section where at least 1 of the 2 termini is fixed.

(8) "Intrastate public carrier business" means all that portion of the business of a public carrier which is carried on in this State and over which the Department has jurisdiction under this chapter.

(9) "Gross revenue" means all revenue which (i) is collected by a public carrier subject to regulation by the Department; and (ii) is derived from the intrastate public carrier business of such a carrier, except, however, that "gross revenue" of a public carrier operating by leasing all or part of its vehicles to nonemployee independent contractor drivers as authorized under this chapter shall mean as to such leased vehicles all revenue which (i) is collected from the nonemployee independent contractor lessees operating vehicles under such public carrier's certificate of public convenience and necessity; and (ii) is derived from the intrastate public carrier business of such a carrier.

(10) "Charter bus" means a motor vehicle having a passenger capacity of 16 persons or more, including the driver, which bus is used exclusively for hire or lease.

(11) "Public use" means service provided in exchange for a fee or charge, regardless of whether the operator intends to make a profit, offered by any railroad, street railway, traction railway, taxicab, motor bus, electric trolley coach or limousine service, system or plant by any individual or group for any purpose except: (i) transportation to and from any school or school-sponsored event when such transportation is under the regulation of the Department of Education; and (ii) transportation to and from nonschool related events by school bus operators under the regulation of the Department of Education, where such nonschool related transportation is a de minimis portion of the carrier's operation; and (iii) transportation to and from a church, synagogue or other place of worship; and (iv) shuttle-type transportation provided by business establishments without charge to customers of the businesses offering such shuttle transportation between fixed termini.

(12) "Taxicab" means any self-propelled motor vehicle equipped with a taxi meter having a passenger capacity of up to 7 persons, including the driver, engaged in the transportation for hire of persons and their accompanying property, or of small packages on isolated occasions and not as part of regular operations, over irregular routes between termini which are not fixed; provided, however, that the utilization of taxicab stands or holding points shall not constitute fixed termini, and excluding, however, carpools, vanpools and public agency vehicles not operated as a commercial venture, and ambulances, vehicles used exclusively for the transportation of decedents and persons participating in funeral services, vehicles used solely to provide free transportation services for customers of the business establishment operating said vehicles, and rental or leased vehicles which rental or lease does not include a driver; provided, however, that no motor vehicle excluded under this definition shall be used on a for-hire basis with a driver except as authorized by this chapter.

(13) "Limousine" is a self-propelled motor vehicle having a passenger capacity of 15 persons or less, including the driver, engaged in the transportation for hire of persons and their accompanying property over regular or irregular routes between 2 termini at least 1 of which is fixed and which motor vehicle is not equipped with a taxi meter as a means of computing the rate, fare or compensation to be charged for such transportation, but excluding, however, carpools, vanpools and public agency vehicles not operated as a commercial venture, and ambulances, vehicles used exclusively for the transportation of decedents and persons participating in funeral services, vehicles used solely to provide free transportation services for customers of the business establishment operating said vehicles and rental or leased vehicles which rental or lease does not include a driver; provided, however, that no motor vehicle excluded under this definition shall be used on a for-hire basis with a driver except as authorized by this chapter.

(14) “Council” means the Council on Transportation.

(15) “Fixed-route carrier” means a transportation provider which uses a self-propelled vehicle having a passenger capacity exclusive of the driver of 10 persons or more and which transports persons and their property over regular routes between termini that are fixed and cannot be altered without the advance, written approval of the Authority.

(16) “Stretcher van” means a vehicle staffed by both a driver and attendant, which is specifically designed and equipped to provide nonemergency transportation of individuals on a stretcher. A stretcher van is used for an individual who:

a. Needs routine transportation to or from a nonemergency medical appointment or service;

b. Is convalescent or otherwise nonambulatory and cannot use a wheelchair; and

c. Does not require medical monitoring, medical aid, medical care, or medical treatment during transport.

(60 Del. Laws, c. 503, § 11; 62 Del. Laws, c. 125, §§ 1-4; 68 Del. Laws, c. 255, §§ 1, 3-7; 69 Del. Laws, c. 435, § 34; 73 Del. Laws, c. 65, § 4; 77 Del. Laws, c. 141, §§ 1-3; 78 Del. Laws, c. 93, § 1; 80 Del. Laws, c. 68, § 1.)

§ 1802 Regulation of public carriers.

(a) The Department shall make and impose charges and fees for filing, copying, inspection and other services rendered pursuant to the powers granted by this chapter or in accordance with such rules and regulations as it may from time to time adopt.

(b) The Department shall, with the approval of the Secretary, prepare proposed rules and regulations governing the responsibilities of the public carriers it regulates. Adoption of these rules and regulations shall be as provided in subchapter II, Chapter 101 of Title 29. The rules and regulations as adopted, and as they may be from time to time amended by the Department, shall have the effect of law and shall remain in power and force until the same are amended or repealed by the Department.

(c) (1) The Department shall grant, upon an applicant’s proof of qualification as set forth in subsection (e) of this section, a certificate of public convenience and necessity. Such certificate shall authorize the certificate holder to operate motor vehicles for hire in public transportation. The certificate shall authorize the number of vehicles the certificate holder may operate, which number may be increased by subsequent application, in the Department’s discretion, and may contain restrictions or conditions related to such items as, but not limited to, geographic areas of operation, bonding, safety and maintenance, insurance, quality control and unfair competition; provided, however, that each holder of any such certificate, or of a successor “grandfather” certificate of public convenience and necessity obtained under subsection (c)(2) of this section, may not be limited to operate fewer vehicles than were in such holder’s authorized fleet of taxicab vehicles on December 31, 1991.

(2) The rules and regulations adopted pursuant to subsection (b) of this section shall provide that a certificate holder may request that the Department divide the certificate into as many certificates of public convenience and necessity as there are authorized vehicles. The certificate resulting from a division of the original certificate shall authorize the operation of only 1 vehicle per certificate. Each certificate of public convenience and necessity shall be a franchise and create a proprietary interest owned by the certificate holder, subject, however, to suspension or revocation by the Department upon a showing beyond a reasonable doubt that the certificate holder is knowingly operating or knowingly permitting operation of a vehicle, or the business authorized by the certificate, in disregard or violation of state law, the rules and regulations and/or applicable practices and orders of the Department.

(3) The rules and regulations adopted pursuant to subsection (b) of this section shall provide that the Department shall issue to each certificate holder a medallion or other identifying insignia, and that this medallion or other identifying insignia shall be physically affixed on the front quarter panels above the height of the front tires of the taxicab vehicle operated under that certificate. The rules and regulations also shall provide that the certificate holder may sell and assign each certificate, vehicle, medallion or other identifying insignia to another or others to operate in the taxicab business under such sold or assigned certificate. If the certificate holder replaces the vehicle identified by the medallion or insignia, the certificate holder, with the approval of the Department, shall affix the medallion or other identifying insignia to the vehicle replacing the former vehicle.

(4) No person who purchases a certificate of public convenience and necessity from a certificate holder as authorized by paragraph (3) of this subsection may commence operations as a public carrier without having first obtained from the Department a certificate of compliance. The Department will issue a certificate of compliance when the purchaser of a certificate of public convenience and necessity provides evidence to the Department to prove by a preponderance of the evidence that the purchaser has complied with subsection (e)(1)b., c. and d. of this section and is of good moral character as specified in subsection (e)(1) of this section.

(5) By its rules and practices, or by order, the Department shall provide for authority to management, maintenance and dispatching companies and organizations (i) to manage parts or all of the operations and businesses of certificated taxicab companies and operators, (ii) to maintain and repair taxicab vehicles for such companies and operators, and/or (iii) to provide radio dispatching of taxicab vehicles for such certificated taxicab companies and operators, pursuant to contractual arrangements made between such management, maintenance and dispatching companies and organizations, on the one hand, and, on the other, such certificated taxicab companies and operators. The Department shall have power to void any contracts and services of any such management, maintenance and dispatching company or organization upon proper and adequate proof of knowing and repeated noncompliance by such company with state law and/or the rules, regulations, practices and orders of the Department.

(d) The Department may, by its rules and regulations, authorize a holder of a certificate of public convenience and necessity to operate the public carrier business thereunder with vehicles leased by such holder to nonemployee independent contractor drivers who will operate such vehicles as such drivers under the authorization of said certificate of public convenience and necessity; provided, however, that the

holder of the certificate of public convenience and necessity shall remain responsible for the proper operation and maintenance of said vehicles in said public carrier business and for the compliance with all laws, rules, regulations, practices and applicable orders; and provided further, that such nonemployee independent contractor drivers do not thereby become public carriers and do not thereby have any rights under this title as a public carrier. The Department may, by its rules and regulations, authorize a system of restricted certification where deemed to be appropriate and only in accordance with such terms and conditions as the Department shall determine. The Department shall have the power to void any leases and/or suspend or revoke the certificate of public convenience and necessity of any holder thereof upon proper and adequate proof of knowing and repeated noncompliance by such certificate holder or its lessees with such laws, rules, regulations, practices and orders.

(e) The Department may issue a certificate of public convenience and necessity upon satisfaction of the following terms and conditions and such other terms and conditions imposed by the Department:

(1) No public carrier shall commence any new operations, or continue any existing operations, without having first obtained from the Department a certificate of public convenience and necessity and having paid the registration fee therefor. Any public carrier which holds a certificate of public convenience and necessity issued by the Department on May 21, 1992 shall be deemed to have an existing certificate of public convenience and necessity as contemplated herein and may continue such operations authorized by the existing certificate of public convenience and necessity. The Department may, after notice and a hearing, impose such terms and conditions upon the certificate as may be required by the public convenience and necessity. The application for a certificate of public convenience and necessity shall be verified and contain a certification by the applicant that notice of the application has been sent to existing public carriers. In addition, the applicant shall be of good moral character, as shall be evidenced by exhibiting compliance with all applicable laws and regulations, and shall not have been convicted of a felonious or infamous crime involving fraud or deceit. The Department shall require the applicant for a certificate of public convenience and necessity to prove by a preponderance of the evidence the following:

a. That the proposed operations will serve a useful public purpose, a useful public necessity and a useful public convenience responsive to a public demand.

b. That the applicant, as to its proposed service and/or operations, has sufficient financial ability to compensate members of the public for injuries to person or property which they may sustain from acts or failures to act of the public carrier. To this end, the Department may require that an applicant post a bond to secure its performance for the first 2 years of its operation in this State.

c. That, as to the proposed service and/or operations, the applicant has complied with all applicable motor vehicle laws of the State, including, but not limited to, subchapter VI of Chapter 21 of Title 21, as the same may be amended and that the applicant will otherwise ensure that its vehicles are safely operated and maintained.

d. That, as to the proposed service and/or operations, the applicant is covered by and with a public liability and property damage policy or policies issued by a company licensed to conduct insurance business in the State with coverages in the amounts specified in this section.

(2) If the Department finds that the applicant has proven by a preponderance of the evidence subparagraphs a. through d. of paragraph (1) of this subsection, a certificate of public convenience and necessity shall be issued, unless an existing public carrier or a member of the public can prove by a preponderance of evidence that the applicant's operation will have a significant adverse impact on the public health and safety or an adverse impact on existing carriers such as to impair their ability to serve the public. For the purposes of this section a preponderance of the evidence means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it. The burden of proof of significant adverse impact is on the intervenor.

