Title 29

State Government

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Part I
General Provisions

Chapter 1
Jurisdiction and Sovereignty

§ 101. Territorial limitation.

The jurisdiction and sovereignty of the State extend to all places within the boundaries thereof, subject only to the rights of concurrent jurisdiction as have been granted to the State of New Jersey or have been or may be granted over any places ceded by this State to the United States.

(Code 1852, § 3; Code 1915, § 2; Code 1935, § 2; 29 Del. C. 1953, § 101.)

§ 102. Consent to purchase of land by the United States.

The consent of the General Assembly is given to the purchase by the government of the United States, or under authority of such government, of any tract, piece or parcel of land, not exceeding 10 acres in any 1 place or locality, for the purpose of erecting thereon lighthouses and other needful public buildings whatsoever and of any tract, piece or parcel of land, not exceeding 100 acres in any 1 place or locality, for the purpose of erecting thereon forts, magazines, arsenals, dockyards and other needful buildings, from any individuals, bodies politic or corporate within the boundaries or limits of the State; and all deeds, conveyances or title papers for the same shall be recorded as in other cases upon the land records of the county in which the land so conveyed may be situated and, in like manner, may be recorded a sufficient description, by metes and bounds, courses and distances of any tracts or legal divisions of any public land belonging to the United States, which may be set apart by the general government for any or either of the purposes before mentioned by an order, patent or other official document or papers so describing such land. The consent herein given is in accordance with clause 18, § 8 of Article I of the Constitution of the United States and with the acts of Congress in such cases made and provided.

(14 Del. Laws, c. 357; 21 Del. Laws, c. 1; Code 1915, § 4; Code 1935, § 4; 29 Del. C. 1953, § 102.)

§ 103. Cession of lands to the United States; taxation; reversion to State.

(a) Whenever the United States shall desire to acquire a title to land of any kind belonging to this State, whether covered by the navigable waters within its limits or otherwise, for the site of any lighthouse, beacon, lifesaving station or other aid to navigation, and application is made by a duly authorized agent of the United States describing the site or sites required therefor, the Governor may convey the site to the United States and cede to the United States jurisdiction over the site. No single tract desired for any lighthouse, beacon or other aid to navigation shall contain more than 10 acres or, for any lifesaving station, more than 1 acre.

(b) All the lands, rights and privileges which may be ceded under subsection (a) of this section and all the buildings, structures, improvements and property of every kind erected and placed on such lands by the United States shall be exempt from taxation so long as the same shall be used for the purposes mentioned in subsection (a) of this section.

(c) The title of any land which may be ceded under subsection (a) of this section shall escheat and revert to the State, unless the construction thereon of the lighthouse, beacon, lifesaving station or other aid to navigation for which it is ceded shall be commenced within 2 years after the conveyance is made and shall be completed within 10 years thereafter.

(15 Del. Laws, c. 5; Code 1915, § 5; Code 1935, § 5; 29 Del. C. 1953, § 103.)

§ 104. Execution of process on ceded territory.

The sovereignty and jurisdiction of this State shall extend over any lands acquired by the United States under §§ 101-103 of this title, to the extent that all civil and criminal process issued under authority of any law of this State may be executed in any part of the premises so acquired or the buildings or structures thereon erected.

(14 Del. Laws, c. 357, § 3; 21 Del. Laws, c. 1, § 3; Code 1915, § 6; Code 1935, § 6; 29 Del. C. 1953, § 104.)

§ 105. Nanticoke Indians; proof of descent; recognition.

(a) The class of people known as the descendants of the Nanticoke Indians, formerly of Sussex County but at present located in the several counties of this State, who desire to migrate, may appear before any justice of the peace or notary public of this State and, on the evidence and proof that the person belongs to or is a descendant of the Nanticoke Indians, may procure from such justice or notary a certificate reciting such facts.

(b) The descendants of the Nanticoke Indians named in subsection (a) of this section shall be recognized as such within this State.

(22 Del. Laws, c. 470, §§ 1, 2; Code 1915, § 3563; Code 1935, § 4053; 29 Del. C. 1953, § 105; 70 Del. Laws, c. 186, § 1.)

§ 106. Lenape Indian Tribe of Delaware; recognition.

(a) *Legislative findings.* — The General Assembly finds all of the following:

(1) The Lenape Indian Tribe of Delaware, referred to as "the Tribe" in this section, has an unbroken history of hundreds of years of settlement and continued residency in the vicinity of the Town of Cheswold in Kent County.

(2) Members of the Tribe preserved, displayed, and manifested close cultural ties with one another by conducting themselves in such a social and economic manner so as to identify themselves as being culturally and ethnically distinct.

(3) The Tribe can date their ancestral ties as far back as the early 1700s.

(4) The Tribe was formerly known as "the Moors" and, for many decades of the twentieth century, state documents such as driver's licenses designated the Tribe's race with an "M".

(5) The Delaware School Code of 1921 provided that the State Board of Education could establish a school "for the children of people called Moors." As a result, 2 schools were built, 1 in the Town of Cheswold and 1 at Fork Branch on Denney's Road in Kent County.

(6) There has been unofficial statewide acceptance and recognition of the Tribe for at least 125 years. Through a formal process of reviewing applicable state laws, historical and anthropological references, and previous actions of the General Assembly and State agencies, the Department of State concluded by 2009 that this State has historically acknowledged the Tribe.

(7) The Smithsonian Institute issued an annual report in 1948, in which the Tribe was referred to as the "Moors of Kent County, Delaware," and identified as a surviving Indian group of the eastern United States.

(8) The United States Census Bureau approved a defined "state designated tribal statistical area" for the Tribe for the 2010 Census.

(9) The Tribe has a constitutional tribal government, and the preamble of its constitution states that its purpose is to:

a. Preserve the legacy of its ancestors.

b. Promote the interests of its people.

c. Affirm its tribal identity.

d. Establish justice.

e. Ensure domestic tranquility.

f. Defend the general welfare.

g. Exercise its governmental jurisdiction.

h. Protect its environmental, cultural, and human resources.

i. Secure its national sovereignty for future generations of its people.

(b) *Recognition.* — The Lenape Indian Tribe of Delaware is designated and recognized as an American Indian Tribe with a recognized tribal governing body carrying out and exercising substantial governmental duties and powers. The Tribe is recognized as eligible for the special programs and services that the United States provides to Indians because of their status as Indians.

(80 Del. Laws, c. 367, § 1.)

§ 107. Nanticoke Indian Tribe of Delaware; recognition.

(a) The Nanticoke Indian Tribe of Delaware is designated and recognized as an American Indian tribe with a tribal governing body carrying out and exercising substantial governmental powers and duties. The Tribe is recognized as eligible for all programs, services, and other benefits provided to Indian tribes by the United States or any state thereof because of their status as American Indians.

(b) The Nanticoke Indian Tribe of Delaware is designated and recognized as the first state-recognized tribe in Delaware, and has been so recognized since March 10, 1881.

(80 Del. Laws, c. 346, § 1.)

§ 108. Concurrent juvenile legislative jurisdiction.

(a) Purpose. —

The General Assembly declares that the purpose of the concurrent juvenile legislative jurisdiction established under this section is to permit the State to exercise concurrent jurisdiction with the United States when a juvenile, while under the age of 18, is alleged to have violated a federal criminal law within the boundaries of a United States military installation located within the boundaries of the State. Concurrent jurisdiction will permit prosecution by the State of a juvenile for crimes or delinquent acts the juvenile is alleged to have committed on military installations in Delaware, but only if the violation of federal law is also a crime or delinquent act under state law. This section shall also apply to the prosecution of a juvenile as an adult under §§ 921 and 1010 of Title 10. Adjudication in Family Court and Superior Court and access to Delaware state juvenile resources will result in better outcomes for these juveniles than prosecution in the federal court system which lacks juvenile-focused courts and resources.

(b) Relinquishment of exclusive juvenile jurisdiction. —

(1) For purposes of this section "military installation" means a base, camp, post, station, yard, center, or homeport facility for any ship, under the jurisdiction of the Department of Defense.

(2) In accordance with 10 U.S.C. § 2683 the State hereby authorizes acceptance of relinquishment by the United States of exclusive federal jurisdiction over alleged juvenile violations of federal criminal laws occurring on the Dover Air Force Base property or on

any other land, previously ceded to the United States by the State, which contains a military installation. Acceptance by the State of relinquishment of exclusive criminal juvenile legislative jurisdiction is conditioned on all the following conditions being met:

a. A duly authorized official or agent of the United States, acting under authority conferred by Congress, under 10 U.S.C. § 2683, must notify the Governor that the United States wishes to relinquish to the State exclusive juvenile legislative jurisdiction, or a portion thereof, held by the United States over the lands designated in such notice, which are within the boundaries of this State, and used by the United States as a military installation.

b. The Governor shall not accept a request under this paragraph (b)(2) unless the request contains all of the following:

1. States the name, position, and legal authority of the person requesting the cessation of exclusive juvenile legislative jurisdiction.

2. Describes by metes and bounds the United States military installation property subject to the concurrent juvenile legislative jurisdiction.

3. Indicates whether the request includes future contiguous expansions of land acquired for military purposes.

(c) Acceptance of concurrent juvenile legislative jurisdiction. —

(1) By appropriate Executive Order the Governor, in the Governor's discretion, may fully or partially accept, on behalf of the State a request by the United States under subsection (b) of this section. If the Governor accepts the request, the Governor must send a notice of acceptance to the official or agent designated by the United States to receive such notice of acceptance. The Governor's written acceptance must state the elements of the request that are accepted.

(2) The Governor's Executive Order accepting concurrent juvenile legislative jurisdiction must be filed in the office of the Secretary of State and in the office of the Recorder of Deeds of the county in which the affected real estate is located. After filing and recording of the Governor's Executive Order, the Governor shall send to the duly-authorized official or agent of the United States who requested the concurrent juvenile legislative jurisdiction, the following documents:

a. The request from the United States official or agent requesting concurrent juvenile legislative jurisdiction.

b. The Governor's Executive Order accepting concurrent juvenile legislative jurisdiction.

c. The Governor's written acceptance of concurrent juvenile legislative jurisdiction.

d. A description by metes and bounds of the United States military installation property subject to the concurrent juvenile legislative jurisdiction.

(d) The State does not incur or assume any liability as a result of the Governor accepting concurrent juvenile legislative jurisdiction.

(e) Upon the establishment of concurrent juvenile legislative jurisdiction under this section, any Delaware state agency or local government agency may enter into a memorandum of understanding with any federal agency for coordination and designation of responsibilities related to such concurrent juvenile legislative jurisdiction.

(84 Del. Laws, c. 321, § 3, § 3; 84 Del. Laws, c. 42, § 1; 85 Del. Laws, c. 68, § 40.)

Part I
General Provisions
Chapter 2
State Boundaries

§ 201. Description.

The limits of the State are as follows: On the south, the divisional line between Delaware and Maryland; on the west, the divisional line between Delaware and Maryland extended northerly to its intersection with the southerly boundary line of Pennsylvania; on the north, the boundary line between Maryland and Pennsylvania extended easterly to its intersection with the 12-mile circle described from New Castle and the 12-mile circle extended to low water mark on the eastern side of the Delaware River; and on the east, the low water mark on the eastern side of the Delaware River within the 12-mile circle, the southerly perimeter of the 12-mile circle from its intersection with the low water mark westerly to the middle line of the Delaware River, the middle lines of the Delaware River and Bay below the 12-mile circle to the mouth of the Bay and the Atlantic Ocean.

(Code 1852, § 4; Code 1915, § 7; Code 1935, § 7; 29 Del. C. 1953, § 301.)

§ 202. Boundary monuments; ownership; inspection, repair and restoration; resurvey; entry upon lands.

(a) The monuments marking the common boundaries between the State and any adjacent state or commonwealth are the joint property of the State and of such adjoining states or commonwealth.

(b) The Director of the Division of Historical and Cultural Affairs and the Secretary of the Department of Natural Resources and Environmental Control shall examine at least every 5 years the monuments marking the boundaries of this State. Whenever the Director of the Division of Historical and Cultural Affairs and the Secretary of the Department of Natural Resources and Environmental Control shall find that the monuments marking the boundary between Delaware and any other state or commonwealth have been lost, moved, removed or defaced so that the boundary thereof becomes obscure, inaccurate or incorrect, the Director of the Division of Historical and Cultural Affairs and the Secretary of the Department of Natural Resources and Environmental Control shall cooperate with the state officials of any adjacent state or commonwealth in the replacement, restoration or repair of the monuments on the common boundary line.

(c) The Director of the Division of Historical and Cultural Affairs and the Secretary of the Department of Natural Resources and Environmental Control may on behalf of the State make joint agreements and enter into joint contracts with appropriate officials or agencies of any adjacent state or commonwealth and with the United States Coast and Geodetic Survey or any similar neutral party or agency to resurvey, remark or otherwise delineate more thoroughly any part of any common boundary between the State and any adjacent state or commonwealth or the offshore boundary between the State and the federal government. Any such resurvey shall reproduce with greatest possible fidelity the present established boundaries of this State. In the event that a question arises as to the common boundary between the State and the federal government, or any adjacent state or commonwealth, a 3-member commission shall be appointed by the Governor to act in conjunction with the Secretary of the Department of Natural Resources and Environmental Control and the Director of the Division of Historical and Cultural Affairs in negotiating a final settlement of the matter with the appropriate officials of the federal government, or the adjacent state or commonwealth.