(3) Any public carrier operating without a certificate of public convenience shall, upon such a finding by the Department, be liable for the payment of a penalty in an amount not to exceed $500 per day of operation for the 1st such finding, and not to exceed $1,000 per day for the 2nd or subsequent such findings. An action alleging failure to comply with the provisions of this section shall include an action alleging a continuing offense and the penalty contemplated herein shall be assessed for each day of operations in which a violation is proven.

(f) Whenever the Department, pursuant to its duties under this chapter, shall investigate the operations, services, rates, charges, accounting records or practices of any public carrier, including a public carrier operating without having received a certificate of public convenience and necessity, and shall hold a hearing in connection therewith, such public carrier shall be charged with and pay such portion of the expenses of the Department, and the compensation and expenses of its agents, representatives, consultants and employees as is reasonably attributable to such investigation, provided that notice of the intent to so charge the public carrier shall be given to the public carrier as soon as the Department makes such intent. This provision shall not apply to the compensation of the full-time employees of the Department. The Department shall have the power to subpoena such records and witnesses as it may require to carry on an investigation pursuant to this chapter.

(g) In order to maintain and foster the effective regulation of public carriers under this title, public carriers subject to regulation of the Department shall bear the expense of regulation by means of an assessment measured by the annual gross revenue of such public carriers. This assessment shall be in addition to all other fees and charges imposed by the Department pursuant to this title. Such assessment shall be in the amount equal to the product of .004 (4 mills) multiplied by the public carrier's gross operating revenue for the applicable calendar year for which the assessment is made. Whenever a public carrier commences operations on a date other than January 1, so that it has not

operated for a full calendar year prior to the date its assessment is calculated, such carrier's assessment shall be prorated, based on the portion of the fiscal year during which the carrier operated.

(h) On or before April 1 of each year, each public carrier subject to this title shall file with the Department an annual gross revenue return. The annual returns shall be completed on a calendar year basis. Forms for such returns and amended returns shall be devised and supplied by the Department.

(i) All returns and the accompanying fees submitted to the Department by a public carrier, as provided in this section, shall be sworn to by an appropriate officer of the public carrier. The Department may audit each such return submitted and may take such measures as are necessary to ascertain the correctness of the returns submitted, and to require the correction of incorrect returns. All returns will be used for the regulatory purposes set out in this section, and shall not be open to public inspection under federal or state freedom of information statutes and shall be precluded from discovery or inspection as a privileged business record, except as otherwise provided by law. In default of compliance with this section, the public carrier shall be subject to the penalties provided in subsection (m) of this section.

(j) Each payment of the assessment imposed by this section is due by midnight of the date specified. Late filings will be subject to payment of a late penalty to be determined by the Department in its regulations. If a public carrier has failed to pay or has underpaid the proper amount, it shall pay interest to the Department of 1% of the amount due for each month or fraction thereof that such amount remains unpaid. The Department may enforce the collection of any delinquent payments by any legal action or other manner by which the collection of debts due the State may be enforced under the laws of this State.

(k) [Repealed.]

(*l*) All fees, licenses, assessments and other charges collected by the Department pursuant to this title shall be deposited in the Delaware Transportation Trust Fund to be used by the Department, subject to annual appropriations by the General Assembly for salaries and other routine operating expenses of the Department. All penalties or fines assessed and collected by the Department shall be deposited in said Fund to be used only for such purposes as described in this chapter.

(m) In default of compliance with this chapter, the rules and regulations, or any order of the Department when the same becomes effective, the public carrier shall be subject to (1) a penalty of up to $500 per day for every day during which such default continues, to be recovered in an action in the name of the State; and (2) the suspension, for a duration not to exceed 1 year, or revocation of the public carrier's certificate of public convenience and necessity. The observance of the rules and regulations and orders of the Department may be compelled by mandamus or injunction. Within 10 days of receiving notice that it is in default of compliance, the public carrier may appeal to the Department for a hearing. Should the Department, after such hearing, determine that the public carrier remains in default of compliance, the public carrier may appeal to the Superior Court. Such an appeal will be on the record only and shall be taken as provided in Rule 72 of the Superior Court Civil Rules. The burden of proof of any such appeal is on the public carrier.

(n) Whoever knowingly performs, commits or does, or participates in performing, committing or doing, or knowingly causes, participates or joins with others in causing any public carrier to do, perform or commit, or advises, solicits, persuades or knowingly instructs, directs or orders any officer, agent or employee of any public carrier to perform, commit or do any act or thing prohibited by this chapter shall be fined not more than $2,000, or imprisoned not more than 6 months, or both.

(o) The Department is authorized to hire sufficient staff to carry out this chapter subject only to the funding granted by the General Assembly.

(p) The Department shall prescribe by rule, regulation or order minimum amounts and kinds of insurance which shall be carried by public carriers, provided that no public carrier shall be permitted to operate as such unless and until each and all of its vehicles transporting passengers shall be covered by and with a public liability and property damage insurance policy or policies issued by an insurance company authorized to do business in the State in the following minimum amounts:

(1) For all public carriers except those covered under paragraph (p)(2) of this section, $1,000,000 for death, bodily injury, and property damage and $1,000,000 for uninsured and underinsured insurance.

(2) For every taxicab owner or business entity with a valid certificate of convenience and necessity that is operating no more than 2 registered taxicab vehicles, all the following:

a. Liability insurance: $250,000 for death and bodily injury per person, $500,000 for death and bodily injury per incident, and $100,000 for property damage.

b. Uninsured and underinsured insurance: $100,000 for death and bodily injury per person, $300,000 for death and bodily injury per incident, and $50,000 for property damage.

c. Personal injury protection: $15,000 per person and $30,000 per incident.

(q) The Department shall have jurisdiction to review, investigate, conduct hearings, revise and approve all rates, fares, tariffs or charges imposed or sought to be imposed upon the public in accordance with the following:

(1) Every public carrier shall file with the Department complete schedules of every classification of fares or rates charged by it for service offered in this State. A current copy of all rates, fares or tariffs in effect shall be kept available for inspection by the public at the business office of the carrier and in or on each vehicle used by the public carrier in performing its services. Every application for a certificate of public convenience and necessity shall include a proposed rate schedule which shall be approved by the Department prior to its granting the certificate to the applicant.

(2) Rates, fares, tariffs or charges of each public carrier may be based upon the public carrier's operating ratio or by reference to the

rate base of the carrier, a fair rate of return for the carrier and the revenues and expenses of the carrier. The Department shall have access, upon reasonable notice, to all records, books and documents of a public carrier which the Department deems relevant in enabling it to act upon rates, fares, tariffs and charges of the carrier, including records, books and documents in the custody of a third party.

(3) No public carrier shall make, impose or exact any unjust or unreasonable or unduly preferential or unjustly discriminatory individual or joint rate or fare for any service supplied by it within this State.

(4) No public carrier shall put into effect any new rate or fare except after 30 days' notice to the Department, which notice shall plainly state the new rate or fare and the time such new rate or fare will go into effect. The public carrier shall also post a notice of the new rate or fare at its place of business 30 days prior to the intended effective date of such new rate or fare. All proposed new rates or fares shall be published at least once a week for 2 consecutive weeks during the 30-day period in a newspaper of countywide circulation in each county in which the public carrier holds itself out to operate, in a form approved by the Department. The Department may, for good cause shown, permit temporary changes in fares to take effect without requiring the 30-day notice; provided, however, that such temporary changes shall be in effect for only so long as the request for same shall state. Any such temporary change shall be clearly posted at the public carrier's place of business and in each of its vehicles.

(5) The Department may, either upon complaint or upon its own initiative, hold a hearing concerning the lawfulness of a rate or fare charged by a public carrier. Such hearing shall be scheduled 20 days after written notice to the public carrier and after notice of such hearing is published in a newspaper of general circulation in the county in which such carrier operates. The hearing will be conducted in accordance with the procedures set forth in § 101 of Title 29.

(6) The Department may, after notice and a hearing, in writing, fix just and reasonable individual rates or fares, joint rates or fares, charges or schedules thereof, as well as commutation, mileage and other special rates or fares, which shall be imposed, observed and followed thereafter by any public carrier affected by such order. An order entered in accordance with this subsection shall be effective 30 days following the date the order is issued, unless the Department, in its discretion, makes the order effective at an earlier date.

(7) In any hearing to determine the lawfulness of a rate, fare or charge imposed by the public carrier, the burden of proof that the rate, fare or charge is lawful is on the public carrier. The standard of review utilized by the Department to determine if any rate, fare, tariff or charges, whether proposed or approved, is lawful is whether said rate, fare, tariff or charge is reasonable and in accord with the public and the financial obligation of the public carrier, upon review by the Department of all surrounding circumstances.

(60 Del. Laws, c. 503, § 11; 62 Del. Laws, c. 125, §§ 5, 8; 68 Del. Laws, c. 255, § 8; 69 Del. Laws, c. 435, §§ 35-37; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 326, §§ 1-4; 74 Del. Laws, c. 171, § 1; 77 Del. Laws, c. 141, §§ 4-7; 83 Del. Laws, c. 464, § 2; 84 Del. Laws, c. 93, § 1.)

§ 1802A Regulatory requirements, powers and limitations [Repealed].

Repealed by 68 Del. Laws, c. 255, § 8, eff. May 21, 1992.

§ 1802B Rates [Repealed].

Repealed by 68 Del. Laws, c. 255, § 8, eff. May 21, 1992.

§ 1802C Taxicab medallion and limousine certification task force.

(a) The General Assembly directs the Department of Transportation (DelDOT) to create a task force to study taxi medallion issues and limousine certification issues and to submit a report to the General Assembly by January 15, 2004. The task force staffing shall be provided by the House of Representatives and shall consist of the following members:

(1) The Chair of the House Transportation Committee who will serve as chair;

(2) Two taxi cab owners/operators, 1 appointed by the Speaker of the House of Representatives and 1 appointed by the President Pro Tempore of the Senate and 2 limousine owners/operators, 1 appointed by the Speaker of the House of Representatives and 1 appointed by the President Pro Tempore of the Senate;

(3) One member of the House of Representatives to be appointed by the Speaker of the House of Representatives and 1 member of the Senate to be appointed by the President Pro Tempore of the Senate;

(4) Two members of the public, 1 to be appointed by the Speaker of the House of Representatives and 1 to be appointed by the President Pro Tempore of the Senate;

(5) The Secretary of DelDOT, or the Secretary's designee; and

(6) Three members appointed by the Secretary of DelDOT.

(b) The General Assembly directs DelDOT to cap the number of taxi medallions and limousine certifications at the amount in existence at the time this legislation is passed. No new medallions or limousine certificates shall be issued on or before June 30, 2004.

(74 Del. Laws, c. 171, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1803 Railroad rights-of-way; acquisition by Department; notice of abandonment.

In order to permit the state Department to receive notice of, and be afforded an opportunity to acquire, by purchase or condemnation, railroad rights-of-way proposed to be abandoned, sold or leased, it shall be unlawful for any present railroad right-of-way in the State to be abandoned, sold or leased without first serving notice thereof upon the Secretary of the Department, and no sale, conveyance or lease of any part of such right-of-way shall thereafter be made to any person other than the State for a period of 90 days, from the time such notice

was served, unless prior thereto the Secretary of the Department shall have filed with the server of the notice a written disclaimer of interest in acquiring all or any part of said right-of-way. The Department shall have the first and primary right to acquire such abandoned right-of-way. The railroad company shall not be entitled to compensation for said right-of-way if it does not possess a fee simple interest (clear title). The State, through the Department, is hereby empowered to purchase, take by gift or devise, or condemn any identifiable interest, reversionary or otherwise, in said abandoned right-of-way. Any sale or conveyance made in violation of this section shall be void.

(59 Del. Laws, c. 365, § 1; 60 Del. Laws, c. 503, § 12.)

§ 1804 Railroad crossings; construction and protection.

(a) No public carrier engaged in the transportation of passengers or property shall, without prior order of the Department, construct its facilities across the facilities of any other such public utility or across any public highway at grade or above or below grade, or at the same or different levels; and, without like order, no such crossing heretofore or hereafter constructed shall be altered, relocated or abolished.

(b) The Department is hereby vested with exclusive power to determine and prescribe, by regulation or order, the points at which, and the manner in which, such crossing may be constructed, altered, relocated or abolished, and the manner and conditions, including protective devices, in or under which such crossings shall be maintained, operated and protected to effectuate the prevention of accidents and the promotion of the safety of the public.

(c) Upon its own motion or upon complaint, the Department shall have exclusive power after hearing upon notices to all parties in interest, including the owners of adjacent property, to order any such crossing heretofore or hereafter constructed to be relocated or altered, or to be abolished upon such reasonable terms and conditions as shall be prescribed by the Department. The Department may order the work of construction, relocation, alteration, protection or abolition of any crossing aforesaid to be performed in whole or in part by any public carrier or municipal corporation or county concerned or by the Department, or, in the case of any crossing on private land, by the owner thereof; provided, however, that when the Department or other governmental authority maintaining any public highway determines to use federal aid moneys in the construction, relocation, alteration, protection or abolition of any crossing aforesaid, then the Department shall take this into account in allocating costs.

(d) The term "public highway" as used in this section means any road, lane or street maintained by the State or any municipal corporation or county for use by the travelling public, that abuts any railroad track or immediately abuts the right-of-way thereof.

(59 Del. Laws, c. 393, § 2; 60 Del. Laws, c. 503, § 13.)

§ 1805 Right-of-way defined.

As used in §§ 1803 to 1806 of this title, "right-of-way" means that roadbed of a line of railroad, not exceeding 100 feet in width, as measured horizontally at the elevation of the base of the rail, including the far embankment or excavated area, with slopes, slope ditches, retaining walls or foundations necessary to provide a width not to exceed 100 feet at the base of rail, including tracks, appurtenances, ballast and any structures or building erected thereon.

(59 Del. Laws, c. 365, § 1; 60 Del. Laws, c. 503, § 14.)

§ 1806 Contents of notice.

Each notice, required to be served pursuant to § 1803 of this title, shall contain a brief description sufficient to identify the right-of-way intended to be abandoned and sold or otherwise disposed of, together with a statement that the notice is given to afford the Department an opportunity to acquire the right-of-way or such portion thereof as may be required for public use.

(59 Del. Laws, c. 365, § 1; 60 Del. Laws, c. 503, § 15; 69 Del. Laws, c. 435, § 38.)

§ 1807 Service of notice.

Service of the said notice shall be made by certified mail, return receipt requested, addressed to the Secretary of the Department.

(59 Del. Laws, c. 365, § 1; 60 Del. Laws, c. 503, § 16; 69 Del. Laws, c. 435, § 38.)

§ 1808 Regulation of ticket agents; penalties for violations.

(a) Each agent who is authorized to sell tickets or other evidence entitling the holder to travel on any railroad, steamboat or public conveyance shall be provided with a certificate setting forth such agent's authority to make such sales, duly attested by the seal of the owner or persons operating such railroad, steamboat or public conveyance, and also by the signature of the officer whose name is signed upon the tickets or coupons which such agent may sell. Such agent shall exhibit to any person desiring to purchase the ticket, or to any officer of the law who may request of the agent the certificate of such agent's authority thus to sell, and shall keep the certificate conspicuously posted in such agent's office for the information of travelers. No person not possessed of such authority shall sell or transfer any coupon or part of any ticket, or other evidence of the holder's title to travel on any railroad, steamboat or other public conveyance, whether the same is situated, operated or owned within or without this State.

(b) Whoever sells, barters or transfers any such coupon or part of any ticket, or evidence, in violation of this section shall be fined not more than $500, or imprisoned not more than 1 year, or both.

(59 Del. Laws, c. 393, § 5; 60 Del. Laws, c. 503, § 17; 84 Del. Laws, c. 42, § 3.)

§ 1809 Redemption of unused tickets.

The owner or person operating any railroad, steamboat or other public conveyance shall provide for the redemption at such owner's or

operator's general office of the whole or such parts of coupons of any ticket sold as the purchaser has not used, and shall redeem the same at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the portion of the ticket was actually used.

(59 Del. Laws, c. 393, § 5; 60 Del. Laws, c. 503, § 17; 84 Del. Laws, c. 42, § 4.)

§ 1810 Erection and maintenance of telegraph and telephone lines by railroad.

Every railroad corporation existing under the laws of this State may erect, establish and maintain telegraph or telephone lines for their own use, along and upon the lands and right-of-way of such railroad corporations.

(59 Del. Laws, c. 393, § 5; 60 Del. Laws, c. 503, § 17.)

§ 1811 Fences and cattle guards; liability for damages; trespass with animals; walking on tracks; penalties.

Every railroad corporation shall erect and maintain fences on both sides of its road, of the height and strength of a fence required by law, with openings, gates or bars therein at farm crossings or the roads for the use of proprietors of lands adjoining such railroad. Every such corporation shall also construct and maintain cattle guards at all the road crossings suitable and sufficient to prevent cattle and other animals from getting on the railroad. Until such fences and cattle guards have been duly made the corporation shall be liable for all damages which are done by their engines and cars to cattle, horses or other animals thereon.

After such fences and guards are duly made and maintained the corporation shall not be liable for any such damages, unless negligently or wilfully done. If any person rides, leads or drives any horse or other animal upon such railroad and within such fences and guards other than at farm crossings without the consent of the corporation, such person shall for every such offense forfeit not more than $10 and shall also pay all damages which are sustained thereby to the party aggrieved. No person other than those connected with or employed upon the railroad shall walk along the tracks of any such railroad, except when the same are laid along public roads or streets.

(59 Del. Laws, c. 393, § 5; 60 Del. Laws, c. 503, § 17; 70 Del. Laws, c. 186, § 1.)

§ 1812 Liability of those damaging railroad property.

Any person who wilfully impairs, injures, destroys or obstructs the use of any railroad enjoyed under this title or any of its necessary works, wharves, bridges, carriages, engines, cars, machines or other property shall forfeit and pay to the corporation the sum of $50, to be by it recovered in any court having competent jurisdiction in any civil action and shall be liable for all damages sustained.

(59 Del. Laws, c. 393, § 5; 60 Del. Laws, c. 503, § 17.)

§ 1813 Badges of railroad conductor, baggage master and brakeman.

Every conductor, baggage master or brakeman, of any railroad corporation employed in a passenger train, shall wear upon his or her hat or cap a badge which shall indicate his or her office and the initial letters of the name of the corporation by which he or she is employed. No conductor or collector of fares or tickets without such badge shall be entitled to demand or receive from any passenger any fare or ticket, or to exercise any powers of his or her office, and no officer without such badge shall have authority to meddle or interfere with any passenger, the passenger's baggage or property.

(59 Del. Laws, c. 393, § 5; 60 Del. Laws, c. 503, § 17; 70 Del. Laws, c. 186, § 1.)

§ 1814 Railroad car brakes.

No passenger train on any railroad shall be run without an air brake, or some equally effective appliance for controlling the speed of trains, which may be applied by the engineer to each car composing the train, and which shall at all times be kept in good condition and ready for use at the discretion of the engineer.

(59 Del. Laws, c. 393, § 5; 60 Del. Laws, c. 503, § 17.)

§ 1815 Penalties for violations of §§ 1813, 1814.

Any corporation failing to comply with, violating or permitting any of its employees or agents to violate any of the provisions of §§ 1813, 1814 of this title shall, in addition to subjecting itself to any damage that may be caused by such failure or violation, be fined not less than $100 nor more than $500.

(59 Del. Laws, c. 393, § 5; 60 Del. Laws, c. 503, § 17.)

§ 1816 Free passes and franks; transportation without fare.

(a) This chapter shall in no wise be construed to prevent the issuance by any public carrier of free passes or franks to its employees, officers, agents and their families, and the interchange between public carriers of passes or franks for their employees, officers, agents and their families, nor to prevent the carrying without fare upon electric trackless trolley coaches, street railways or buses of policemen, firemen, health officers and park guards in uniform, or plain clothes detectives, sheriffs, deputy sheriffs and other public employees wearing official badges.

(b) Nothing in this title shall be construed to prohibit the carriage or handling of persons or property free or at reduced rates by railroads for the United States, state or municipal governments, or to or from fairs and expositions for exhibitions thereof; or the free carriage of destitute and homeless persons transported by charitable societies and the necessary agents employed in such transportation; or the issuance of mileage, excursion or commutation passenger tickets; nor to prohibit any such corporation from giving reduced passenger rates to ministers of religion solely engaged in ministerial duties or to the United States, state or municipal governments; nor to prohibit any such

corporation from giving free carriage to their own officers and employees; nor to prohibit the principal officers of any such corporation from exchanging passes or tickets with other railroad corporations for their officers and employees; nor to prohibit any such corporation from giving reduced rates of transportation to other railroad corporations for railroad construction, material, equipment or supplies.

(59 Del. Laws, c. 393, § 5; 60 Del. Laws, c. 503, § 17.)

§ 1817 Transportation utilities; intra and interline connections; switch connections.

The Department may, after hearing, upon notice, by order in writing, direct any railroad, street railway, traction company, charter bus or passenger line, to establish and maintain at any junction or point of connection or intersection with any other line of such company, or with any line of any other railroad, street railway, traction company, charter bus, electric trackless trolley coach or passenger line, such just and reasonable connection as is necessary to promote the convenience of shippers of property, or of passengers, and in like manner may direct any railroad, street railway or traction company, engaged in carrying merchandise, to construct, maintain and operate upon reasonable terms a switch connection with any private sidetrack which may be constructed by any shipper to connect with the railroad, street railway or traction railway where, in the judgment of the Department, such connection is reasonable and practicable, and can be put in with safety, and will furnish sufficient business to justify the construction and maintenance of the same.