(d) The Director of the Division of Historical and Cultural Affairs and the Secretary of the Department of Natural Resources and Environmental Control, their authorized agents or employees, may enter upon any property for the purpose of examining any boundary monument, except that no entry shall be made during the growing season upon any land planted in crops which might be damaged by such entry.

(48 Del. Laws, c. 256, § 1; 29 Del. C. 1953, § 302; 53 Del. Laws, c. 255; 58 Del. Laws, c. 102, §§ 1, 2, 4; 71 Del. Laws, c. 368, § 1.)

§ 203. Penalty for removing, damaging or possessing monument.

(a) Whoever moves, removes, breaks, mutilates, defaces, destroys or otherwise injures any monument marking any boundary between this State and any adjacent state or commonwealth shall be guilty of a class B misdemeanor.

(b) Any person who has in possession any monument heretofore placed or prepared to be placed upon any of the boundary lines specified in subsection (a) of this section shall, upon demand being made for the monument by the Director of the Division of Historical and Cultural Affairs, surrender and deliver the monument to the Director of the Division of Historical and Cultural Affairs, or to the Director's authorized agents or employees.

(c) Whoever fails on demand to surrender and deliver the monument as required by subsection (b) of this section shall be guilty of a class B misdemeanor.

(48 Del. Laws, c. 256, § 2; 29 Del. C. 1953, § 303; 53 Del. Laws, c. 255; 58 Del. Laws, c. 102, § 3; 65 Del. Laws, c. 475, §§ 1, 2; 70 Del. Laws, c. 186, § 1.)

§ 204. Publication of Delaware boundaries.

The Director of the Division of Historical and Cultural Affairs is hereby directed to publish a small pamphlet setting forth in latitudes and longitudes, as currently determined by the United States Coast and Geodetic Survey, the boundaries of the State. In addition to

other distribution, copies shall be sent to the Department of Natural Resources and Environmental Control, the State Department of Transportation, the Division of Legislative Services, and the Library of Congress.

(29 Del. C. 1953, § 304; 58 Del. Laws, c. 86; 84 Del. Laws, c. 255, § 28.)

Part I
General Provisions

Chapter 3
State Seal, Song and Symbols

§ 301. Great Seal.

The seal now used as the Great Seal of this State and bearing the arms of this State shall be the Great Seal of this State. It is emblazoned as follows: Party per fess, or and argent, the first charged with a garb (wheat sheaf) in bend dexter and an ear of maize (Indian Corn) in bend sinister, both proper; the second charged with an ox statant, ruminating, proper; fess, wavy azure, supporters on the dexter a husbandman with a hilling hoe, on the sinister a rifleman armed and accoutred at ease. Crest, on a wreath azure and argent, a ship under full sail, proper, with the words "Great Seal of the State of Delaware," the dates "1704, 1776, and 1787," and the words "Liberty and Independence" engraved thereon.

(Code 1852, § 463; 24 Del. Laws, c. 89, § 1; Code 1915, § 387; Code 1935, § 361; 29 Del. C. 1953, § 501; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 276, § 1.)

§ 302. Seal of state officials, courts and public officers.

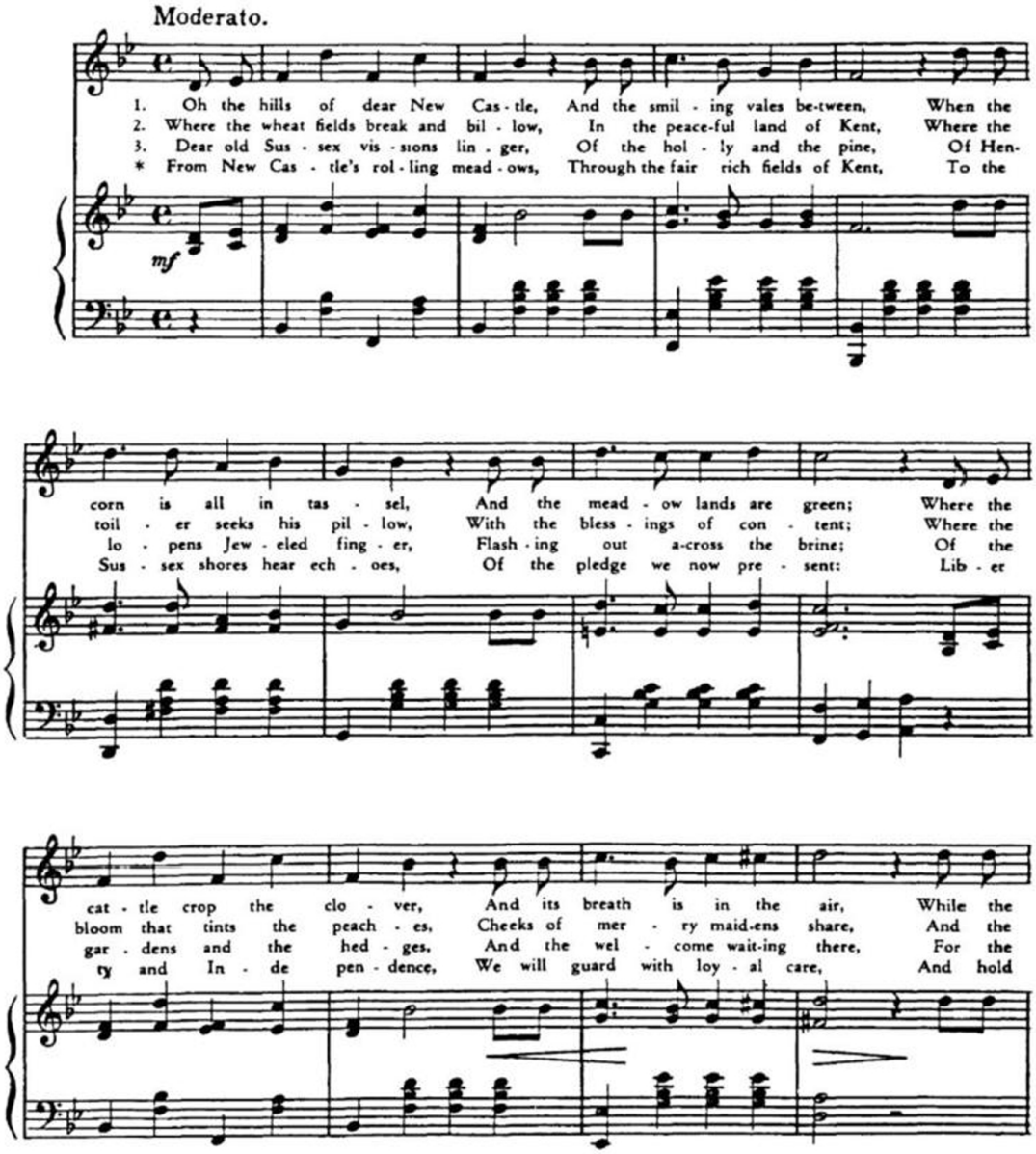
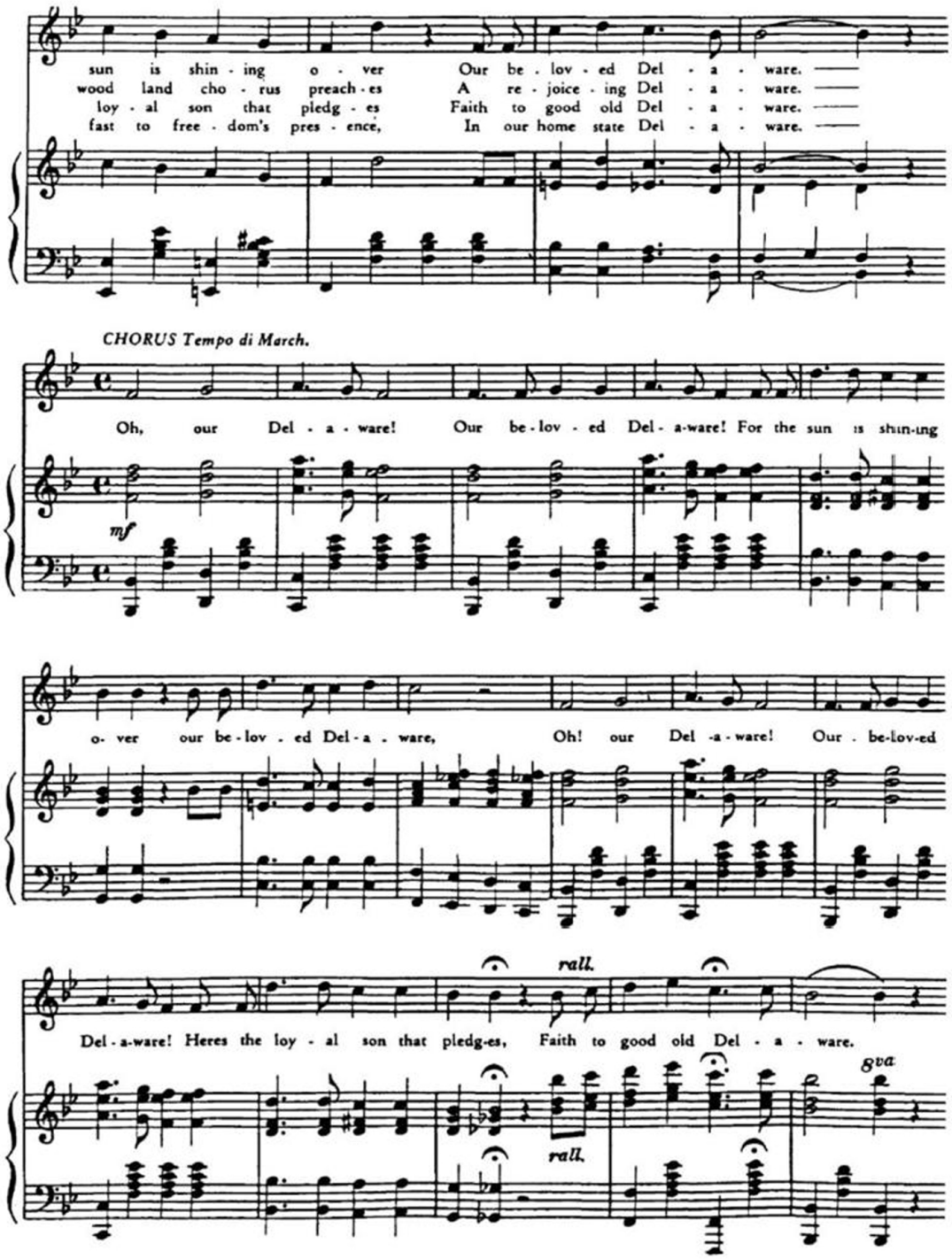
The seals of the Secretary of State and Auditor of Accounts and of the several courts of this State and of the several public offices and officers in the several counties, now established and used, shall be the seals of such courts, offices and officers respectively and shall be so received and used. The seal of the office of the clerk of peace shall be the seal of the county government of Kent and Sussex Counties. The seal of the office of the clerk of the county council shall be the seal of the county government of New Castle County.

(Code 1852, § 464; 21 Del. Laws, c. 114; Code 1915, § 388; Code 1935, § 362; 29 Del. C. 1953, § 502; 54 Del. Laws, c. 186; 55 Del. Laws, c. 85, § 38A.)

§ 303. State song.

The official state song shall consist of the poem *"Our Delaware"* containing 3 verses, each verse in honor of a county of this State, written by George B. Hynson; a fourth verse in praise of the State and pledging the loyalties of its citizens, written by Donn Devine; and a musical score composed specifically for the state song by Will M. S. Brown.

OUR DELAWARE.

Words by GEO. B. HYNSON. Music by WILL M. S. BROWN.

(34 Del. Laws, c. 253; Code 1935, § 2763; 29 Del. C. 1953, § 503; 61 Del. Laws, c. 45, § 1.)

§ 304. State bird.

The blue hen chicken is the official bird of the State.

(42 Del. Laws, c. 128; 29 Del. C. 1953, § 504.)

§ 305. State tree.

The American holly (*Ilex opaca, Aiton*) is adopted as the state tree.

(42 Del. Laws, c. 86; 29 Del. C. 1953, § 505.)

§ 306. State flag.

The design of the official state flag shall be as follows: A background of colonial blue surrounding a diamond of buff in which diamond is placed the correct coat of arms of the State in the colors prescribed by law and in accordance with § 301 of this title, with the words, "December 7, 1787," to be inscribed underneath the diamond.

The official state colors, colonial blue and buff, are designated by the Textile Color Card Association of the United States, Inc., New York, as "arno blue" Cable No. 10663, and "golden beige" Cable No. 10781 respectively; the color shades having been determined by Colorimetric Specifications of the National Bureau of Standards, United States Department of Commerce, in Test No. 2, 1/140565, dated November 18, 1954, which is on file with the Delaware Public Archives, Dover, Delaware. The colors of the coat of arms and other elements of the state flag shall be the following: Husbandman, trousers of gray brown, shirt of red, hat and hilling hoe of brown; rifleman, suit of green, binding, bag and leggings of buff, hat of brown, powder flask and feather of gray; shield, frame of shaded yellow, top panel of orange, center panel of blue, lower panel of white, ox of red brown, grass and corn of green, wheat and branches underfoot of yellow, heraldric wreath to be blue and silver (twisted); ship under full sail to have a dark hull and white sails; date, December 7, 1787, to be white; cord and tassels to be blue and gold.

(29 Del. C. 1953, § 506; 50 Del. Laws, c. 288, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 91, § 10.)

§ 307. Governor's flag.

The official flag of the Governor of the State shall be identical to the official flag of this State except that it shall also bear a fringe of gold surrounding the edge of the flag and the pole upon which the Governor's flag is carried shall have mounted thereon a model of a blue hen's fighting cock.

(29 Del. C. 1953, § 507; 50 Del. Laws, c. 290, § 1.)

§ 308. State flower.

The peach blossom, as originally adopted as the floral emblem of the State on May 9, 1895, shall be the official state flower.

(29 Del. C. 1953, § 508; 50 Del. Laws, c. 289, § 1.)

§ 309. State bug.

The lady bug shall be the official state bug for the State.

(59 Del. Laws, c. 300, § 1.)

§ 310. State mineral.

The official state mineral is sillimanite.

(61 Del. Laws, c. 21, § 1.)

§ 311. State fish.

The weakfish *(Cynoscion genus)* is the official fish of the State.

(63 Del. Laws, c. 90, § 1.)

§ 312. State beverage.

Milk shall be the official beverage of the State.

(64 Del. Laws, c. 41, § 1.)

§ 313. State herb.

Solidago odora, commonly known as "sweet golden rod," shall be the official herb of the State.

(70 Del. Laws, c. 386, § 1.)

§ 314. State fossil.

The official state fossil is the belemnite.

(70 Del. Laws, c. 427, § 1.)

§ 315. State butterfly.

The tiger swallowtail (*Pterourus glaucus*) is the official butterfly of the State.

(72 Del. Laws, c. 44, § 1.)

§ 316. State soil.

Greenwich loam (a coarse, loamy, mixed, semiactive, mesic, Typic Hapludult) is the official soil of the State.

(72 Del. Laws, c. 288, § 1.)

§ 317. State star.

The official state star is Delaware Diamond, located in the constellation of Ursa Major (Great Bear), with coordinates of right ascension 9*h*40*m*44*s* and declination 48°14#2#.

(72 Del. Laws, c. 398, § 1.)

§ 318. State nickname.

The official nickname of the State is “The First State.”

(73 Del. Laws, c. 268, § 1.)

§ 319. State marine animal.

The official state marine animal is the horseshoe crab.

(73 Del. Laws, c. 326, § 1.)

§ 320. State macroinvertebrate.

The stonefly (order *Plecoptera*) is the official macroinvertebrate of the State.

(75 Del. Laws, c. 37, § 1.)

§ 321. State dessert.

Peach pie shall be the official dessert of the State.

(77 Del. Laws, c. 190, § 1.)

§ 322. State fruit.

Strawberries shall be the official fruit of the State.

(77 Del. Laws, c. 255, § 1.)

§ 323. State wildlife animal.

The grey fox is the official wildlife animal of the State.

(77 Del. Laws, c. 286, § 1.)

§ 324. State shell.

The shell of the channeled whelk (Busycotypus canaliculatus) shall be the official shell of the State.

(79 Del. Laws, c. 215, § 1.)

§ 325. State sport.

Bicycling is the official sport of the State.

(79 Del. Laws, c. 253, § 1.)

§ 326. State dance [Expired].

(80 Del. Laws, c. 334, § 1; expired by operation of 80 Del. Laws, c. 334, § 3, eff. July 29, 2017.)

§ 327. State dog.

84 Del. Laws, c. 38 designates rescue dogs as the official state dog.

(84 Del. Laws, c. 38, § 1.)

§ 328. State tall ship.

The ship Kalmar Nyckel is designated the official tall ship of Delaware.

(80 Del. Laws, c. 423, § 1.)

§ 329. State historical aircraft.

The Bellanca Cruisair is the official historical aircraft of Delaware.

(82 Del. Laws, c. 172, § 1.)

§ 330. State sea turtle.

The loggerhead turtle (Caretta caretta) is the official sea turtle of the State.

(83 Del. Laws, c. 382.)

§ 331. 9/11 Remembrance Flag.

(a) The 9/11 Remembrance Flag is designated as the symbol of our State's concern and commitment to remembering all of the lives lost as a result of the terrorist attacks of September 11, 2001. Among those lost were members of the military, police, fire, and other rescue and first-response personnel acting in the line of duty. Each year on September 11, schools are encouraged to offer instruction on the events of that day, and the role of the many military, police, fire, and other rescue and first-response personnel in responding to the attacks.

(b) The chief administrator of each governmental building or facility within this State, as defined in subsection (c) of this section, is encouraged to display the 9/11 Remembrance Flag on September 11 of each year.

(c) For purposes of this section, "governmental building or facility within this State" means the following locations:

(1) The Delaware Legislative Hall, the Office of the Governor and each other Delaware constitutional office, the chambers of the Delaware Senate and the Delaware House of Representatives, the Delaware Supreme Court Building and each Delaware trial courthouse, as well as any official State of Delaware veterans' memorial, Delaware veterans' home, or Delaware veterans' cemetery;

(2) To the extent authorized by federal law and regulation, any United States veterans' cemetery, veterans' memorial, post office, or other federal building, as well as any United States Department of Veterans Affairs medical center, veterans service center, and veterans' community-based outreach center;

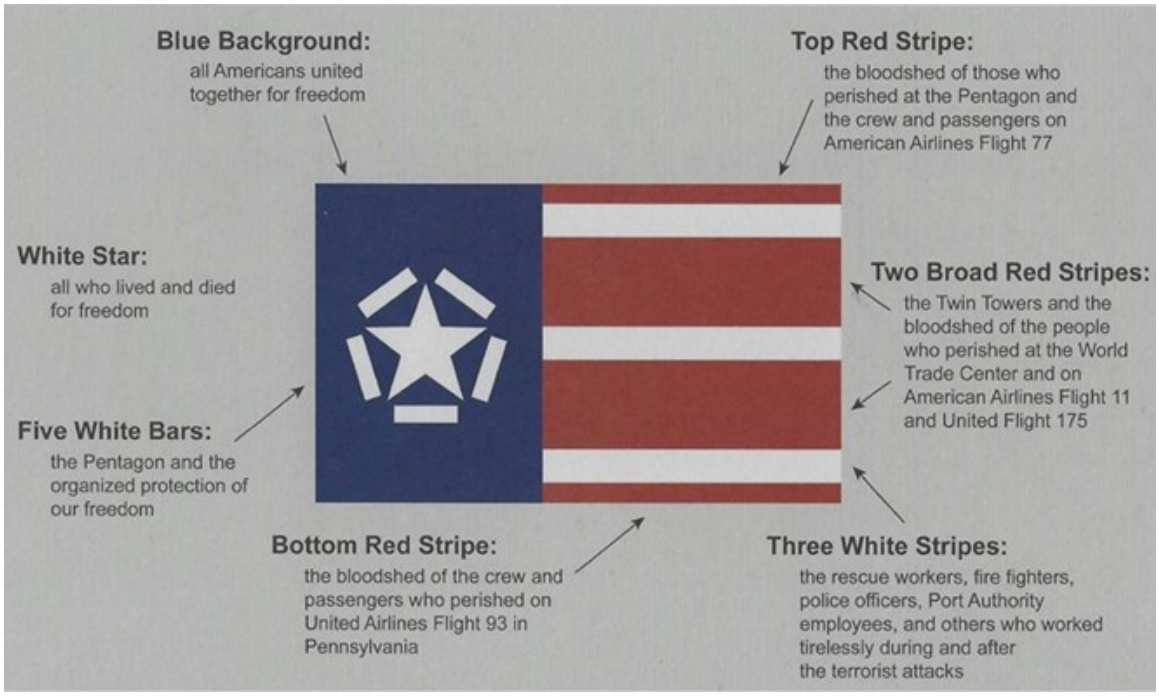
(3) Any appropriate local government building or facility, as determined by the governing body of that local government.

(d) This section may not be construed or interpreted to require any employee to report to work solely for the purpose of providing for the display of the 9/11 Remembrance Flag or any other flag.

(e) If a governmental building or facility within this State opts to display the 9/11 Remembrance Flag, the chief administrator of that facility shall prescribe procedures necessary for the display.

(f) The 9/11 Remembrance Flag is permitted to be flown beneath, and is not in place of, the American Flag.

(g) Any named public office or public official may accept a donation of 1 or more 9/11 Remembrance Flags for the purpose of this section.



(83 Del. Laws, c. 423, § 1.)

§ 332. State dinosaur.

The Dryptosauridae is designated the official dinosaur of this State.

(83 Del. Laws, c. 501, § 1.)

§ 333. State cocktail.

The Orange Crush is the official cocktail of Delaware.

(84 Del. Laws, c. 351, § 1.)

§ 334. State dragonfly.

The blue dasher (Pachydiplax longipennis) is the official dragonfly of this State.

(85 Del. Laws, c. 85, § 1.)

§ 335. State migratory bird.

The red knot is the official migratory bird of Delaware.

(85 Del. Laws, c. 86, § 1.)

Part I
General Provisions

Chapter 4
Buildings and Grounds

Subchapter I
General Provisions

§ 401. General powers and duties.

The Office of Management and Budget, hereinafter referred to in this chapter as the "Office," shall:

(1) Approve and determine the location of any state buildings upon state lands owned or acquired by the State in the City of Dover;

(2) Determine and cause the style of architecture of any building erected, reconstructed or altered on the state group park or any state lands adjacent thereto to conform with the architecture of the other buildings erected thereon since 1930;

(3) Review and approve the style of architecture of all buildings erected, reconstructed or altered on all other state lands in the City of Dover;

(4) Supervise the furnishing or refurnishing of the Governor's office in the legislative building or wherever the same may be located at the State Capitol and act in an advisory capacity in the furnishing or refurnishing of any other important public rooms or halls;

(5) Consider and determine the effect landscaping and maintenance of lands might have on the appearance of buildings and grounds;

(6) Determine and approve the location of all pipes, conduits, cables, wires and other service media, either above or below the ground, which in the opinion of the Office may be required for the distribution of utility service to or across those lands within the jurisdiction of the Office. After such determination and approval of location, the Office may grant, in the name of the State, those rights-of-way or easements across or through state lands which in its opinion are deemed necessary for adequate utility service.

(44 Del. Laws, c. 211, §§ 5, 7; 48 Del. Laws, c. 116, § 1; 29 Del. C. 1953, § 3105; 57 Del. Laws, c. 740, §§ 1B-1D; 75 Del. Laws, c. 88, § 16(5).)

§ 402. Duty to survey, lay out and beautify lands; power to enter into contracts, employ assistants and obtain cooperation from other agencies.

(a) The Office shall cause the lands acquired under this chapter to be surveyed, laid out and beautified to the end that the same may be used for sites for state buildings to meet the needs of the State for adequate quarters for state departments, boards and commissions functioning at the State Capital and for state grounds and may cause any building or buildings being on the lands at the time they are acquired to be sold and removed or taken down, in the discretion of the Office. In the event of the sale of any such building or buildings, the proceeds thereof shall be deposited in a special fund of the State to fund capital projects of the State to the credit of the State.

(b) The Office may:

(1) Make and enter into contracts for services, labor and materials needful or proper for the purposes of this section or any of them;

(2) Employ such assistants as it shall require in the performance of its duties; and

(3) Call upon any department of the state government for assistance in carrying out the purposes of this chapter.

(45 Del. Laws, c. 294, § 6; 46 Del. Laws, c. 191, § 6; 29 Del. C. 1953, § 3106; 57 Del. Laws, c. 740, §§ 1B, 1E; 63 Del. Laws, c. 142, § 41; 75 Del. Laws, c. 88, § 16(5).)

§ 403. Approval of Office prerequisite before erecting state buildings.

No department or agency of this State shall erect, reconstruct or alter any building on any state lands in the City of Dover without first having obtained the approval of the Office as to the style of architecture and general internal and external appearance as well as to the location of such building.

(44 Del. Laws, c. 211, § 6; 29 Del. C. 1953, § 3107; 57 Del. Laws, c. 740, § 1B; 75 Del. Laws, c. 88, § 16(5).)

§ 404. Title to lands; gift or sale of lands by City of Dover.

(a) The title to the lands and premises acquired by purchase, gift or condemnation under this chapter shall be taken in the name of the State.

(b) In the case of lands and premises or easements owned by or held for the use of the City of Dover, the Council of such City may consent to the gift or sale thereof to the State, and a deed executed and acknowledged by the Mayor of the City and attested by the Clerk or Secretary of Council conveying to the State the lands and premises or the easements therein shall be deemed and held to vest in the State an absolute title in fee simple thereto.

(45 Del. Laws, c. 294, § 3; 46 Del. Laws, c. 191, § 3; 29 Del. C. 1953, § 3108.)

§ 405. Condemnation proceedings.

Whenever the Office cannot agree with the owner of any of the lands and premises or easements which the Office is authorized to acquire for the State and which is desired by the Office for the purposes of this chapter, for the purchase thereof the Office may condemn such property as provided in Chapter 61 of Title 10.