(59 Del. Laws, c. 393, § 5; 60 Del. Laws, c. 503, § 17; 68 Del. Laws, c. 255, § 10; 69 Del. Laws, c. 435, § 38.)

§ 1818 Public carriers operating buses; public liability insurance.

The Department may prescribe by regulation or order, as to public carriers operating charter buses, such requirements as it deems necessary for the protection of persons or property of their patrons and the public, including the filing of surety bonds, the carrying of insurance or the qualifications and conditions under which such carriers may act as self-insurers with respect to such matters.

(59 Del. Laws, c. 393, § 5; 60 Del. Laws, c. 503, § 17; 68 Del. Laws, c. 255, § 11; 69 Del. Laws, c. 435, § 38; 83 Del. Laws, c. 464, § 2.)

§ 1819 Appeal from Department's order.

(a) Any public carrier affected by any final order made by the Department, or any other original party to or any intervenor in the proceedings before the Department in which such order was entered and affected thereby, may appeal from such order to the Superior Court within 30 days from the date upon which such order is served. The appeal shall be filed with the Prothonotary of the Court and summons in the appeal shall be served upon the Secretary of the Department either personally or sent by certified mail to the office at Dover, Delaware, and shall be served upon all other parties to the proceeding below, other than the appellant.

(b) The appeal shall not be a trial de novo but shall be based upon the record before the Department.

(c) The scope of review before the Court shall be whether the Department's decision is based on substantial evidence.

(62 Del. Laws, c. 125, § 10; 68 Del. Laws, c. 255, § 9; 69 Del. Laws, c. 435, § 38.)

§ 1820 Stay pending appeal.

The filing of an appeal from any order of the Department shall in no case supersede or stay the order of the Department, unless the Superior Court so directs, and the appellant may be required by the Court to give bond in such form and of such amount as the Court, allowing the stay, requires.

(62 Del. Laws, c. 125, § 10; 69 Del. Laws, c. 435, § 38.)

§ 1821 Liability for trashing railroad right-of-ways; penalty; jurisdiction.

A person shall be guilty of an offense if the person throws, or causes to be thrown, any waste paper, sweepings, ashes, household waste, glass, metal, tires, refuse or rubbish, or any dangerous or detrimental substance to be deposited into or upon any railroad right-of-way of this State. Whoever violates this section shall be fined not less than $50 nor more than $300. For each subsequent offense occurring within 3 years of a former offense, the person shall be fined not less than $300 nor more than $500. The minimum fines for a violation of this section shall not be subject to suspension. The Justice of the Peace Court system shall have exclusive jurisdiction over any violations of this section.

(68 Del. Laws, c. 351, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1822 Medical transportation by health-care facilities.

Vehicles that are operated by: long-term care facilities, as defined in § 1102 of Title 16; hospitals as defined in § 1001 of Title 16; treatment facilities as defined in § 2203 [repealed] of Title 16; providers who are qualified to provide treatment by the Department of Health and Social Services, including for day and residential services; and facilities where physical therapy is provided; may provide transportation services for their patients, clients or residents in accordance with a contract between the facility and a nonemergency medical transportation broker, without certification as a public carrier.

(80 Del. Laws, c. 68, § 2; 81 Del. Laws, c. 207, § 1; 85 Del. Laws, c. 461, § 8.)

§ 1823 Medical transportation by stretcher van.

Stretcher vans, as defined in § 1801 of this title may provide nonemergency medical transportation services in accordance with a contract between the owner or operator of such stretcher van and a broker of nonemergency medical transportation services, without certification as public carrier. At a minimum, stretcher van driver and attendant credentialing will include a yearly national criminal background check, yearly 10-panel drug test, and training appropriate to the level of service being provided. All vehicles used as stretcher vans will be

required to pass a yearly inspection as well as random inspections as the broker deems necessary. In addition, stretcher van operators, not certified as public carriers must nonetheless comply with public liability insurance requirements applicable to public carriers.

(80 Del. Laws, c. 68, § 2.)

Part II
Transportation Department
Chapter 19
TRANSPORTATION NETWORKS

§ 1901 Definitions.

As used in this chapter:

(1) "Digital network" means any online-enabled technology application service, website or system offered or utilized by a transportation network company that enables the prearrangement of rides with transportation network company drivers.

(2) "Personal vehicle" means a vehicle that is used by a transportation network company driver and is:

a. Owned, leased or otherwise authorized for use by the transportation network company driver; and

b. Not a taxicab, limousine, or public carrier as defined in Chapter 18 of this title.

(3) "Prearranged ride" means the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the TNC driver transports a requesting rider, and ending when the last rider departs from the personal vehicle. A prearranged ride does not include:

a. Transportation provided using a taxicab, limousine, or other public carrier pursuant to Chapter 18 of this title; or

b. A shared expense carpool or vanpool arrangement; or

c. A regional transportation provider.

(4) "Protective hairstyle" includes braids, locks, and twists.

(5) "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

(6) "Transportation network company" or "TNC" means a corporation, partnership, sole proprietorship, or other entity that is licensed pursuant to this chapter and operating in Delaware that uses a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides. A transportation network company shall not be deemed to control, direct or manage the personal vehicles or transportation network company drivers that connect to its digital network, except where agreed to by written contract. "Transportation network company" does not include a transportation broker arranging nonemergency medical transportation for Medicaid or Medicare members pursuant to a contract with the State or a managed-care organization.

(7) "Transportation network company driver" or "TNC driver" means an individual who:

a. Receives connections to potential passengers and related services from a transportation network company in exchange for payment of a fee to the transportation network company; and

b. Uses a personal vehicle to offer or provide a prearranged ride to riders upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.

(8) "Transportation network company rider" or "rider" means an individual or persons who use a transportation network company's digital network to connect with a transportation network company driver who provides prearranged rides to the rider in the TNC driver's personal vehicle between points chosen by the rider.

(80 Del. Laws, c. 374, § 1; 83 Del. Laws, c. 13, § 1.)

§ 1902 Not other carriers.

TNCs or TNC drivers are not public carriers, as defined in Chapter 18 of this title, nor do they provide taxicab or limousine service. A TNC driver shall not be required to register with any state or local agency the vehicle such TNC driver uses to provide prearranged rides as a commercial or public carrier vehicle. A TNC driver shall also not be required to obtain a Delaware business license from the Delaware Division of Revenue.

(80 Del. Laws, c. 374, § 1.)

§ 1903 TNC permit required.

(a) A person shall not operate a TNC in Delaware without first having obtained a permit from the Delaware Department of Transportation, Delaware Transit Corporation ("Division").

(b) The Division shall issue a permit to each applicant that meets the requirements for a TNC set forth in this chapter, and pays an annual permit fee of $5,000 to the Division.

(80 Del. Laws, c. 374, § 1.)

§ 1904 Agent and registration requirements.

(a) The TNC must maintain an agent for service of process in the State.

(b) The TNC must file with the Delaware Secretary of State articles of incorporation or foreign articles of incorporation and must meet all applicable business licensure requirements under the Delaware Code and Delaware Division of Revenue's regulations.

(80 Del. Laws, c. 374, § 1.)

§ 1905 Fare collected for services.

On behalf of a TNC driver, a TNC may charge a fare for the services provided to riders; provided that, if a fare is collected from a rider, the TNC shall disclose to the rider the fare or fare calculation method on its website or within the online-enabled technology application service. The TNC shall also provide riders with the option to receive an estimated fare before the rider enters the TNC driver's vehicle.

(80 Del. Laws, c. 374, § 1.)

§ 1906 Identification of TNC vehicles and TNC drivers and customer service.

(a) The TNC's online-enabled technology application service or website shall display a picture of the TNC driver, and the license plate number of the motor vehicle utilized for providing the prearranged ride, before the rider enters the TNC driver's vehicle.

(b) A TNC driver must display on the TNC driver's vehicle at all times while logged into a TNC's digital platform, a sign, emblem, or logo that can sufficiently identify the vehicle as being associated with the TNC or its associated digital platform.

(c) A TNC must provide a customer support telephone number, email address, or hyperlink on its digital application or website.

(80 Del. Laws, c. 374, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1.)

§ 1907 Electronic receipt.

Within a reasonable period of time following the completion of a trip, a TNC shall transmit an electronic receipt to the rider on behalf of the TNC driver that lists:

(1) The origin and destination of the trip;

(2) The total time and distance of the trip; and

(3) An itemization of the total fare paid, if any.

(80 Del. Laws, c. 374, § 1.)

§ 1908 Financial responsibility of transportation network companies.

On or before August 10, 2016, and thereafter, a transportation network company driver or transportation network company on the TNC driver's behalf shall maintain primary automobile insurance that:

(1) Recognizes that the TNC driver is a transportation network company driver or otherwise uses a vehicle to transport passengers for compensation and covers the TNC driver in both of the following 2 circumstances:

a. While the TNC driver is logged on to the transportation network company's digital network; and

b. While the TNC driver is engaged in a prearranged ride.

(2) The following automobile insurance requirements shall apply while a participating transportation network company driver is logged on to the transportation network company's digital network and is available to receive transportation requests but is not engaged in a prearranged ride:

a. Primary automobile liability insurance in the amount of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage; and

b. Personal injury protection benefits that meet the minimum coverage amounts where required by § 2118 of Title 21;

c. Uninsured and underinsured motorist insurance in the minimum amount of $100,000 per incident.

d. The coverage requirements of this paragraph (2) may be satisfied by any of the following:

1. Automobile insurance maintained by the transportation network company driver.

2. Automobile insurance maintained by the transportation network company.

3. Any combination of paragraphs (2)d.1. and (2)d.2. of this section.

(3) The following automobile insurance requirements shall apply while a transportation network company driver is engaged in a prearranged ride:

a. Primary automobile liability insurance that provides at least $1,000,000 for death, bodily injury and property damage;

b. Minimum coverage amounts where required by § 2118 of Title 21 and § 3902 of Title 18.

c. Uninsured and underinsured motorist insurance in the minimum amount of $1,000,000 per incident.

d. The coverage requirements of this paragraph (3) may be satisfied by any of the following:

1. Automobile insurance maintained by the transportation network company driver.

2. Automobile insurance maintained by the transportation network company.

3. Any combination of paragraphs (3)d.1. and (3)d.2. of this section.

(4) If insurance maintained by TNC driver in paragraph (2) or (3) of this section has lapsed or does not provide the required coverage, insurance maintained by a transportation network company shall provide the coverage required by paragraph (3) of this section beginning with the first dollar of a claim and have the duty to defend such claim.

(5) Coverage under an automobile insurance policy maintained by the transportation network company shall not be dependent on a personal automobile insurer first denying a claim nor shall a personal automobile insurance policy be required to first deny a claim.

(6) Insurance required by this section may be placed with an insurer licensed under Delaware law or with a surplus lines insurer eligible under § 1912 of Title 18 that has a credit rating of no less than "A-" from A.M. Best or "A" from Demotech or similar rating from another rating agency recognized by the Department of Insurance.

(7) Insurance satisfying the requirements of this section shall be deemed to satisfy the financial responsibility requirements of Chapter 29 of Title 21.

(8) A transportation network company driver shall carry digital or physical proof of coverage satisfying paragraphs (2) and (3) of this section with the transportation network company driver at all times during the use of a vehicle in connection with a transportation network company's digital network. In the event of an accident, a transportation network company driver shall provide this insurance coverage information to the directly interested parties, automobile insurers and investigating police officers, upon request. Upon such request, a transportation network company driver shall also disclose to directly interested parties, automobile insurers, and investigating police officers, whether the transportation network company driver was logged on to the transportation network company's digital network or on a prearranged ride at the time of an accident.

(9) As part of the permit application under § 1903 of this title, a TNC shall file with the Division certificates of insurance showing that it maintains insurance that meets the requirements of paragraph (4) of this section.

(80 Del. Laws, c. 374, § 1; 83 Del. Laws, c. 464, § 3; 84 Del. Laws, c. 42, § 1.)

§ 1909 Disclosures.

(a) The transportation network company shall disclose in writing to transportation network company drivers the following before they are allowed to accept a request for a prearranged ride on the transportation network company's digital network:

(1) The insurance coverage, including the types of coverage and the limits for each coverage, that the transportation network company provides while the transportation network company driver uses a personal vehicle in connection with a transportation network company's digital network; and

(2) That the transportation network company driver's own automobile insurance policy might not provide any coverage while the TNC driver is logged on to the transportation network company's digital network and is available to receive transportation requests or is engaged in a prearranged ride, depending on its terms.

(b) A transportation network company shall make the following disclosure to a TNC driver in the TNC driver's terms of service:

"If the vehicle with which you provide transportation network company services has a lien against it, you must notify the lienholder that you provide transportation network company services with such vehicle. Providing such transportation network company services may violate the terms of your contract with the lienholder."

(80 Del. Laws, c. 374, § 1.)

§ 1910 Automobile insurance provisions.

(a) Insurers that write automobile insurance in Delaware may exclude any and all coverage afforded under the policy issued to an owner or operator of a personal vehicle for any loss or injury that occurs while a TNC driver is logged on to a transportation network company's digital network or while a TNC driver provides a prearranged ride. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy including, but not limited to:

(1) Liability coverage for bodily injury and property damage;

(2) Personal injury protection benefits as required by § 2118 of Title 21 and § 3902 of Title 18;

(3) Uninsured and underinsured motorist;

(4) Medical payments coverage;

(5) Comprehensive physical damage coverage; and

(6) Collision physical damage coverage.

Such exclusions shall apply notwithstanding any requirement under Chapters 21 and 29 of Title 21.

Nothing in this section implies or requires that a personal automobile insurance policy provide coverage while the TNC driver is logged on to the transportation network company's digital network, while the TNC driver is engaged in a prearranged ride or while the TNC driver otherwise uses a vehicle to transport passengers for compensation.

Nothing in this chapter shall be construed as to require an insurer to use any particular policy language or reference to this section in order to exclude any and all coverage for any loss or injury that occurs while a TNC driver is logged on to a transportation network company's digital network or while a TNC driver provides a prearranged ride.

Nothing shall be deemed to preclude an insurer from providing primary or excess coverage for the transportation network company driver's vehicle, if it so chose to do so by contract or endorsement.

(b) Automobile insurers that exclude the coverage described in § 1908 of this title shall have no duty to defend or indemnify any claim expressly excluded thereunder. Nothing in this chapter shall be deemed to invalidate or limit an exclusion contained in a policy including any policy in use or approved for use in Delaware prior to August 10, 2016, that excludes coverage for vehicles used to carry persons or property for a charge or available for hire by the public.

An automobile insurer that defends or indemnifies a claim against a TNC driver that is excluded under the terms of its policy, shall have a right of contribution against other insurers that provide automobile insurance to the same TNC driver in satisfaction of the coverage requirements of § 1908 of this title at the time of loss.

(c) In a claims coverage investigation, transportation network companies shall immediately provide upon request by directly involved parties or any insurer of the transportation network company driver if applicable, the precise times that a transportation network company

driver logged on and off of the transportation network company's digital network in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident. Insurers providing coverage set forth under § 1908 of this title shall disclose upon request by any other such insurer involved in the particular claim, the applicable coverages, exclusions and limits provided under any automobile insurance maintained under § 1908 of this title in order to satisfy the requirements.

(d) If a lender or a secured party has a secured interest in a TNC driver's vehicle and a transportation network company's insurer makes a payment for a claim for damage to the TNC driver's vehicle that is covered under comprehensive or collision damage coverage held by the transportation network company, the insurer shall issue the payment directly to the vehicle repair shop or jointly to the owner of the vehicle and the primary lender or secured party on the covered vehicle.

(e) Nothing in this section shall limit the right of a lender or secured party of a TNC driver's vehicle to require a TNC driver to maintain comprehensive, collision damage coverage, or both for a TNC driver's vehicle, or to show evidence of such coverage to the lender or secured party, that would cover the period when the TNC driver is logged on to the transportation network company's digital network but is not engaged in a prearranged ride or when the TNC driver is engaged in a prearranged ride. If the TNC driver fails to maintain the required comprehensive or collision damage coverage, or to show evidence to the lender or secured party of the coverage upon reasonable request by the lender or secured party, the lender or secured party may obtain the coverage at the expense of the TNC driver

(80 Del. Laws, c. 374, § 1.)

§ 1911 Limitation on TNCs.

Notwithstanding any other provision of law, TNC drivers shall be independent contractors and not employees of the TNC if all of the following conditions are met:

(1) The TNC does not prescribe specific hours during which a TNC driver must be logged into the TNC's digital platform;

(2) The TNC imposes no restrictions on the TNC driver's ability to utilize digital platforms from other TNCs;

(3) The TNC does not assign a TNC driver a particular territory in which to operate;

(4) The TNC does not restrict a TNC driver from engaging in any other occupation or business; and

(5) The TNC and TNC driver agree in writing that the TNC driver is an independent contractor of the TNC.

(80 Del. Laws, c. 374, § 1.)

§ 1912 Zero tolerance for drug or alcohol use.

(a) The TNC shall implement a zero tolerance policy regarding a TNC driver's activities while accessing the TNC's digital platform. The zero tolerance policy shall address the use of drugs or alcohol while a TNC driver is providing prearranged rides or is logged into the TNC's digital network but is not providing prearranged rides, and the TNC shall provide notice of this policy on its website, as well as procedures to report a complaint about a TNC driver with whom a rider was matched and whom the rider reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

(b) Upon receipt of such rider complaint alleging a violation of the zero tolerance policy, the TNC shall immediately suspend such TNC driver's access to the TNC's digital platform, and shall conduct an investigation into the reported incident. The suspension shall last, at a minimum, the duration of the investigation.

(c) The TNC shall maintain records relevant to the enforcement of this requirement for a period of at least 2 years from the date that a rider complaint is received by the TNC.

(80 Del. Laws, c. 374, § 1.)

§ 1913 TNC driver requirements.

(a) Before allowing an individual to accept trip requests through a TNC's digital platform:

(1) The individual shall submit to the TNC information or documents from which a TNC can verify that the individual satisfies the requirements set forth in paragraphs (b)(5)-(8) of this section.

(2) The TNC shall conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include:

a. Multi-state/multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation (primary source search); and

b. U.S. Department of Justice National Sex Offender Public Website;

(3) The TNC shall review, or have a third-party review, a driving history research report for such individual.

(b) The TNC must disqualify any prospective TNC driver whose background check or driving history reveals that the TNC driver:

(1) Within the prior 3-year period was convicted of:

a. More than 3 moving violations;

b. Driving while license is suspended or revoked under § 2756 of Title 21;

c. Attempting to flee or elude a police officer under § 4103 of Title 21; or

d. Offenses which caused the TNC driver's license to be suspended, revoked, or disqualified for moving violations.

(2) Has been convicted, within the past 7 years, of:

a. Any felony; or

b. Misdemeanor driving under the influence, reckless driving or hit and run, or any misdemeanor violent offense or sexual offense;

or

c. Speeding more than 100 miles per hour.

(3) Has ever been convicted, within the maximum allowable time period for which convictions may be reviewed under applicable state law, of:

a. An offense classified as a class A or violent class B felony;

b. Any crime against a child;

c. Any crime constituting a felony sexual offense;

d. Any crime constituting a felony homicide, including, but not limited to, murder, manslaughter, and vehicular homicide;

(4) Is a match in the U.S. Department of Justice National Sex Offender Public Website;

(5) Does not possess a valid driver's license;

(6) Does not possess proof of registration for the motor vehicle or vehicles used to provide prearranged rides;

(7) Does not possess proof of automobile liability insurance for the motor vehicle or vehicles used to provide prearranged rides; or

(8) Is not at least 18 years of age.

(c) A TNC or a third party must check, at least annually, the driving record of every TNC driver operating on the TNC's platform in order to verify that the TNC driver has not accrued any moving violations that would require disqualification under paragraph (b)(1) of this section.

(80 Del. Laws, c. 374, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 1.)

§ 1914 Vehicle safety.

The TNC shall verify on an annual basis that:

(1) Each TNC vehicle registered in Delaware that is required to pass a safety inspection for registration has a valid vehicle registration, which serves as proof that the vehicle passed its most recent safety inspection; and

(2) Each TNC vehicle with over 10,000 miles that is registered in another state has passed a motor vehicle safety inspection authorized or approved by a state government agency for personal vehicles; provided that, the initial safety inspection for a vehicle used by a new TNC driver may be conducted within 90 days of beginning service.

(80 Del. Laws, c. 374, § 1.)

§ 1915 No street hails.

A TNC driver shall not solicit or accept street hails.

(80 Del. Laws, c. 374, § 1.)

§ 1916 No cash trips.

The TNC shall adopt a policy prohibiting solicitation or acceptance of cash payments from riders and notify TNC drivers of such policy. TNC drivers shall not solicit or accept cash payments from riders for fares. Any payment for prearranged rides shall be made only electronically using the TNC's digital network or online-enabled technology application service.

(80 Del. Laws, c. 374, § 1.)

§ 1917 No discrimination; accessibility.

(a) The TNC shall adopt a policy of nondiscrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, gender identity, or any other basis protected under Chapter 45 of Title 6 with respect to riders and potential riders and notify TNC drivers of such policy.

(b) TNC drivers shall comply with all applicable laws regarding nondiscrimination against riders or potential riders on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, gender identity, or any other basis protected under Chapter 45 of Title 6.

(c) TNC drivers shall comply with all applicable laws relating to accommodation of service animals.

(d) A TNC shall not impose additional charges for providing services to persons with physical disabilities because of those disabilities.

(80 Del. Laws, c. 374, § 1; 85 Del. Laws, c. 144, § 1.)

§ 1918 Records.

A TNC, or a third party on the TNC's behalf, shall maintain the following customer records:

(1) Individual trip records for at least 1 year from the date each trip was provided;

(2) Individual records of TNC driver customers at least until the 1-year anniversary of the date on which a TNC driver's customer relationship with the TNC has ended;

(3) The TNC driver's driver license number and state of licensure;

(4) The vehicle registration number, license plate number, and state of vehicle registration for each vehicle that the TNC driver will use to provide prearranged rides;

(5) Documentation showing that the vehicle has been inspected in accordance with § 1914 of this title and that the TNC driver has passed a criminal history record check and driving record check as required under § 1913 of this title.