(45 Del. Laws, c. 294, § 4; 46 Del. Laws, c. 191, § 4; 29 Del. C. 1953, § 3109; 57 Del. Laws, c. 740, § 1B; 75 Del. Laws, c. 88, § 16(5).)

§ 406. Dedication to public of certain lands for street uses.

Should it be thought desirable by the Office to widen and/or straighten or alter any street abutting upon any of the lands acquired under this chapter, it may cause to be laid off so much and such portion of the land so acquired as it deems necessary or proper to effect such widening, straightening or altering and shall cause a description thereof to be recorded in the office of the Recorder for Kent County and thereupon the land so described shall be deemed and held to be a dedication to the public for street uses and to be under and subject to the jurisdiction of the municipal authorities having supervision over the streets of the City of Dover without any further or other act, acceptance or consent.

(45 Del. Laws, c. 294, § 5; 46 Del. Laws, c. 191, § 5; 29 Del. C. 1953, § 3110; 57 Del. Laws, c. 740, § 1B; 75 Del. Laws, c. 88, § 16(5).)

§ 407. Emergency access to certain state lands.

Where an area of real property owned by this State is bounded by a wall, fence or other structure which has gates or other lockable entrances, the Office shall notify those ambulance, fire and police services which are nearest to the enclosed area of the location of such gates and entrances. The Office shall provide the ambulance service, fire company or police department nearest each such enclosed area a key to each entrance. For purposes of this section, the words “real property” shall include all improved land only and shall not include buildings.

(63 Del. Laws, c. 166, § 6; 75 Del. Laws, c. 88, § 16(5).)

§ 408. Display of POW/MIA flag.

A state agency, including a public school, shall cause a POW/MIA flag to be displayed out-of-doors on its installation, grounds, or campus at each location on each day the flag of the United States is so displayed.

(78 Del. Laws, c. 408, § 1; 83 Del. Laws, c. 30, § 1.)

Subchapter II

Custodian of State House

§ 421. Duties.

The Director of the Office of Management and Budget shall have general charge of the State House and administration buildings and shall see that they are properly cared for. The Director of the Office of Management and Budget shall assign all rooms in the State House and administration buildings for such uses and purposes as the Director may designate.

(36 Del. Laws, c. 3, § 2; Code 1935, § 17; 29 Del. C. 1953, § 4502; 57 Del. Laws, c. 740, § 2B; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 16(5).)

§ 422. Appointments; duties; police powers.

The Director of the Office of Management and Budget shall appoint persons who shall:

(1) Care for the property belonging to this State;

(2) Keep clean and in good order all the rooms, offices, apartments, library and furniture, halls, stairways and cellars in the buildings;

(3) Attend to the heating of the same;

(4) Look after the pavements and grounds attached thereto; and

(5) Perform the duties and do any and all things directed to be done by the Director of the Office of Management and Budget.

(36 Del. Laws, c. 3, § 3; Code 1935, § 18; 29 Del. C. 1953, § 4503; 57 Del. Laws, c. 740, § 2C; 63 Del. Laws, c. 419, § 1; 75 Del. Laws, c. 88, § 16(5); 75 Del. Laws, c. 322, § 6.)

§ 423. State House and administration buildings; days open [Repealed].

Repealed by 71 Del. Laws, c. 138, § 5, effective July 3, 1997.

Part I
General Provisions
Chapter 5
State Archives and Historical Objects
Subchapter I
Public Records

§ 501. Statement of legislative intent; short title.

(a) The General Assembly finds that public records are essential to the administration of state and local government. Public records contain information which allows government programs to function, provide officials with a basis for making decisions and ensure continuity with past operations. Public records document the legal responsibility of government, protect the rights of citizens and provide citizens with a means of monitoring government programs and measuring the performance of public officials. State and local government records also reflect the historical development of the government and of the citizens which it serves. Such records need to be systematically managed to ensure preservation of historically valuable materials, to provide ready access to vital information and to promote the efficient and economical operation of government.

(b) The General Assembly intends by this subchapter to establish a single body of law applicable to all public officers and employees on the subject of public records management and preservation and to ensure that the procedures used to manage and preserve public records will be uniform throughout the State.

(c) The Delaware Public Archives is established as a division within the Department of State and is charged with administering, implementing and enforcing all provisions of the Delaware Public Records Law as defined in this subchapter.

(d) The Delaware Public Archives shall be the official repository for the archival records of this State and all political subdivisions thereof.

(e) This subchapter may be cited as the "Delaware Public Records Law."

(66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, § 11.)

§ 502. Definitions.

As used in this subchapter, the following terms shall have the meanings indicated:

(1) "Agency" means any office, department, board, commission or other separate unit of government of this State, including all branches of government: Executive, legislative and judicial.

(2) "Archival record" means those records that contain significant information about the past or present or provide significant evidence of the organization, policies, procedures, decisions and essential transactions of public business and are therefore worthy of long-term preservation and systematic management for historical and other research.

(3) "Custodian of public records" means the person designated, pursuant to § 520 of this title, or who is otherwise responsible for the creation or maintenance of public records.

(4) "Electronic record" means a public record that is stored, generated, received or communicated by electronic means for use by, or storage in, an information system or for transmission from one information system to another.

(5) "Governing body" means the county council, levy court, city or town council, board or commission or other body authorized by law to govern the affairs of local government.

(6) "Local government" means any county, city, town, municipality or other government, created by an act of the General Assembly, that is not a state agency, department, board or commission.

(7) "Political subdivision" includes counties, cities, towns, districts, authorities and other public corporations and entities whether mandated by the Constitution or formed by an act of the General Assembly.

(8) "Public record" means any document, book, photographic image, electronic data recording, paper, sound recording or other material regardless of physical form or characteristics, including electronic records created or maintained in electronic information systems, made, used, produced, composed, drafted or otherwise compiled or collected or received in connection with the transaction of public business or in any way related to public purposes by any officer or employee of this State or any political subdivision thereof.

(9) "Records officer" means any person or persons designated according to the provisions of this chapter, whose responsibilities include the development and oversight of agency or local government records management programs.

(10) "Records retention and disposition schedule" means a list or other instrument describing records and their minimum retention periods which is issued by the Delaware Public Archives.

(11) "Vital records" means those records which contain information required for government to continue functioning during a disaster, protect the rights of Delaware citizens and document the obligations of Delaware government, and reestablish operations after a calamity has ended.

(66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, § 12.)

§ 503. Duties of Delaware Public Archives concerning public records.

(a) The Delaware Public Archives shall be responsible for establishing and enforcing the policies and guidelines for the management and preservation of all public records of this State and the political subdivisions thereof.

(b) The Delaware Public Archives shall have the power, duty and authority to:

(1) Establish and administer an archives and records management program for the application of efficient and economical methods to the creation, utilization, maintenance, retention, preservation and disposal of public records.

(2) Analyze, develop, establish and coordinate standards, procedures and techniques of recordmaking and recordkeeping.

(3) Preserve and administer in the Delaware Public Archives such records as may be transferred into its custody, carefully protecting such materials, and filing, classifying and cataloguing them for use. Provided, that any materials placed in the keeping of the Delaware Public Archives under special terms or conditions restricting their use shall be made accessible only in accordance with such terms or conditions.

(4) Initiate appropriate action to recover records removed unlawfully or without authorization.

(5) Establish a centralized micrographics and document imaging program for the benefit of all agencies, at the full cost of such goods and services, in accordance with § 6531 of this title.

(6) Institute and maintain a training and information program in records and information management to bring approved and current practices, methods, procedures and devices for the efficient and economical management of records to the attention of all agencies and political subdivisions.

(7) Establish and maintain a program in cooperation with state agencies and the political subdivisions of this State for the selection and preservation of vital records, or those records which are considered essential to the continuing operation of government and to the protection of the rights and privileges of citizens.

(8) Promulgate such rules and regulations as may be necessary to carry out the purposes of this chapter.

(9) Adopt a seal of office for the purpose of certifying copies of public records.

(66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, §§ 13-19.)

§ 504. Duties of public officials and employees concerning public records.

(a) It shall be the responsibility of every public official and employee to:

(1) Adequately document the transaction of public business and the services and programs for which such persons are responsible;

(2) Retain and adequately protect all public records in their custody; and

(3) Cooperate with the Delaware Public Archives and records officers in the establishment and maintenance of an active and continuous program for the economical and efficient management of public records.

(b) No officer, member or employee of any agency of this State or any political subdivision thereof shall destroy, sell or otherwise dispose of any public record or printed public document in such person's care or custody or under such person's control without first having advised the Delaware Public Archives of their nature and obtained its consent.

(66 Del. Laws, c. 211, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 91, §§ 20, 21.)

§ 505. Storage and protection of public records.

(a) All public records of this State and the political subdivisions thereof shall be kept in facilities maintained by the agencies and offices responsible for the creation and maintenance of such records, unless the consent of the Delaware Public Archives is obtained for their transfer or storage elsewhere.

(b) The chief administrative officer responsible for maintaining an office or offices wherein public records are created or kept shall establish such safeguards against damage, removal or loss of records as the chief administrative officer shall deem necessary and as may be required by rules and regulations issued under authority of this chapter. Such safeguards shall include but are not limited to notifying all officials and employees of the requirements and penalties of this chapter.

(66 Del. Laws, c. 211, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 91, § 22.)

§ 506. Delivery of records to successors.

The custodian of any public records shall, at the expiration of the custodian's term of office, appointment or employment, deliver custody and control of all public records kept or received by the custodian in the transaction of official business to the custodian's successor, supervisor or records officer, or, if there be none, to the Delaware Public Archives.

(66 Del. Laws, c. 211, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 91, § 23.)

§ 507. Preservation of plans of state buildings and public works.

(a) Complete copies of as-built drawings and specifications for all buildings and other public works that are built on state property, including alterations thereto, shall be deposited with the Delaware Public Archives for preservation and safekeeping.

(b) The Office of Management and Budget shall not approve final payment for any construction project until permanent archival-quality copies of the architectural and engineering drawings have been deposited with the Delaware Public Archives.

(66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, §§ 24, 25; 75 Del. Laws, c. 88, § 16(5).)

§ 508. Deposit of deeds to state-owned property with the Delaware Public Archives.

All state agencies shall deposit with the Delaware Public Archives for preservation and safekeeping the original deeds to all state-owned property. The Delaware Public Archives shall give a receipt for each deed received into its custody.

(66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, §§ 26, 27.)

§ 509. Duty of public officials to consult Delaware Public Archives before duplicating or repairing records.

All public officials of this State and the political subdivisions thereof shall consult with the Department of State regarding proper methods and materials before undertaking the repair or restoration of any public record.

(66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, §§ 28, 29.)

§ 510. Transfer of records upon termination of state agencies; political subdivisions.

(a) All public records which are in or shall come into the possession of any state agency shall, upon termination of such agency, be transferred to the custody of the Delaware Public Archives, provided that such transfer is consistent with the provision of any such termination.

(b) All public records which are in or shall come into the possession of any political subdivision of this State shall, upon termination or revocation of the charter of such political subdivision, be transferred to the custody of the Delaware Public Archives.

(66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, §§ 30, 31.)

§ 511. Certified copies of records delivered to Delaware Public Archives for preservation.

(a) The Delaware Public Archives may issue certified copies of any public records in its custody, as provided by § 10003 of this title, subject to the restrictions listed in § 10002 of this title, which certified copies shall be admissible in evidence in any court of justice or administrative hearing in the same manner and entitled to the same weight and have the same effect as certified copies made by the official from whose office such records were received.

(b) The State Archivist and Records Administrator, or in his or her absence the Deputy State Archivist, may certify copies of any public records in the custody of the Delaware Public Archives under seal of the Delaware Public Archives.

(66 Del. Laws, c. 211, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 91, §§ 32, 33.)

§ 512. Transfer of records to the Delaware Public Archives.

(a) Selection and transfer of public records in the custody of any public official of this State or the political subdivisions thereof shall be based upon terms and conditions established in approved records retention and disposition schedules, and according to the rules and regulations established pursuant to the provisions of this chapter.

(b) The Delaware Public Archives shall provide written notice a minimum of 10 working days prior to such transfers, unless there is immediate, actual or threatened damage, loss or destruction of public records, in which case, such transfer may be without notice.

(66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, §§ 34-36.)

§ 513. Acquisition and custody of federal records.

The Delaware Public Archives may acquire and take into its protective custody such public records in the custody of the government of the United States as may relate to the State.

(66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, §§ 37-39.)

§ 514. Inspection of public records by the Delaware Public Archives.

For the purpose of this chapter all custodians of public records of this State and the political subdivisions thereof shall, upon the request of the State Archivist and Records Administrator, afford to the State Archivist and Records Administrator or Delaware Public Archives staff designated by the Archivist all proper and reasonable access to and examination of all public records in their custody.

(66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, §§ 40, 41.)

§ 515. Microfilming and other document imaging services; appropriations and expenditures.

(a) Any program or function of any state agency or local government, which requires microfilm or other document imaging services, must include provisions for the anticipated cost of such services. Agencies may choose to contract with the Delaware Public Archives for microfilm and document imaging services in accordance with the provisions of § 6531 of this title.