(80 Del. Laws, c. 374, § 1.)

§ 1919 Audits and inspection of records.

(a) In response to a specific complaint, the Division or its employees or duly authorized agents may inspect those records held by a TNC that are specifically necessary for the investigation and resolution of the complaint.

(b) No more than quarterly, the Division may request that a TNC transmit to the Division records and information that the TNC is required to maintain under § 1918 of this title for up to 50 TNC drivers; provided that, the TNC shall undertake best efforts not to share records and information about the same TNC driver during consecutive reporting periods; and further provided that, the Division shall not retain criminal background check reports. Within 10 business days of receiving a request, the TNC shall transmit the records to the Division via a secure delivery method, which may include use of encryption security or hand delivery. If, after this initial review, the Division has a reasonable basis to conclude that the TNC is not in compliance with this chapter, the Division may, upon reasonable notice, conduct a supplemental audit of records and information for an additional selection of TNC drivers at a mutually agreed location.

(c) Any records or information that a TNC discloses to the Division pursuant to this section shall be exempt from disclosure under the Delaware Freedom of Information Act, § 10001 et seq. of Title 29.

(d) The Division shall destroy any records it receives from a TNC pursuant to this section within 180 days of receiving such records unless required by law to retain the records for a longer period or the record relates to a TNC driver who the Division has a reasonable basis to believe is not properly authorized to operate in Delaware.

(80 Del. Laws, c. 374, § 1.)

§ 1920 Compliance with state law and defensive driving course.

A TNC must advise TNC drivers that they are responsible for complying with all applicable laws, including the State's hands-free cell phone law. A TNC must provide to each TNC driver domiciled in the state information about a defensive driving course approved by the Division.

(80 Del. Laws, c. 374, § 1.)

§ 1921 Penalties.

(a) The Division is authorized to enforce the requirements of this chapter. The Court of Common Pleas has jurisdiction over contested violations issued under this section.

(b) A TNC or TNC driver who fails to comply with any requirement contained in this chapter may be assessed a civil penalty of up to $100 for a first violation, up to $500 for a second violation, and up to $1,000 for a third violation and subsequent violations. The penalties collected under this section will be remitted to the Division to be used for enforcement operations. To determine the amount of the fine, the Division shall consider all relevant mitigating factors, including without limitation:

(1) The severity of the violation; and

(2) The good faith of the person or entity charged with the violation in attempting to achieve compliance.

A TNC will not be subject to financial penalties under this subsection if, upon notice of the violation, the TNC takes corrective steps to remedy the violation within a reasonable time period, as determined by the Division.

(c) The Division may suspend or revoke a TNC permit if the TNC commits a pattern of violations that evidence the TNC's intentional disregard of public safety.

(80 Del. Laws, c. 374, § 1.)

§ 1922 Controlling authority.

The Division may promulgate rules and regulations consistent with this chapter that are necessary to ensure compliance with this chapter or to address new industry developments not addressed explicitly in this chapter. Notwithstanding any other provision of law, TNCs and TNC drivers are governed exclusively by this chapter and any rules promulgated by the Division consistent with this chapter. A municipality or other local entity may not:

(1) Impose a tax on, or require a license for, a TNC, a TNC driver, or a vehicle used by a TNC driver where such tax or licenses relates to providing prearranged rides;

(2) Require a TNC or a TNC driver to obtain a business license or any other type of similar authorization to operate within the jurisdiction; or

(3) Subject a TNC or a TNC driver to the municipality or other local entity's rate, entry, operational or other requirements.

(80 Del. Laws, c. 374, § 1.)

Part II
Transportation Department
Chapter 20
PUBLIC-PRIVATE INITIATIVES PROGRAM IN TRANSPORTATION

§ 2001 Findings and declaration of policy.

The General Assembly hereby finds and declares that:

(a) It is essential for the economic, social and environmental well being of the State and the maintenance of a high quality of life that the citizens of the State have an efficient transportation system.

(b) The State has limited resources to fund the maintenance and expansion of the State transportation system and therefore alternative funding sources should be developed to supplement public revenue sources.

(c) A significant alternative to public revenue sources is a public-private sector initiatives program permitting private entities to undertake all or a portion of the study, planning, design, development, financing, acquisition, installation, construction, improvement, expansion, repair, operation and maintenance of public transportation projects for the citizens of Delaware in exchange for the right to lease or own the facilities for an agreed-upon period and earn a reasonable rate of return through tolls or user fees.

(d) In addition to alleviating the strain on the public treasury and allowing the State to use its limited resources for other needed projects, public-private initiative projects also do all of the following:

(1) Take advantage of private sector efficiencies in designing and building transportation projects and financial and development expertise;

(2) Allow for the rapid formation of capital necessary for funding transportation projects;

(3) More quickly reduce congestion in existing transportation corridors and provide the public with alternate route and mode selections;

(4) Provide the opportunity to link transportation investments with land use measures which further the State's growth management and clean air policies;

(5) Provide sound investment opportunities for the private sector; and

(6) Require continued compliance with environmental requirements and applicable state and federal laws that all publicly financed projects must address.

(e) The Department should be permitted and encouraged to test the feasibility of building privately-funded transportation systems and facilities through innovative agreements with the private sector by developing projects, and the Secretary should be granted authority to entertain, solicit, evaluate, negotiate and administer such agreements.

(f) The Department is encouraged and authorized to take full advantage of every financing opportunity and mechanism provided by federal legislation, including transportation legislation facilitating federal financing or grants for construction, improvement, leasing, operation or related functions as to roads, bridges, tunnels or other transportation systems.

(g) A Public-Private Initiatives Program Revolving Loan Fund, which would allow available federal and State funds to be leveraged, should be established to provide a source of public funds for partial financing of projects.

(70 Del. Laws, c. 280, § 1; 74 Del. Laws, c. 69, §§ 82-84.)

§ 2002 Definitions.

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

(a) "Agreement" means an agreement entered into by the Secretary and one or more contracting parties for a project.

(b) "Contracting party" means any individual, corporation, partnership, company, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated association, body politic, authority or any other form of entity not specifically listed herein entering into an agreement with the Secretary for a project.

(c) "Project" means any public transportation project undertaken under this chapter.

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

(e) "Metropolitan planning organization" means a metropolitan planning organization established and designated pursuant to 23 U.S.C. § 134 (1993).

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

(g) "Transportation System" means any capital-related improvement and addition to the State's transportation infrastructure, including but not limited to highways, roads, bridges, vehicles and equipment, ports and marine-related facilities, park and ride lots, rail and other transit systems, facilities, stations and equipment, rest areas, tunnels, airports, transportation management systems, control/communications/information systems and other transportation-related investments, or any combination thereof.

(70 Del. Laws, c. 280, § 1; 74 Del. Laws, c. 69, §§ 82, 85.)

§ 2003 Projects.

(a) *Project.* — Subject to subsection (c) of this section, the Secretary may entertain and solicit proposals from, and may negotiate and enter into agreements with, private entities or consortia thereof, for projects using in whole or in part private sources of financing involving (i) all or a portion of the study, planning, design, construction, leasing, financing, operation and maintenance of transportation systems, or (ii) the repair, and/or expansion, leasing, financing, operation and maintenance of existing transportation systems, or any combination of the foregoing.

(b) *Eligibility.* — The Secretary may entertain and solicit proposals from any source whatsoever; provided however, that the Secretary shall only enter into agreements regarding a transportation project that has been specifically authorized by the General Assembly, and that such authorization includes all material terms of the proposed project, including without limitation any terms concerning repayment of debt or capital to or for the benefit of any private entity; further provided (i) which has been authorized by the Delaware General Assembly (except that no agreement may be entered into which compels (A) direct or indirect expenditures or loans on the part of the State in excess of the total sum which may be appropriated by the Delaware General Assembly as the State's financial participation with respect to said transportation system or; (B) credit enhancements which pledge the full faith and credit of the State); and/or (ii) for which the General Assembly has provided specific or categorical funding authorization for purposes of implementing this chapter; and (iii) which is consistent with § 8419(2)(a) of Title 29, applicable provisions of the Department's long range transportation plan, any applicable recommendations developed by the Cabinet Committee on State Planning pursuant to Chapter 91 of Title 29, and applicable provisions of the Federal Clean Air Act [42 U.S.C. § 1857 et seq. and 42 U.S.C. § 7551].

(c) *Proposals.* — (1) The Secretary shall solicit proposals through a request for proposals pursuant to Chapter 69, Title 29, accompanied by material explaining of the Public-Private Initiatives Program enacted hereunder and describing the selection process and criteria. The Secretary may identify in these requests for proposals specific systems, corridors or routes for improvement.

(2) Alternatively, potential projects may be identified and proposed by any potential contracting party. Such unsolicited proposals will also be accepted provided they satisfy the criteria outlined in accordance with this chapter. In the event that an unsolicited proposal is deemed in compliance with this chapter and accepted for review, the Secretary shall publicly announce, not less than once a week for 2 consecutive weeks in a newspaper published or circulated in each county of the State, the acceptance of the unsolicited proposal along with a detailed description of the unsolicited proposal, and shall provide 60 days within which other interested parties may submit proposals relating to the same subject. Notwithstanding any other provisions of this Code to the contrary, all proposals made pursuant to this chapter may provide for the design-build mode of infrastructure development;

(3) Proprietary information contained in proposals not selected for projects and records of negotiations in progress shall be exempt from public disclosure.

(d) *Fees authorized.* — To offset a portion of the costs of initiating this program and reviewing proposals received for projects under this chapter, the Department is authorized to assess a non-refundable Proposal Review Fee for each proposal not to exceed $50,000.

(e) *Selection and approval.* — (1) The projects shall be selected by a project committee, chaired by the Secretary, consisting of the Secretary, the Director of Financial Management and Budget, the Chief Engineer of the Department of Transportation, and up to 4 other persons to be appointed by the Secretary. The projects shall be selected without regard to the provisions of Chapter 69 of Title 29.

Each proposal shall be weighed on its own merits and ranked according to the selection criteria stipulated in the request for proposals, provided that upon receipt of all proposals the project committee may group similar types of project proposals together for purposes of evaluation and selection, and provided further that the proposals selected by such committee from any such group of proposals must be those with the highest ranking within that group, and provided further that such committee may elect not to select any proposals from an established group of proposals, and provided further that as to similar proposals or proposals that are mutually exclusive so that the undertaking of 1 would preclude the need, desirability, or ability of undertaking the other, only the proposal with the highest ranking among such proposals shall be selected, and, subject to approval as set forth above, proceed to negotiations. Each of the agreements shall be negotiated individually as a stand-alone project.

(2) Each selected project must be subsequently approved, within 45 days of its selection, by both (i) the directly affected metropolitan planning organization or organizations and (ii) the Council on Transportation established under § 8409 of Title 29 or its successor, in that order. If a directly affected metropolitan planning organization approves a selected project, it shall be deemed to have given its approval to amend the Transportation Improvement Program to include such project. If the Council on Transportation approves a selected project, it shall be deemed to have given its approval to amend the State Capital Improvement Program to include such project. Approval for each selected project by the affected metropolitan planning organization and the Council on Transportation shall be based solely upon the project's compatibility with State and regional transportation plans, compliance with applicable laws and regulations, and fiscal impact upon the State Capital Improvement Program or regional Transportation Improvement Program. If either organization disapproves a project, it shall set forth in writing its reasons for doing so. If neither approval nor disapproval is granted within 45 days after the proposal was delivered to any affected metropolitan planning organization or the Council on Transportation, the proposal shall be deemed approved by those organizations. Moreover, in the event that a project is disapproved as provided above, the Department may resubmit the plan or revise version thereof no sooner than 60 days after notification that the plan has been disapproved by either party.

(3) The Secretary shall promptly notify the Co-chairs of the Joint Bond Bill Committee of the Delaware General Assembly when a project has been duly selected by the project committee. After the Co-chairs' receipt of such notice, the Co-chairs shall meet and either

approve or reject the project. Upon their approval of the project, it shall be deemed as an amendment to the Capital Improvements Program for the fiscal year in which the approval is granted.

(f) *Compliance.* — Except as otherwise expressly provided in this chapter, all projects must comply with all applicable rules and statutes in existence at the time the agreement is entered into, including but not limited to this title, § 711 of Title 19, § 6960 of Title 29 and 49 C.F.R. Part 21, provided that the provisions of Chapter 69 of Title 29 other than § 6960 of Title 29 thereof shall not be applicable to the projects regardless of the use of State funds. Compliance with § 6960 of Title 29, or in the alternative, federal prevailing wage laws, shall be required without regard to the source of funds for a project. Each agreement may provide for protection for the contracting party from future discretionary regulatory changes which would substantially or materially change the terms and conditions or financial assumptions of the agreement.

(g) *Financing.* — (1) The Department is authorized, notwithstanding any other provision of this Code, to (i) use any federal, state or other funds, including without limitation funds obtained from or through the Delaware Transportation Authority, any loans from the Public-Private Initiatives Program Revolving Loan Fund established in § 2912 of this title and federal transportation funds, to finance, secure, guarantee, service project debt or repay project costs; and (ii) do such things as necessary and desirable to maximize the funding and financing of such projects, provided that private capital participation in the total capital cost for each project shall be negotiated with the other terms of the agreement. Notwithstanding other provisions of this chapter, the amount of such participation shall be taken into account in determining the negotiated rate of return on the investment in the project. In addition, the projected total percentage of public capital investment, as well as the limits of the Department's financial liability for the project, shall be expressly disclosed in the agreement.

(2) The Department, either directly or through a designated party, may apply for, receive and accept from any federal agency or any other governmental body grants or financial support of whatever nature for any purpose described in this chapter. The Department may transfer or lend the proceeds of any such grant, or utilize such proceeds available for credit enhancement, to public agencies or contracting parties, on terms and conditions complying with applicable federal and state law.

(70 Del. Laws, c. 280, § 1; 71 Del. Laws, c. 150, § 78; 72 Del. Laws, c. 164, § 1; 74 Del. Laws, c. 69, §§ 82, 86-92; 83 Del. Laws, c. 37, § 32.)

§ 2004 Ownership and lease of project transportation systems.

(a) Agreements may provide for either private or State ownership of the project during the construction period, depending on the project structure determined by the Secretary. Each agreement shall provide for State ownership or control of the underlying real property at all times, except as provided in subsection (b) or subsection (c) of this section. After completion and final acceptance of each project, or discrete segment thereof, the agreement shall provide for State ownership of the project and lease to the contracting party, unless the State elects to provide for ownership of the project or portion thereof by the contracting party during the term of the agreement in which case the agreement shall provide for the transfer of the project to the State at no charge at the expiration of the term of the agreement. The State shall lease each of the projects, or applicable project segments, to the contracting parties for up to 50 years after completion of such projects. An agreement may provide for lease payments to consist of royalties.

(b) If state ownership or control of railroad rights-of-way used in a project is not feasible, for example, but not by way of limitation, due to federal ownership of said rights-of-way, an agreement for a project may nonetheless be approved, subject to the following limitations:

(1) State ownership or control of any other real property utilized in the project, as well as compliance with all other provisions of subsection (a) of this section, shall nonetheless be required;

(2) The negotiations on the rate of return to the contracting party during the term of the agreement shall take this reduced ownership/control factor into account; and

(3) All expenses relating to the indemnification of the owner of any railroad rights-of-way must be borne by the contracting party, notwithstanding the provisions of § 2008 of this title.

(c) An agreement for a project in which the state does not assume ownership or control of the underlying real property involved in the project may be approved, subject to the following limitations:

(1) Compliance with all other provisions of subsection (a) of this section shall nonetheless be required;

(2) The negotiations on the rate of return to the contracting party during the term of the agreement shall take this reduced ownership/control factor into account; and

(3) All expenses relating to the indemnification of the owner of any such real property must be borne by the contracting party, notwithstanding the provisions of § 2008 of this title.

(70 Del. Laws, c. 280, § 1; 71 Del. Laws, c. 150, §§ 80, 81; 72 Del. Laws, c. 164, § 2; 74 Del. Laws, c. 69, §§ 82, 93.)

§ 2005 Exercise of Department's powers.

For purposes of facilitating these projects and to assist the contracting parties in the financing, development, construction leasing, maintenance and operation of such projects, the agreements may include provisions for the Department to exercise any powers conferred upon it by law, including but not limited to the lease of rights of way and airspace, granting of necessary easements and rights of access, power of eminent domain, granting of development rights and opportunities, issuance of permits or other authorizations, protection from competition, remedies in the event of default of either of the parties, granting of contractual and real property rights, liability during construction and the term of the lease, and the authority to negotiate acquisition of rights of way in excess of appraised value. Amounts paid by a contracting party for any right-of-way in excess of the appraised value thereof may be considered a contribution to the project

only to the same extent that such excess amounts could be paid by the Department to acquire the right-of-way under applicable law.

(70 Del. Laws, c. 280, § 1; 74 Del. Laws, c. 69, §§ 82, 94.)

§ 2006 Authorization of tolls and user fees; limitations on toll and user fee revenues.

(a) *Authorization of tolls and user fees.* — Each agreement may authorize the contracting party to impose tolls or user fees for use of the transportation system constructed and/or leased by it to allow a reasonable rate of return on investment. The agreement may authorize the contracting party to collect tolls or user fees through both conventional methods and non-conventional methods including, but not limited to, automatic vehicle identification systems, electronic toll collection systems and, to the extent permitted by law, video-based toll collection enforcement. The agreement may authorize the collection of tolls and user fees by a third party.

(b) *Classification of tolls and user fees.* — A contracting party may establish different toll rates or user fees based on categories such as vehicle class or vehicle weight and may further vary toll rates by time of day or year.

(c) *Maximum rate of return.* — A maximum rate of return on investment shall be negotiated by the parties and stated in the agreement. A contracting party may establish and modify toll rates and user fees as long as the maximum rate of return on investment is not exceeded.

(d) *Uses of revenues.* — Each agreement shall require that over the term of the lease toll or user fee revenues be applied to payment of the contracting party's capital outlay costs for the project, including interest expense, the project's operations costs, costs of toll collections, administration of the project, any reimbursement to the State for the costs of project review and oversight, maintenance and police services, establishment and funding of a fund to ensure the adequacy of maintenance expenditures, a reasonable return on investment to the contracting party, and any other use mutually agreed upon by the parties and specifically set forth in the agreement, regardless of any contrary provisions of Delaware law.

(e) *Excess revenues.* — As agreed upon by the parties the agreement may require that any revenues in excess of the maximum rate of return allowed in the agreement either be applied to any indebtedness incurred by the contracting party in connection with the project and/or be paid to one or more other entities or funds including, but not limited to, the Revolving Loan Fund established in § 2012 of this title, the State's Transportation Trust Fund established under § 1404 of this title, the Department, or the State. For the purpose of determining whether there are revenues in excess of the maximum rate of return (or in excess of any incentive rate of return authorized by the agreement pursuant to subsection (f) of this section), the agreement shall expressly provide for an annual audit to be performed (at the expense of the contracting party) by the same auditor chosen to perform the annual audit of the Transportation Trust Fund pursuant to § 1323 of this title and the certification of the rate of return which the contracting party has realized during the audited period. The contracting party shall maintain its books and corporate records in the State.

(f) *Incentive rates of return.* — Notwithstanding § 2006(c) of this title, each agreement or an amendment to each agreement may provide for incentive rates of return in excess of the maximum rate of return established in the agreement for the attainment of specific safety, performance, transportation demand management or other goals set forth in the agreement or amendment.

(g) *Continuation of tolls.* — After expiration of the lease or ownership period of a project to or by a contracting party, the Department may continue to charge tolls or user fees for the use of the project. The Department may delegate such authority to continue to collect tolls or user fees for the use of the project to a third party, provided that such revenues must first be used for operations and maintenance of the project and, subsequently, any revenues determined by the Secretary to be excess must be paid by such 3rd party to the State's Transportation Trust Fund, the Department or the State.

(70 Del. Laws, c. 280, § 1; 74 Del. Laws, c. 69, § 95.)

§ 2007 Reimbursement for services rendered by department or other State agencies.

(a) *Police services.* — Each project is deemed to be part of the State Transportation System. The Delaware State Police shall have primary jurisdiction over each project except with respect to all or any portion of a project located in a jurisdiction where primary law enforcement responsibility is delegated to another law enforcement agency by law or by applicable status of forces agreements or otherwise. Each law enforcement agency rendering services pursuant to the above shall receive reimbursement for such services in accordance with an agreement that the contracting party shall enter into with such agency.

(b) *Maintenance services.* — Agreements for maintenance services may be entered into under this chapter with the Department or other State agencies, provided that such agreements shall provide for full reimbursement for services rendered by the Department or such other agencies.

(c) *Coordination of permits and licenses.* — The Department shall, with the mandatory assistance of all applicable State agencies and departments, establish a unified permitting and licensing process in the Department for the processing and issuance of all necessary permits and licenses for projects under this chapter, including, but not limited to, all environmental permits, businesses and tax licenses and transportation permits. The Department shall seek the cooperation of federal and local agencies to expedite all necessary federal and local permits, licenses and approvals necessary for the projects, provided, however, that the agreements shall provide for full reimbursement for services rendered by the Department or other agencies.

(d) *Other.* — The Department may provide services for which it is reimbursed including, but not limited to, preliminary planning, environmental certification (including the procurement of all necessary environmental permits), and preliminary design of the projects.

(70 Del. Laws, c. 280, § 1; 74 Del. Laws, c. 69, § 82.)

§ 2008 Liability coverage; indemnification.

Each agreement must require that liability insurance coverage of an amount appropriate to protect the project's viability is secured and maintained by the contracting party. Each agreement may provide for State indemnification of the contracting party for design and construction liability where the State has approved relevant design and construction plans.

(70 Del. Laws, c. 280, § 1; 74 Del. Laws, c. 69, § 82.)