(b) The Department of Finance shall not approve expenditure of funds used for the development, implementation or maintenance of microfilm or document imaging programs, including contracting with a commercial service provider or purchase of equipment or

software, without prior written approval of the Delaware Public Archives. Any programs or projects in operation must adhere to standards established by the Delaware Public Archives to allow for approval of expenditures.

(Code 1935, § 1090B; 42 Del. Laws, c. 96, § 4; 29 Del. C. 1953, § 3330; 57 Del. Laws, c. 608, §§ 1B, 1J; 65 Del. Laws, c. 348, § 99; 66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, §§ 42-44; 72 Del. Laws, c. 382, § 2.)

§ 516. Responsibility of the Delaware Public Archives concerning records created or reproduced by photographic or microphotographic means; admissibility of photographic copies of records in evidence.

(a) The Delaware Public Archives shall be responsible for monitoring the use of photographic or microphotographic processes in the creation or duplication of public records.

(1) The Delaware Public Archives shall enforce compliance with approved procedures and standards of quality, to be established by the Delaware Public Archives pursuant to the provisions of this chapter, regarding creation and storage of public records by microphotography or other means.

(2) Destruction of original records which have been duplicated shall require the prior approval of the Delaware Public Archives.

(b) Photographs, photocopies or microfilm of any record photographed, photocopied or microfilmed as provided in this chapter shall have the same force and effect as the originals thereof would have had and shall be treated as originals for the purpose of their admissibility in evidence. Certified or authenticated copies of such photographs, photocopies or microfilm or enlargements thereof shall be admitted in evidence equally with the original photographs, photocopies or microfilm.

(66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, §§ 45-49.)

§ 517. Standards for methods and materials used for public records.

(a) All custodians of public records of this State and the political subdivisions thereof, whose duty it shall be to create any public record, shall not use or permit to be used for recording purposes, any materials or methods which do not meet standards of quality established by the Delaware Public Archives.

(b) The Delaware Public Archives may require that certain records shall be kept on permanent-durable paper. The Delaware Public Archives may require the microfilming of records that are not produced on permanent-durable paper.

(c) The Delaware Public Archives shall make available, upon request, its standards of quality for methods and materials.

(66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, §§ 50-52.)

§ 518. Recovery of records; replevin.

(a) The chief administrative officer of each state agency and political subdivision of this State shall notify the Delaware Public Archives of any actual, impending or threatened unlawful removal, defacing, alteration or destruction of records that shall come to his or her attention, and with the assistance of the Delaware Public Archives shall initiate action through the Attorney General for recovery of such records as shall have been unlawfully removed and for such other redress as may be provided by law.

(b) Upon the request of the State Archivist and Records Administrator, the Attorney General shall have the authority to enjoin, recover and replevin any public records which have been unlawfully transferred or removed in violation of this subchapter or otherwise transferred or removed unlawfully through whatever means of equitable relief necessary. Such records shall be returned to the office of origin or to the Delaware Public Archives.

(66 Del. Laws, c. 211, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 91, §§ 53, 54.)

§ 519. Delaware Public Archives to be depository for reports, publications, rules and regulations.

(a) The Delaware Public Archives is hereby constituted the central depository for the reports, publications, rules and regulations of the government of this State and all political subdivisions thereof. It shall be the duty of all state agencies and political subdivisions of this State to deposit with the Delaware Public Archives 2 copies of the best edition of all reports and publications issued for general public distribution. Said deposit shall also include 2 complete and current sets of respective rules and regulations and any changes as they occur.

(b) The Delaware Public Archives shall have the authority to determine whether or not any of said publications lack sufficient information for retention as research materials, and it may request the publishing agency to discontinue depositing such publications with the Archives. The Delaware Public Archives may preserve copies of any publications deposited for preservation and may destroy the originals after copies created on a recording medium that meets the standards of quality for methods and materials established under § 517 of this chapter have been made and preserved.

(29 Del. C. 1953, § 3309; 51 Del. Laws, c. 207; 57 Del. Laws, c. 608, §§ 1B, 1E, 1F; 62 Del. Laws, c. 327, § 2; 66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, §§ 55-57.)

§ 520. Custodian designated.

The chief administrative officer or officers charged by law with the responsibility of maintaining offices having public records shall be the official custodian of such public record. However, upon transfer of any and all public records to the Delaware Public Archives for archival preservation, the State Archivist and Records Administrator shall become the designated custodian.

(66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, § 58.)

§ 521. Appointment of records officers.

(a) Each state agency and political subdivision of this State shall designate as many as appropriate, but at least 1, records officer to serve as liaison with the Delaware Public Archives for the purpose of implementing and overseeing a records management program, and coordinating legal disposition, including destruction of obsolete records.

(b) Appointment of state agency records officers shall be made by the respective heads of each agency.

(c) Appointment of records officers for the political subdivisions of this State shall be made by the chief administrative official of such political subdivision.

(66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, § 59.)

§ 522. Appointment of State Archivist and Records Administrator; qualifications for position; removal from office.

(a) The Secretary of State shall appoint with a fixed salary, and with written approval of the Governor, a director for the Delaware Public Archives who shall have the title (State Archivist and Records Administrator) who shall be qualified by training and experience to perform the duties of the office, and who may be removed from office by the Secretary with written approval of the Governor.

(b) The State Archivist and Records Administrator shall have such powers, duties and functions in the administration and operation of the Delaware Public Archives and implementation of the Delaware Public Records Law as may be assigned by the Secretary or required by the Delaware Public Records Law.

(66 Del. Laws, c. 211, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 91, § 60.)

§ 523. Council on Archives [Repealed].

(73 Del. Laws, c. 365, § 1; repealed by 78 Del. Laws, c. 328, § 1, eff. July, 12, 2012.)

§ 524. Records retention and disposition schedules.

The Delaware Public Archives shall, after consultation with appropriate state agencies, or political subdivisions of this State, establish records retention and disposition schedules setting forth the minimum length of time that records need to be retained. If any state or federal law or regulation provides a retention period different from that established by the records retention period and disposition schedule established herein, the retention period established by law or regulation shall govern.

(66 Del. Laws, c. 211, § 1; 72 Del. Laws, c. 91, § 63.)

§ 525. Delaware Cultural Access Fund.

(a) There is hereby established a special fund to be known as the Delaware Cultural Access Fund. Such fund shall consist of revenues derived from the imposition of the additional fee authorized pursuant to § 9607 of Title 9 which may be supplemented in the discretion of the Secretary of State by funds received through § 2311 of this title and the Technology Infrastructure Fund in the Department of State.

(b) These funds shall be used to promote, preserve and protect the State's cultural assets and shall be used to fund services provided through the Delaware Public Archives, Division of Libraries, Division of the Arts, and Division of Historical and Cultural Affairs.

(c) All fees received by the State Treasurer and other moneys appropriated or received for the purposes stated in subsection (b) of this section shall be deposited in an appropriated special fund which shall be administered by the Secretary of State, under the same type of budget and financial controls as the General Fund of this State.

(d) [Deleted.]

(67 Del. Laws, c. 257, § 1; 72 Del. Laws, c. 91, §§ 64-66; 73 Del. Laws, c. 365, § 2; 77 Del. Laws, c. 75, §§ 2-4; 80 Del. Laws, c. 79, § 126.)

§ 526. Penalties.

Whoever violates §§ 504, 506, 507, 508, 509, 512, 514, 517 and 519 of this title shall be guilty of an unclassified misdemeanor and shall be fined not more than $500, or imprisoned not more than 3 months, or both.

(66 Del. Laws, c. 211, § 1; 67 Del. Laws, c. 257, § 1; 72 Del. Laws, c. 91, § 67.)

§§ 527-536.

Subchapter II

Historical Buildings, Sites, Objects and Archaeological Resources

§ 551. Powers with respect to historical buildings, sites, objects and archaeological resources.

(a) To prevent the further loss of part of our national heritage and culture through the deterioration or neglect of historic buildings, sites, objects or archaeological resources within this State, including archaeological resources in or on subaqueous lands pursuant to Chapter 53 of Title 7, the Department of State may survey, examine, select for preservation, acquire, repair, restore, operate and make available

for public visitation and use such historic buildings, sites, objects or archaeological resources as it may deem worthy of preservation in the best public interest for the fulfillment of the purposes of this subchapter.

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

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

(2) If the provisions of paragraph (b)(1) of this section do not apply, or were forfeited through lack of response, or were waived by the tenant, or the tenant fails to comply with the terms and conditions of the purchase agreement, the Department may dispose of the property in accordance with the procedures outlined in Chapter 94 of this title.

(3) Prior to the sale of any historic property, the Department shall present the details of the proposed sale to the Controller General and the Director of the Office of Management and Budget for their approval.

(48 Del. Laws, c. 265, § 1; 29 Del. C. 1953, § 3351; 57 Del. Laws, c. 608, § 1B; 66 Del. Laws, c. 211, § 1; 75 Del. Laws, c. 153, §§ 14, 15; 76 Del. Laws, c. 288, § 65.)

§ 552. Acquisition of land; contracts.

(a) The Department may acquire by gift, devise, purchase or otherwise, absolutely or in trust, and hold and, unless otherwise restricted by the terms of the gift or devise, encumber, convey or otherwise dispose of any real property or of any estate or interest therein as may be necessary in carrying into effect the purposes of this subchapter.

(b) The Department may enter into contracts and execute all instruments necessary to fulfill its duties respecting the protection, preservation, maintenance or operation of such historic buildings, sites, objects or archaeological resources it may select.

(48 Del. Laws, c. 265, §§ 2, 3; 29 Del. C. 1953, § 3352; 57 Del. Laws, c. 608, § 1B; 66 Del. Laws, c. 211, § 1; 75 Del. Laws, c. 153, § 14.)

§ 553. Employees; duties.

The Department shall appoint and prescribe the duties of such employees or agents as may be necessary to carry out its functions and shall fix their rate of compensation.

(48 Del. Laws, c. 265, § 4; 29 Del. C. 1953, § 3353; 57 Del. Laws, c. 608, § 1B; 66 Del. Laws, c. 211, § 1.)

§ 554. Powers with respect to historical buildings, sites, objects and archaeological resources.

(a) A trust fund is continued under the jurisdiction of the Department of State subject to audit by the Secretary of Finance or its authorized agents to accept, hold and administer gifts and bequests of money, securities or other personal property of whatsoever character, absolutely or on trust.

(b) Unless otherwise restricted by the terms of the gift or bequest, the Department may sell, exchange or otherwise dispose of and invest or reinvest in such investments as it may determine from time to time the moneys, securities or other property given, bequeathed or appropriated to it.

(c) The principal of such funds, together with the income therefrom and all other revenues received by it from any source whatsoever for this purpose, shall be deposited in a special fund of the State.

(d) When the principal and accrued interest of the trust fund shall have accumulated sufficiently in the judgment of the Department to undertake the preservation of a historic building, site, object or archeological resource, the accrued funds, principal and interest may be expended for that purpose.

(48 Del. Laws, c. 265, § 5; 29 Del. C. 1953, § 3354; 57 Del. Laws, c. 608, §§ 1B, 1K; 63 Del. Laws, c. 142, § 42; 66 Del. Laws, c. 211, § 1; 75 Del. Laws, c. 153, § 14.)

§ 555. Reserved power to repeal or amend this subchapter.

The right to repeal, alter or amend this subchapter at any time is expressly reserved, but no contract or individual right made or acquired shall thereby be divested or impaired.

(48 Del. Laws, c. 265, § 6; 29 Del. C. 1953, § 3355; 66 Del. Laws, c. 211, § 1.)

§ 556. Purchase of state papers [Repealed].

Repealed by 72 Del. Laws, c. 91, § 71, effective July 1, 1999.

§ 557. Fort Christina Monument.

The land acquired at "The Rocks" on the Christina River in the City of Wilmington for the purpose of creating there a state park to mark perpetually the place where the first Swedish settlers landed and the site of Fort Christina, the first permanent settlement in this State as well as the first permanent settlement in the Delaware River Valley, shall be known and designated as the Fort Christina Monument. The Department of State shall have jurisdiction, control and maintenance of the Fort Christina Monument.

(29 Del. C. 1953, § 3357; 53 Del. Laws, c. 256; 57 Del. Laws, c. 608, § 1B; 66 Del. Laws, c. 211, § 1.)

§ 558. Erection and maintenance of historic markers; employment of expert assistance; unauthorized possession or transportation; duplication.

(a) The Department of State shall:

(1) Determine and select such points of historic interest throughout this State as the Department thinks should be marked with a suitable monument, tablet or marker;

(2) Design, purchase and erect monuments, tablets or markers which the Department may decide to be appropriate at such points, indicating thereon the events commemorated and having such other suitable inscription as may seem necessary; and

(3) Keep in good repair all monuments, tablets and markers erected by the Historic Markers Commission and also all monuments, tablets and markers erected by the Department of State.

(b) The Department may employ such expert assistance to aid in its historical researches as it may deem necessary to effectively carry out the purposes of this section.

(c) All historical markers which are erected by the Department of State shall be the property of the State. No person, entity or business shall possess, transport, alter or remove said marker without written authority of an appropriate official of the Department of State. Further, no person, entity or business shall receive, retain, alter or dispose of state historical markers absent written authorization of an appropriate official of the Department of State. Unauthorized recipients of these markers may be prosecuted criminally for receiving stolen property.

(d) The Department of State may establish rules or regulations regarding all aspects of state historical markers. Other persons, entities or businesses shall not duplicate state historical markers, or create, obtain or install similar markers with an intent to mislead or deceive the public.

(41 Del. Laws, c. 94, §§ 1-3; 29 Del. C. 1953, § 3308; 57 Del. Laws, c. 608, § 1B; 66 Del. Laws, c. 211, § 1; 69 Del. Laws, c. 247, § 1.)

§ 559. Display and distribution of state flag.

(a) State agencies, including all public schools, shall cause the flag of this State to be displayed out-of-doors (weather permitting) on its installation, grounds or campus at each location. This section shall apply only where public buildings, including school buildings, are equipped with flagpoles.

(b) To carry out the purpose of subsection (a) of this section, the Office of Management and Budget shall purchase and distribute as many flags of this State as necessary to supply each agency and public school with the initial issue, upon certification by the agency or public school head that such purchase is initial and not a replacement.

(29 Del. C. 1953, § 7602; 57 Del. Laws, c. 431, § 1; 63 Del. Laws, c. 165, §§ 1, 2; 66 Del. Laws, c. 211, § 1; 75 Del. Laws, c. 88, § 16(5).)

§ 560. Freedom Trail.

Consistent with the authority granted to the Department of State pursuant to §§ 551 and 552 of this title, the Department shall consider and recognize Delaware's Underground Railroad and other historical sites associated with African American Freedom in Delaware and designate such sites with specially designated Freedom Trail markers. The Department shall recognize Delaware's underground railroad trail by utilizing the historical markers program to identify important historical sites as evidence of the struggle for freedom over slavery, segregation and other forms of injustice.

(73 Del. Laws, c. 357, § 1.)

Subchapter III

State Museum

§ 571. Establishment of State Museum.

The Department of State may establish and maintain under its jurisdiction a division to be known as the Delaware State Museum to be located in the City of Dover.

(46 Del. Laws, c. 261, § 1; 29 Del. C. 1953, § 3371; 57 Del. Laws, c. 608, §§ 1B, 1M; 66 Del. Laws, c. 211, § 1.)

§ 572. Purpose of State Museum.

The purpose of the Delaware State Museum is to:

(1) Collect and preserve for the citizens of Delaware permanent exhibits of some phases of the social, cultural, industrial, agricultural and commercial life of the State and of its natural resources;

(2) Prepare and circulate for use in the schools of the State portable exhibits of instructive material which will aid in a better understanding of the past and present activities in Delaware; and

(3) Convey to the visitors to the State a better understanding of the contributions of Delaware toward the growth of our nation from the time of our first settlement to the present day.

(46 Del. Laws, c. 261, § 2; 29 Del. C. 1953, § 3372; 66 Del. Laws, c. 211, § 1.)

§ 573. Powers and duties with respect to State Museum.

The Department may:

(1) Solicit and receive funds for the purpose of restoring and equipping the State Museum; and

(2) Collect and prepare suitable exhibits, purchase necessary supplies, tools and equipment and employ a curator and other personnel necessary for the adequate operation of the State Museum.

(46 Del. Laws, c. 261, § 4; 29 Del. C. 1953, § 3373; 57 Del. Laws, c. 608, § 1B; 66 Del. Laws, c. 211, § 1.)

§ 574. Expenses and insurance of State Museum.

The expenses of water, electric lights, heating fuel and janitors' supplies shall be paid from the funds of the Department.

The State Insurance Commissioner shall provide adequate insurance for protection against fire, smoke, theft and wind damage.

(46 Del. Laws, c. 261, § 5; 29 Del. C. 1953, § 3374; 66 Del. Laws, c. 211, § 1.)

Part I
General Provisions

Chapter 6
Miscellaneous Provisions

§ 601. Obtaining portraits by gift.

The Department of State shall continue to obtain, by gift, portraits of the signers of the Declaration of Independence, governors, United States Senators, Representatives, judges of courts, cabinet officers, Naval, Army and Air Force officers and colonial and United States officials who are from Delaware.

(29 Del. C. 1953, § 3501; 57 Del. Laws, c. 608, § 4; 70 Del. Laws, c. 186, § 1.)

§ 602. Certified or registered mail.

The State, its various offices, departments and agencies may use certified mail in all cases where registered mail was required prior to September 30, 1959.

(29 Del. C. 1953, § 7601; 52 Del. Laws, c. 191, § 1.)

§ 603. Identification of state vehicles.

All state-owned boats and motor vehicles shall bear prominent identification, at least on the rear thereof, identifying such vehicles as state-owned vehicles. Exceptions are the Governor's car, vehicles of the State Police, state detectives, enforcement vehicles of the Department of Natural Resources and Environmental Control operated by environmental protection officers, Alcoholic Beverage Control Commission and certain special use vehicles operated by the Division of Adult Corrections, the Division of Juvenile Corrections, State Fire Marshal's Office and the Controlled Substances Program of the Department of Health and Social Services.

(59 Del. Laws, c. 381, § 24; 60 Del. Laws, c. 588, § 1; 63 Del. Laws, c. 336, § 1.)

§ 604. Notification to Governor and General Assembly of rules and regulations promulgated by state agencies [Repealed].

Repealed by 69 Del. Laws, c. 107, § 3, effective Jan. 1, 1994.

§ 605. Promulgation of rules and regulations by state agencies — Review by Attorney General to determine effect on private property right.

(a) No rule or regulation promulgated by any state agency shall become effective until the Attorney General has reviewed the rule or regulation and has informed the issuing agency in writing as to the potential of the rule or regulation to result in a taking of private property.

(b) Judicial review of actions taken pursuant to this section shall be limited to whether the Attorney General has reviewed the rule or regulation and has informed the issuing agency in writing.

(c) The term "taking of private property" as used under this section shall mean an activity wherein private property is taken such that compensation to the owner of that property is required by the Fifth and Fourteenth Amendments to the Constitution of the United States or any other similar or applicable law of this State.

(d) Nothing in this section shall affect any otherwise available judicial review of agency action.

(68 Del. Laws, c. 191, § 1.)

§ 606. Interpreting of significant State events for the hearing impaired.

The General Assembly, finding that the hearing impaired are an important but often neglected portion of Delaware's citizenry, hereby requests that significant State events be interpreted for the hearing impaired. "Significant State events" include, but are not limited to, the following: The Governor's state of the State; the Governor's budget address to the General Assembly; and inaugural addresses.

(70 Del. Laws, c. 549, § 1.)

§ 607. Use of automated answering systems by state agencies, limitations.

All state agencies shall require that the publicly listed telephone number or numbers for that agency be answered by a person who can direct each call to the proper person or department within that agency during normal business hours. Notwithstanding the foregoing, the satellite offices of state agencies which have no more than 1 full-time employee to provide clerical and secretarial services shall be exempt from the requirements of this section. "Publicly listed" shall mean listed in a local telephone directory (i.e., Government Blue Pages). "Normal business hours" shall mean each Monday through Friday, except those days designated as holidays, during the hours in which the staff of that agency is scheduled to work.

Nothing in this section shall prohibit the internal use of voice mail or other advanced technologies if the agency finds them to be useful. However, any such system shall contain within its message a description of normal business hours and a phone number which

will be answered by a person during normal business hours. An automated call distribution system in high volume customer service areas designed to minimize waiting times shall be permissible under this section provided that the system provides callers with an option to speak directly with an agency representative if they should choose to do so.

(72 Del. Laws, c. 281, § 1.)

§ 608. Use of respectful language when referring to persons with disabilities.

(a) The General Assembly recognizes that language used in reference to individuals with disabilities shapes and reflects society's attitudes toward people with disabilities. Many of the terms currently used diminish the humanity and natural condition of having a disability. Certain terms are demeaning and create an invisible barrier to inclusion as equal community members. The General Assembly finds it necessary to clarify preferred language for new and revised laws and rules by requiring the use of terminology that puts the person before the disability.

(b) From August 17, 2011, all new and revised statutes, administrative rules, local laws, ordinances, charters or regulations promulgated or any publication published by the State or any political subdivision that refers to persons with disabilities shall:

(1) Avoid language that:

a. Implies that a person as a whole is disabled, such as the "mentally ill," "retarded" or the "learning disabled," or

b. Equates persons with their conditions, such as "epileptics," "autistics," or "quadriplegics;" and

(2) Replace nonrespectful language by referring to persons with disabilities as persons first; for example, "persons with disabilities," "persons with developmental disabilities," "persons with mental illness," "persons with autism," or "persons with cognitive disabilities."

(c) Violation of this section shall not be grounds to invalidate any new or revised statutes, administrative rules, local laws, ordinances, charters, or regulations promulgated or any publication published by the State or any political subdivision; provided, however, such documents shall be changed to reflect the provisions of this section in subsequent revisions.

(d) Nothing in this section shall constitute a requirement to change the name of any agency or program. Existing printed material may be utilized until such time as supplies are required to be replenished.

(e) Nothing in this section shall be construed as changing the application of any provision affected by this section to any person. This section does not apply where a reference to a particular word or phrase is required by federal law or regulation or state statute.

(78 Del. Laws, c. 180, § 1.)

§ 609. Lead paint on outdoor structures.

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

(81 Del. Laws, c. 396, § 8.)

§ 610. Prohibiting the denial of an application for a license solely on immigration or citizenship status.

(a) The General Assembly hereby finds and declares all of the following:

(1) It is in the best interests of this State to make full use of the skills and talents of every resident of this State.

(2) It is the public policy of this State that each resident of this State, regardless of immigration or citizenship status, is eligible to receive the benefit of applying for a license, certificate, or permit pursuant to 8 U.S.C. § 1621(d).

(b) For purposes of this section,

(1) "Application" means an application for issuance or renewal of any license, permit, certificate, approval, registration, or other similar form of permission or authorization to practice or engage in any profession, occupation, or business of any commission, board, or agency.

(2) "Social Security number exemption attestation" means a signed statement from the applicant stating that if the applicant obtains a Social Security number in the future, the applicant will update their application with that Social Security number.

(3) "State" means any agency, authority, department, instrumentality, commission, office, board, or other unit of this State's government authorized by law to issue a professional license, permit, certification, approval, or registration necessary to engage in any profession, occupation, or business of any commission, board, or agency.

(c) Notwithstanding any other law or regulation, the State may not deny an application because of the applicant's immigration or citizenship status.

(d) (1) Notwithstanding any other law or regulation, if an applicant for a license does not have a Social Security number, the applicant must do 1 or more of the following when completing an application for a license:

a. Provide an alternative personally-identifying number, such as the applicant's individual taxpayer identification number,

b. Complete a Social Security number exemption attestation.

(2) A Social Security number or alternative personally-identifying number provided in an application is confidential and is not a public record for the purposes of Chapter 100 of this title. The State may not disclose that Social Security number or alternative personally-identifying number, except for the following purposes:

a. Tax purposes.

b. Licensing purposes.

c. Enforcement of an order for the payment of child support.

(84 Del. Laws, c. 193, § 1.)

§ 611. Healthcare records.

Notwithstanding any law or court rule to the contrary and except as required by federal law, no officer or employee of a state or local agency, commission, board, or department, including any "law-enforcement officer" as defined in § 222 of Title 11, may provide information or assistance to a federal law-enforcement agency, another state's law-enforcement agency, a private citizen, or quasi-law-enforcement agency in relation to an investigation or inquiry concerning the lawfulness of healthcare services, if the healthcare services would be lawful as provided if they occurred entirely in this State. For purposes of this section, "healthcare services" means as defined in § 1702 of Title 24.

(85 Del. Laws, c. 102, § 8.)

Part II
The General Assembly
Chapter 7
General Provisions

§ 701. Designation of meetings of General Assembly.

(a) (1) The meetings of the General Assembly are to be designated by numbers with a new consecutive number designated every 2 calendar years. The General Assembly sitting in 1961 and 1962 is to be designated as the 121st General Assembly.

(2) The session of the General Assembly commencing on the first Tuesday of January, 1961, is to be designated as the first regular session of the 121st General Assembly. The session of the General Assembly commencing on the first Tuesday of February, 1962, is to be designated as the second regular session of the 121st General Assembly.

(3) After the 121st General Assembly, a subsequent regular session of the General Assembly commencing in an odd year is to be designated as the first regular session of a General Assembly and a regular session commencing in an even year is to be designated as the second regular session of a General Assembly.

(b) A special session of a General Assembly is to be designated through a distinguishing designation.

(c) The method of designation under this section must be used in all official references to the General Assembly and its sessions.

(21 Del. Laws, c. 9, § 4; 27 Del. Laws, c. 15; Code 1915, § 369; Code 1935, § 339; 29 Del. C. 1953, § 701; 53 Del. Laws, c. 188; 83 Del. Laws, c. 458, § 1.)

§ 702. Oaths of office.

An oath of office may be administered by any of the following:

(1) A member of a House of the General Assembly to any other member of the same House.

(2) The President or President Pro Tempore of the Senate to the Secretary of the Senate and other officers of the Senate.

(3) The Speaker of the House of Representatives to the Chief Clerk of the House of Representatives and other officers of the House of Representatives.