§ 2009 Other agreement provisions.

(a) *Grant of rights to contracting party.* — An agreement may include provisions authorizing the State to grant necessary easements and lease to a contracting party existing rights of way or rights of way subsequently acquired. An agreement may also include provisions to lease the airspace above or below the right of way associated with the project to the contracting party at less than fair market value during the term of the contracting party's lease of the project, provided that if the Department continues to lease the airspace rights to the contracting party after the expiration of such lease term, it must do so only at fair market value. The agreement may also grant the contracting party the right of first refusal to undertake projects utilizing real estate and airspace owned by the Department within or contiguous to the right of way, provided that in the judgment of the Secretary such projects must contribute to the public use and benefit of the project, and provided further that nothing herein shall derogate from the Department's power to declare real estate or airspace owned by the Department surplus to the needs of the Department pursuant to § 137 of Title 17 or any successor provision.

(b) *Miscellaneous.* — An agreement may include any contractual provision that is necessary to protect the project revenues required to repay the costs incurred to study, plan, design, finance, acquire, build, install, lease, operate, enforce laws, and maintain the transportation system including, but not limited to, a traffic guarantee, an equity guarantee or insurance provided that such provision will not unreasonably prohibit the development of essential public transportation systems and facilities.

(70 Del. Laws, c. 280, § 1; 74 Del. Laws, c. 69, §§ 82, 96.)

§ 2010 Operation of toll facility.

At the request of a contracting party operating a toll facility hereunder, the Department may adopt and enforce reasonable regulations consistent with State law which (i) set maximum and minimum speeds, (ii) exclude undesirable vehicles, cargoes, or materials from the use of the facility, (iii) establish high occupancy or express lanes for use during all or any part of a day and limit the use of such lanes to certain traffic, (iv) determine points of access, (v) determine truck/trailer multiples, (vi) determine truck weight stations, and (vii) determine truck weight limits.

(70 Del. Laws, c. 280, § 1.)

§ 2011 Plans and specifications.

The plans and specifications for each project constructed pursuant to this chapter shall comply with the Department's standards for state projects and any applicable federal standards. Each project is deemed to be part of the state highway system for purposes of identification, maintenance standards, and enforcement of traffic laws and for the purposes of applicable sections of this title.

(70 Del. Laws, c. 280, § 1; 74 Del. Laws, c. 69, § 82.)

§ 2012 Public-Private Initiatives Program Revolving Loan Fund.

(a) *Establishment of Fund.* — There is hereby established a Public-Private Initiatives Program Revolving Loan Fund which shall be maintained and administered by the Department in accordance with the provisions of this chapter and such rules as the Department may from time to time prescribe. The Fund shall be available for the purpose of providing financial assistance in accordance with the provisions of this section. Subject to the provisions of any applicable bond resolution governing the investment of bond proceeds deposited in the Fund, the Fund shall be invested and reinvested in the same manner as other State funds. The Fund shall retain any investment earnings. Subject to the provisions of any applicable bond covenants or resolutions or any other applicable laws or regulations governing the Fund, the Department may, with the approval of the Delaware General Assembly, transfer moneys from the Fund to the Transportation Trust Fund.

(b) *Fund deposits.* — The following shall be deposited in the Fund:

(1) Federal grants and awards or other federal assistance received by the State for the purpose of deposit therein and eligible for deposit therein under applicable federal law;

(2) State funds appropriated for deposit to the Fund;

(3) Payments received from any public or private agency in repayment of a loan previously made from the Fund or pursuant to 23 U.S.C. § 129(a)(7) or successor legislation;

(4) Net proceeds of bonds approved by the Delaware General Assembly which have been designated by the Delaware General Assembly for deposit in the Fund;

(5) Interest or other income earned on the investment of moneys in the Fund; and

(6) Any additional moneys made available to the Fund by the Secretary from any sources, public or private, including excess toll revenues, with the approval of the General Assembly for the purposes for which the Fund has been established.

(c) *Accounting of deposits.* — In order to facilitate the determination of the amount of funds available for financing Projects which meet either federal eligibility criteria or state eligibility criteria but not both, deposited funds commingled in the Fund shall also be accounted for separately based on whether their source is federal or state.

(d) *Permitted uses of funds.* — Amounts in the Fund may be used only:

(1) To make loans for the construction, reconstruction, resurfacing, restoring, rehabilitation or replacement of public or private toll transportation facilities or other transportation systems within the State, or the study of the feasibility thereof;

(2) To guarantee, or purchase insurance for, bonds, notes or other evidences of obligation issued by the contracting party developing a public or private toll facility or other transportation system for the purpose of financing all or a portion of the cost of such toll facility or system, if such action would improve the credit market access of the contracting party or reduce interest rates payable by such party;

(3) To earn interest on Fund accounts;

(4) For the reasonable cost of administering the Fund; and

(5) To be used for any purpose authorized by this chapter.

(e) *Terms of loan agreements.* — The following terms shall apply to all loans made from the Fund:

(1) Loans shall bear interest at the average rate of interest earned by the State's pooled investment fund for the period beginning with the 1st month following the date that the loan is funded and ending on the last day of the month preceding the start of repayment; provided, however, that in the event the Department funds a loan with the proceeds of a bond issue, the rate of interest charged shall be no less than the cost the Department incurs to borrow such funds irrespective of the average rate of interest earned by the State's pooled investment funds;

(2) Loan repayment shall begin no later than 5 years from the date that the facility or system is opened to toll traffic and shall be completed by no later than 30 years from the time the loan was obligated;

(3) The loan may be subordinated to other debt financing except for loans made by any other public agency; and

(4) Reasonable origination or processing fees may be charged.

(70 Del. Laws, c. 280, § 1; 74 Del. Laws, c. 69, §§ 97, 98.)

Part II
Transportation Department
Chapter 21
COMPLETE COMMUNITY ENTERPRISE DISTRICT

§ 2101 Declaration of policy.

It is the policy of this State to:

(1) Encourage development that maximizes the economic value to the citizens and the government of the State of both existing and new transportation infrastructure.

(2) Strategically deploy transportation funds in ways that meet the mobility needs of the people of the State at the lowest total economic cost to the people and government of the State.

(3) Encourage transportation solutions that enable the formation of new households in the State that have less than 1 vehicle per adult worker.

(80 Del. Laws, c. 224, § 1.)

§ 2102 Definitions.

As used in this chapter:

(1) "Complete Community Enterprise District" or "District" means an area of a municipality or county, or both, that meets the criteria set forth in §§ 2103 and 2104 of this title.

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

(3) "Farebox recovery ratio" means the fraction of a transit system's operating expenses which are met by the fares paid by passengers.

(4) "Level of service" means a qualitative measure describing operational conditions within a traffic stream based on service measures such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, and convenience.

(5) "Parcel of land" means any quantity of land capable of being described with such definiteness that its locations and boundaries may be established and which is designated by its owner or developer as land to be used or developed as a unit or which has been used or developed as a unit.

(6) "Project" means any State-funded capital-related improvement or addition to the State's transportation infrastructure, including transit systems, facilities, stations and equipment, sidewalks, multi-use paths, protected bicycle lanes, and bicycle boulevards.

(80 Del. Laws, c. 224, § 1; 83 Del. Laws, c. 38, § 1.)

§ 2103 District designation.

(a) Any municipality, county, or municipality-county partnership may enter into an agreement with the Department to create a Complete Community Enterprise District.

(b) (1) A municipality, county, or municipality-county partnership and the Department must agree on the boundaries of the District and must create a master development plan for the District that must subsequently be reviewed through the preliminary land use services process under Chapter 92 of Title 29 and adopted into the municipality's, county's, or municipality-county partnership's comprehensive plan.

(2) The master development plan required by paragraph (b)(1) of this section must, upon creation of the District, include enhanced mass transit routes in the District and maximize the use of walking and bicycling by residents and employees.

(3) The master development plan required by paragraph (b)(1) of this section may include the following:

a. A mix of parcels of land zoned for residential, commercial, light industrial, or institutional uses.

b. A guide for the specific design of the physical form, public spaces, and amenities of the District so that transit, walking, and cycling are safe and comfortable modes of travel for all the residents of the District.

c. An agreement on level of service requirements specific to the District.

(c) Once a master development plan has been created, the Department shall conduct a transportation planning study to evaluate existing and proposed future conditions in and around the District boundaries agreed to under this section. The study shall determine the effects of creating the District and identify the projects needed within the District to implement the policies defined in § 2105 of this title and the projects needed outside the District to meet the highway capacity and quality of service standards of the Department and the county or municipality in which the District is located. The Department shall publish this study on its website at least 10 business days prior to any hearing required under § 2662, § 4962, or § 6962 of Title 9 or § 312 of Title 22.

(80 Del. Laws, c. 224, § 1; 83 Del. Laws, c. 38, § 2.)

§ 2104 District requirements.

A Complete Community Enterprise District must meet all of the following requirements:

(1) Be contiguous.

(2) Be no more than 9 square miles in area.

(3) Be a compact shape that is not a linear corridor.

(4) Be zoned and otherwise regulated such that the District may be developed at a density that is high enough to enable frequent transit service to the residents of the District.

(5) Exempt all development on all parcels of land included in the District from any municipal or county requirements for the provision of off-street parking.

(6) Contain more total area zoned for residential use than is zoned for commercial or other uses. Each parcel of land within the District must be zoned to maximize the use of transit, walking, and bicycling by residents and employees.

(7) Consist of more than 1 parcel and part of at least 1 parcel must be within a ½ mile of any of the following:

a. An existing bus or rail stop where passengers can board and alight.

b. A planned or existing bus or rail station.

(8) Include adjacent neighborhoods within a ½ mile of a bus or rail stop or planned or existing bus or rail station.

(9) Be part of a master development plan for the District that maximizes the use of transit, walking, and bicycling by residents and employees, as required under § 2103(b)(2) of this title.

(80 Del. Laws, c. 224, § 1; 83 Del. Laws, c. 38, § 3.)

§ 2105 District policies.

Once a District has been created, the Department shall:

(1) Develop transit capital improvement projects with the goal of increasing transit ridership in the District that would result in a greater farebox recovery ratio.

(2) Identify the most significant barriers to more trips via walking and cycling in the District and develop capital improvement projects to overcome those barriers.

(3) Assign Department capital improvement projects within a District the highest weight for multi-modal mobility, flexibility/access, as well as the weight equivalent to projects in Transportation Improvement Districts through the Department's project prioritization process under § 8419 of Title 29.

(4) Establish an engineering design goal of free flowing eighty-fifth percentile motor vehicle traffic speeds of 25 miles per hour or less for all streets and roads that are not limited access in the District.

(5) Refrain from developing any projects that expand road capacity in the District unless the Department can demonstrate that such projects will have no negative effect on transit access, pedestrian safety, or on the percentage of trips that can be made by bicycle under low traffic stress conditions.

(80 Del. Laws, c. 224, § 1.)

§ 2106 Authority, role, and responsibility of municipalities and counties.

Nothing in this chapter may be construed to deny to a municipality or county its final decision making authority over proposed land use planning actions.

(80 Del. Laws, c. 224, § 1.)