(Code 1852, § 2354; Code 1915, § 4242; Code 1935, § 4712; 29 Del. C. 1953, § 702; 83 Del. Laws, c. 458, § 2.)

§ 703. Delivery of election certificates.

(a) The Senate may compel the delivery of the certificate of election of Governor or Lieutenant Governor or of the election of any of its members and, for that purpose, may order and cause the arrest of any officer presiding at a board of canvass and punish as a contempt the neglect to deliver a certificate of election.

(b) The House of Representatives may compel the delivery of the certificate of election of any of its members by the process under subsection (a) of this section.

(Code 1852, § 475; 21 Del. Laws, c. 38, § 28; Code 1915, § 360; Code 1935, § 331; 29 Del. C. 1953, § 703; 83 Del. Laws, c. 458, § 3.)

§ 704. Powers respecting elections and election contests.

(a) (1) The Senate may compel the delivery of ballot boxes to the Senate and, for that purpose, may order and cause the arrest of the sheriff or other person having custody of the ballot boxes and punish as a contempt the failure to deliver the ballot boxes.

(2) The House of Representatives may compel and enforce the delivery of ballot boxes to the House as the Senate may by the process under paragraph (a)(1) of this section.

(b) When there is a vacancy in either House of the General Assembly when that House of the General Assembly is in session, the Presiding Officer of the House in which the vacancy exists shall issue a writ of election to fill the vacancy, as prescribed by Chapter 71 of Title 15.

(c) [Repealed.]

(d) If the election or eligibility of a member of the Senate or House of Representatives is contested under subchapter I of Chapter 59 of Title 15, the President of the Senate or Speaker of the House of Representatives, as the case may be, shall issue a writ to order the payment of costs by the contestant under § 5908 of Title 15.

(Code 1852, §§ 379, 404-407, 434; 21 Del. Laws, c. 38, § 31; Code 1915, § 365; Code 1935, § 336; 29 Del. C. 1953, § 704; 82 Del. Laws, c. 141, § 23; 83 Del. Laws, c. 458, § 4.)

§ 705. Power of subpoena; administration of oaths or affirmations; penalties for noncompliance.

(a) Whenever it is necessary in connection with any of the powers and duties of the General Assembly of the State, the Senate or the House of Representatives may, by issuing subpoenas and any other necessary legal process, do the following:

(1) Require the attendance of any resident of this State.

(2) Require a resident of this State to produce any records or papers in the resident's possession located within this State.

(b) An individual who is a member of the General Assembly may administer oaths or affirmations to witnesses in connection with any hearing or investigation conducted by the House of which the individual is a member or a committee of which the individual is a member.

(c) Whoever does any of the following is to be fined not more than $1,000, or imprisoned not more than 12 months, or both:

(1) Having been summoned as a witness under subsection (a) of this section, wilfully makes default.

(2) Having appeared, refuses to answer a question pertinent to the question under inquiry.

(3) Having possession of records required in a subpoena, fails to produce the records as required under subsection (a) of this section.

(d) Nothing in this section is to be construed as a waiver by the General Assembly of the General Assembly's inherent right to issue subpoenas and to punish for contempt of the General Assembly without the intervention of a court.

(Code 1852, § 2355; Code 1915, § 4243; Code 1935, § 4713; 29 Del. C. 1953, § 705; 50 Del. Laws, c. 382, § 1; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 458, § 5.)

§ 706. Notice of petition for private act [Repealed].

(Code 1852, §§ 476, 477; Code 1915, § 361; Code 1935, § 332; 29 Del. C. 1953, § 706; repealed by 83 Del. Laws, c. 458, § 6, effective Oct. 14, 2022.)

§ 707. Stationery.

The Division of Legislative Services shall provide stationery for the use of the General Assembly and its members.

(24 Del. Laws, c. 88, §§ 1-3; Code 1915, § 364; 36 Del. Laws, c. 73, § 8; Code 1935, §§ 253, 335; 29 Del. C. 1953, § 707; 51 Del. Laws, c. 134, § 4; 59 Del. Laws, c. 253, § 5; 83 Del. Laws, c. 458, § 7; 84 Del. Laws, c. 255, § 29.)

§ 708. Requisition of supplies and postage [Repealed].

Repealed by 59 Del. Laws, c. 253, § 6, effective Feb. 5, 1974.

§ 709. Withholding of compensation.

(a) A member or officer of the General Assembly may elect to have withheld from the compensation paid to the member or officer those sums of moneys required during each pay period for federal income tax, state income tax, and social security.

(b) A member or officer of the General Assembly making an election under subsection (a) of this section shall notify the State Treasurer in writing of the election. The State Treasurer, on receiving notice of the election, shall withhold from the compensation paid to the member or officer those sums of moneys required during each pay period for federal income tax, state income tax, and social security and make payment of these moneys in accordance with federal and state laws.

(29 Del. C. 1953, § 709; 56 Del. Laws, c. 370, § 1; 83 Del. Laws, c. 458, § 8.)

§ 710. Compensation of Lieutenant Governor and members of General Assembly.

(a) The Lieutenant Governor shall receive an annual salary as determined in the annual appropriations act.

(b) A member of the Senate and the House of Representatives is to receive an annual salary, as determined in the annual appropriations act, for the period commencing on the day after Election Day in the year in which the member is elected and extending through Election Day in the year in which the term expires. The salary received under this subsection is to be paid under § 2712 of this title.

(c) A member of the Senate or the House of Representatives who is elected or appointed to any of the following positions is to receive, while serving in the position, additional yearly compensation as follows:

(1) President Pro Tempore of the Senate, $20,291.

(2) Speaker of the House of Representatives, $20,291.

(3) Majority and Minority Leader of the Senate, $12,624.

(4) Majority and Minority Leader of the House, $12,624.

(5) Chair and Vice Chair of the Joint Finance Committee, $11,688.

(6) Majority and Minority Whip of the Senate, $7,950.

(7) Majority and Minority Whip of the House, $7,950.

(8) Members of the Joint Finance Committee, $9,620.

(9) Chair and Vice Chair of the Joint Committee on Capital Improvement, $4,670.

(10) Members of the Joint Committee on Capital Improvement, $3,929.

(11) Chair and Vice Chair of the Joint Legislative Oversight and Sunset Committee, $4,670.

(12) Members of the Joint Legislative Oversight and Sunset Committee, $3,929.

(d) A member of the Senate or the House of Representatives who is elected or appointed to 2 positions under subsection (c) of this section may receive the compensation for the position the member is elected or appointed to with the greater compensation and receive $^1/_2$

of the amount of the compensation for the other position to which the member is elected or appointed. Eligible recipients of compensation for a second position may choose not to accept the compensation.

(e) (1) A member of the Senate or the House of Representatives is to receive the compensation required under subsections (c) and (d) of this section beginning on the following date:

a. For a member elected to a position under paragraphs (c)(1) or (2) of this section, the date the Senate or the House, as appropriate, votes to elect the member to the position.

b. For a member elected to a position under paragraphs (c)(3), (4), (6), or (7) of this section, the date the member's election is announced to a session of the Senate or the House, as appropriate.

c. For a member appointed to a position under paragraphs (c)(5) or (8) through (12) of this section, the date the member's appointment is communicated to the Secretary of the Senate or Chief Clerk of the House, as appropriate.

(2) The compensation received under subsections (c) and (d) of this section is to be paid under § 2712 of this title.

(f) A member of the Senate or the House of Representatives who is elected or appointed to a position under subsection (c) of this section and who is entitled to receive compensation under subsections (c) and (d) of this section is to receive the compensation until the member's successor has been elected or appointed or the General Assembly in which the member is elected or appointed expires, whichever comes first.

(60 Del. Laws, c. 82, § 1; 60 Del. Laws, c. 98, § 1; 62 Del. Laws, c. 68, §§ 89-91; 62 Del. Laws, c. 277, §§ 15, 16, 38; 63 Del. Laws, c. 80, §§ 16, 17, 48; 63 Del. Laws, c. 322, §§ 19, 20, 47; 64 Del. Laws, c. 220, §§ 13-15; 64 Del. Laws, c. 225, § 7; 64 Del. Laws, c. 334, §§ 11(f)-(h), 33, 34, 78(a); 69 Del. Laws, c. 64, § 10(e); 69 Del. Laws, c. 291, §§ 10(e), 38; 70 Del. Laws, c. 118, § 10(e); 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 425, § 10(f); 71 Del. Laws, c. 132, § 10(f); 71 Del. Laws, c. 354, § 10(f); 72 Del. Laws, c. 94, § 10(f); 72 Del. Laws, c. 395, § 10(f); 72 Del. Laws, c. 489, § 24; 73 Del. Laws, c. 74, § 10(f); 73 Del. Laws, c. 312, § 10(f); 74 Del. Laws, c. 68, § 10(f); 74 Del. Laws, c. 307, § 10(f); 75 Del. Laws, c. 89, § 10(f); 75 Del. Laws, c. 350, § 10(f); 76 Del. Laws, c. 80, § 10(f); 80 Del. Laws, c. 260, § 2; 83 Del. Laws, c. 458, § 9.)

§ 711. Expenses of members of General Assembly.

A member of the Senate and the House of Representatives is to receive $7,481 annually for expenses. The expenses received under this section are to be paid under § 2712(a) of this title.

(60 Del. Laws, c. 82, § 2; 62 Del. Laws, c. 68, § 92; 64 Del. Laws, c. 334, § 35; 69 Del. Laws, c. 291, § 39; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 458, § 10.)

Part II
The General Assembly

Chapter 8
Composition of and Reapportionment of the General Assembly

Subchapter I
General Provisions

§ 801. Composition of the House of Representatives.

The House of Representatives shall be composed of 41 members who shall be chosen to hold office for 2 years. The State shall be divided into 41 representative districts, from each of which shall be chosen, by the qualified electors thereof, 1 Representative.

(29 Del. C. 1953, § 601; 54 Del. Laws, c. 360; 56 Del. Laws, c. 243; 58 Del. Laws, c. 280, § 9; 63 Del. Laws, c. 183, § 1; 68 Del. Laws, c. 188, § 1; 73 Del. Laws, c. 243, § 1; 78 Del. Laws, c. 105, § 1.)

§ 802. Composition of the Senate; staggered terms.

The Senate shall be composed of 21 members who shall be chosen to hold office for a term established under § 806 of this title. The State shall be divided into 21 senatorial districts, from each of which shall be chosen by the qualified electors thereof, 1 Senator.

(29 Del. C. 1953, § 602; 54 Del. Laws, c. 360; 56 Del. Laws, c. 243; 58 Del. Laws, c. 280, §§ 10, 11; 63 Del. Laws, c. 183, § 1; 68 Del. Laws, c. 188, § 1; 73 Del. Laws, c. 243, § 1; 78 Del. Laws, c. 105, § 1; 84 Del. Laws, c. 233, § 54.)

§ 803. Numbering of districts.

Each representative district and each senatorial district shall be designated by number.

(29 Del. C. 1953, § 605; 54 Del. Laws, c. 360; 56 Del. Laws, c. 243; 58 Del. Laws, c. 280, §§ 14-17; 63 Del. Laws, c. 183, § 1; 68 Del. Laws, c. 188, § 1; 73 Del. Laws, c. 243, § 1; 78 Del. Laws, c. 105, § 1.)

§ 804. Determining district boundaries; criteria.

In determining the boundaries of the several representative and senatorial districts within the State, the General Assembly shall use the following criteria. Each district shall, insofar as is possible:

(1) Be formed of contiguous territory;

(2) Be nearly equal in population;

(3) Be bounded by major roads, streams or other natural boundaries; and

(4) Not be created so as to unduly favor any person or political party.

(29 Del. C. 1953, § 606; 54 Del. Laws, c. 360; 56 Del. Laws, c. 243; 63 Del. Laws, c. 183, § 1; 68 Del. Laws, c. 188, § 1; 73 Del. Laws, c. 243, § 1.)

§ 804A. Criteria for counting incarcerated individuals for redistricting purposes.

(a) The General Assembly, in determining the reapportionment and redistricting for the State, applying the criteria set forth in § 804 of this title, and using the official reporting of the federal decennial census as set forth in § 805 of this title, may not count as part of the population in a given district boundary an incarcerated individual who meets both of the following:

(1) Was incarcerated in a state correctional facility in this State or federal correctional facility, as determined by the decennial census.

(2) Was not a resident of the State before the individual's incarceration.

(b) (1) The General Assembly, in determining the reapportionment and redistricting for the State as provided in this subchapter, shall count as part of the population in a given district boundary an individual incarcerated in a state correctional facility in this State or federal correctional facility, as determined by the decennial census, if the individual was a resident of the State before incarceration.

(2) The General Assembly shall count the individual for reapportionment and redistricting purposes at the individual's last known residence before incarceration.

(c) This section does not apply to the redistricting of the State following the 2010 federal decennial census. This section applies to the redistricting of the State following each federal decennial census thereafter.

(d) The Department of Elections shall geocode the last known residence of an incarcerated individual that is provided by the Department of Correction or the Federal Bureau of Prisons and is required to be counted under section (b) of this section.

(1) On or before September 15 of the year of a federal decennial census, the Department of Correction shall provide to the Department of Elections information in the Department of Correction's possession regarding the last known residence of an incarcerated individual required to be counted under subsection (b) of this section.

(2) The Department of Elections shall make reasonable efforts to correct a last known residence of an incarcerated individual that is not able to be geocoded, including by doing the following:

a. Verifying and correcting zip codes against the United States Postal Service zip code locator.

b. Correcting misspellings of city and street names.

c. Correcting or adding street suffixes against the United State Postal Service zip code locator.

d. Correcting street direction using the United States Postal Service zip code locator.

e. Removing extra information from the address field.

f. Removing an apartment number.

g. Removing a decimal point.

(3) The Department of Elections may request from a state or federal agency information necessary to geocode the last known residence of an incarcerated individual required to be counted under section (b) of this section.

(4) If, after making reasonable efforts under paragraph (d)(2) of this section, the Department of Elections is not able to geocode the last known residence of an incarcerated individual, the Department shall establish the last known residence of the incarcerated individual as the state correctional facility where the individual is incarcerated.

(5) The Department of Elections shall provide to the General Assembly the geocoded last known residence data for incarcerated individuals required to be counted under subsection (b) of this section on or before January 15 of the year following a federal decennial census.

(6) The Department of Elections may adopt regulations to implement this section.

(77 Del. Laws, c. 472, § 1; 78 Del. Laws, c. 24, § 1; 83 Del. Laws, c. 128, § 1.)

§ 805. Redistricting after federal decennial census.

The apportionment provided for by this chapter shall continue in effect until the official reporting by the President of the United States of the next federal decennial census. Within 120 calendar days following the receipt, by the entity designated by the Governor, of the federal decennial census data for redistricting pursuant to Public Law 94-171, the General Assembly shall reapportion and redistrict the State, wherever necessary, for the general election of 2032 and thereafter in such a manner that the several representative and senatorial districts shall comply, insofar as possible, with the criteria set forth in § 804(1)-(4) of this title. Such apportionment shall thence continue in effect until the next succeeding federal decennial census.

(29 Del. C. 1953, §§ 605, 607; 54 Del. Laws, c. 360; 56 Del. Laws, c. 243; 58 Del. Laws, c. 280, §§ 14-18; 63 Del. Laws, c. 183, § 1; 68 Del. Laws, c. 73, § 1; 68 Del. Laws, c. 188, § 1; 73 Del. Laws, c. 243, § 1; 78 Del. Laws, c. 105, § 2; 83 Del. Laws, c. 162, § 1; 83 Del. Laws, c. 258, § 1.)

§ 806. Staggered senatorial districts.

(a) The Senators from the 1st, 5th, 7th, 8th, 9th, 12th, 13th, 14th, 15th, 19th and 20th Senatorial Districts shall be elected for 4-year terms in 2022 and 2026 and for a 2-year term in 2030.

(b) The Senators from the 2nd, 3rd, 4th, 6th, 10th, 11th, 16th, 17th, 18th and 21st Senatorial Districts shall be elected for a 2-year term in 2022 and for 4-year terms in 2024 and 2028.

(29 Del. C. 1953, § 608; 54 Del. Laws, c. 360; 56 Del. Laws, c. 243; 58 Del. Laws, c. 280, § 19; 58 Del. Laws, c. 547; 63 Del. Laws, c. 183, § 1; 68 Del. Laws, c. 188, § 1; 73 Del. Laws, c. 243, § 1; 78 Del. Laws, c. 105, § 2; 83 Del. Laws, c. 258, § 1.)

Subchapter II

General Assembly House Of Representatives Districts

§ 821. Boundaries of the General Assembly House of Representative Districts.

The boundaries of the General Assembly House of Representative districts shall be described as follows:

(1) *First Representative District. —*

The First Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 000200, blocks 1000 through 1021, 2000 through 2031, 3000 through 3018, 4000 through 4012, 5000 through 5018, and 6000 through 6020.

b. In census tract 000300, blocks 1000 through 1010, 2000 through 2015, and 3000 through 3024.

c. In census tract 000400, blocks 1000 through 1018, 2000 through 2019, and 3000 through 3030.

d. In census tract 000500, blocks 1000 through 1012, 2000 through 2012, 3000 through 3011, and 4000 through 4012.

e. In census tract 000601, blocks 1000 through 1018, 1020, and 1021.

f. In census tract 000602, blocks 1001, 1006 through 1008, 1012, 1014 through 1016, 3000 through 3003, and 3009 through 3011.

g. In census tract 001100, blocks 1000, 1001, 1003 through 1014, 2000 through 2003, 2008 through 2010, and 3000 through 3014.

h. In census tract 001200, blocks 2008 through 2014, 2017 through 2021, 2023, and 2024.

i. In census tract 001300, block 1013.

j. In census tract 001400, blocks 1002 through 1006.

k. In census tract 002800, blocks 1000 through 1002.

l. In census tract 010704, blocks 1002 through 1016, 1022 through 1026, 1028, and 3000 through 3008.

m. In census tract 010800, blocks 3006, 3014, 3021, and 3022.

(2) *Second Representative District. —*

The Second Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 00500, blocks 4006 and 4008.

b. In census tract 000601, census blocks 1019, 2000 through 2014, and 3000 through 3016.

c. In census tract 000602, blocks 1000, 1002 through 1005, 1009 through 1011, 1013, 1017 through 1019, 2000 through 2022, 3004 through 3008, and 3012 through 3016.

d. In census tract 000900, blocks 1000 through 1015, 2000 through 2008, and 3000 through 3019.

e. In census tract 001100, blocks 2004 through 2007.

f. In census tract 001400, blocks 1000, 1001, 1016 through 1019.

g. In census tract 001500, blocks 1000 through 1004, 1008, and 1009.

h. In census tract 001600, blocks 1000 through 1017, and 2000 through 2002.

i. In census tract 002100, blocks 2023 through 2026.

j. In census tract 002700, blocks 1000 through 1049, and 2000 through 2020.

k. In census tract 002800, blocks 1003 through 1071, 2000 through 2006, and 2009 through 2047.

l. In census tract 002900, blocks 1000 through 1023, 2000 through 2013, and 3000 through 3009, and 4000 through 4011.

m. In census tract 003002, blocks 1000 through 1038, and 2000 through 2032.

n. [Repealed.]

o. In census tract 012500, block 2004.

p. In census tract 012900, blocks 1000 through 1019, 2000 through 2014, 3000 through 3018, 3023, and 3030 through 3033.

q. In census tract 980100, blocks 1000 through 1015.

r. In census tract 990100, blocks 0006 and 0007.

(3) *Third Representative District. —*

The Third Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 001300, blocks 3022 through 3026.

b. In census tract 001400, blocks 1007 through 1015, 1020, 1021, and 2000 through 2023.

c. In census tract 001500, blocks 1005 through 1007, 1010, 1011, and 2000 through 2016.

d. In census tract 001600, blocks 2003 through 2013, and 3000 through 3013.

e. In census tract 002100, blocks 1000 through 1016, and 2000 through 2022.

f. In census tract 002200, blocks 1000 through 1015, 2000 through 2009, and 3000 through 3007.

g. In census tract 002300, blocks 1000 through 1010, 2000 through 2010, and 3000 through 3017.

h. In census tract 002400, blocks 1000 through 1018, 2000 through 2024, 3000 through 3037, 4000 through 4006, 4008 through 4020, and 4022.

i. In census tract 002500, blocks 1000 through 1017, 2000 through 2002, 2005 through 2008, and 3000 through 3017.

j. In census tract 002600, blocks 1000 through 1008, 2000 through 2021, 3000 through 3014, and 4000 through 4011.

k. In census tract 002800, blocks 2007 and 2008.

(4) *Fourth Representative District. —*

The Fourth Representative District shall consist of that portion of Sussex County contained in the following census blocks:

a. In census tract 050701, blocks 1000 through 1005, 1011 through 1024, 2000, and 2011 through 2040.

b. In census tract 050703, blocks 1002, 1004, 1006 through 1009, 1012 through 1014, 1016, 1018 through 1032, 2000 through 2016, 2018, and 2019.

c. In census tract 050706, blocks 1000 through 1054, 2000 through 2054, and 3000 through 3025.

d. In census tract 050707, blocks 1000 through 1030, and 2000 through 2031.

e. In census tract 050708, blocks 1000 through 1039.

f. In census tract 050709, blocks 1000 through 1035, and 2000 through 2023.

g. In census tract 050710, blocks 1000 through 1053, and 2000 through 2021.

h. In census tract 050711, blocks 1000 through 1030, and 2000 through 2021.

i. In census tract 051010, blocks 1006 through 1008, and 1010 through 1013.

j. In census tract 051012, blocks 1000 through 1023, and 2000 through 2012.

k. In census tract 051013, blocks 1000 through 1030, and 2016 through 2018.

l. In census tract 051014, blocks 1000 through 1018, and 2000 through 2019.

m. In census tract 051015, blocks 2000 through 2004.

(5) *Fifth Representative District. —*

The Fifth Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 014903, blocks 4000 through 4008, 4012, 6000 through 6004, and 6009.

b. In census tract 014906, blocks 2000 through 2017, 3000 through 3007, and 3009 through 3015.

c. In census tract 014907, blocks 3000 through 3006.

d. In census tract 014908, blocks 1000 through 1003, and 2000 through 2002.

e. In census tract 014909, blocks 1000 through 1004, 2000 through 2007, 3000 through 3013, and 4000 through 4012.

f. In census tract 016301, blocks 1000 through 1017, 2000, and 2001.

g. In census tract 016306, blocks 1000 through 1002, 1014, 2000 through 2016, and 3000 through 3011.

h. In census tract 016307, blocks 1000 through 1021, 1024, and 1026 through 1028.

(6) *Sixth Representative District. —*

The Sixth Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 010502, blocks 1002 through 1023, 2000 through 2047, 3000 through 3022, and 4001 through 4023.

b. In census tract 010703, blocks 1000 through 1017, and 2000 through 2015.

c. In census tract 010704, blocks 1000, 1001, 1017 through 1021, 1027, and 2000 through 2036.

d. In census tract 010800, blocks 1000 through 1025, 2000 through 2031, 3000 through 3005, 3007 through 3013, and 3015 through 3020.

e. In census tract 010900, blocks 1000 through 1015, 2000 through 2016, and 3000 through 3021.

f. In census tract 011000, blocks 1000 through 1030, 2000 through 2015, and 3000 through 3025.

g. In census tract 011400, blocks 1000 through 1009, 2000 through 2019, and 3000 through 3019.

h. In census tract 011600, blocks 1000, 1001, 1006 through 1011, 1016 through 1018, 2003 through 2006, 2032, 3018, 3019, 3027, 3037, and 3038.

i. In census tract 990100, blocks 0005 and 0008.

(7) *Seventh Representative District. —*

The Seventh Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 010104, blocks 1000 through 1052, and 2000 through 2012.

b. In census tract 010105, blocks 1000 through 1021, and 2000 through 2013.

c. In census tract 010106, blocks 1000 through 1009, 2000 through 2003, and 3000.

d. In census tract 010200, blocks 1000 through 1011, and 2000 through 2010.

e. In census tract 010300, blocks 1000 through 1022, 2000 through 2015, and 3000 through 3010.

f. In census tract 010400, blocks 1000 through 1021, 2000 through 2018, 3000 through 3026, and 4000 through 4021.

g. In census tract 010502, blocks 1000, 1001, 4000, and 5000 through 5027.

h. In census tract 011100, blocks 1000 through 1072.

i. In census tract 011204, block 2029.

j. In census tract 990100, blocks 0001 through 0004.

(8) *Eighth Representative District. —*

The Eighth Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 016609, blocks 1000 through 1021.

b. In census tract 016610, blocks 1000 through 1042, 2000 through 2018, 3000 through 3051, and 4000 through 4030.

c. In census tract 016612, blocks 1000 through 1003, 1005 through 1016, 2000 through 2041, and 3037 through 3039.

d. In census tract 016613, blocks 1000 through 1009, 2000 through 2007, 3000 through 3018, and 4000 through 4021.

e. In census tract 016614, blocks 1000 through 1027, 2000 through 2038, and 2040 through 2046.

f. In census tract 016806, blocks 1000 through 1003, 1007 through 1011, 1029 through 1031, 2016, and 2017.

g. In census tract 016808, blocks 2008, 2009, 2011 through 2014, and 2025.

(9) *Ninth Representative District. —*

The Ninth Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 016608, blocks 1000 through 1049, and 2000 through 2073.

b. In census tract 016611, blocks 1000 through 1043, and 3000 through 3086.

c. In census tract 016612, blocks 1004, 3000 through 3036, 3040, and 3041.

d. In census tract 016614, blocks 2039, and 3000 through 3051.

e. In census tract 016807, blocks 1000 through 1017.

f. In census tract 016808, blocks 1000 through 1008, 2000 through 2007, 2010, 2015 through 2018, 2024, 2037, 3000 through 3007, 3022, 4000 through 4022, and 5000 through 5010.

g. In census tract 016904, blocks 1000 through 1009, 1013 through 1018, 1042 through 1044, and 1075.

h. In census tract 990100, blocks 0019 through 0024.

(10) *Tenth Representative District. —*

The Tenth Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 011201, blocks 1000 through 1012, and 2000 through 2010.

b. In census tract 011202, blocks 1000 through 1033, and 2000 through 2034.

c. In census tract 011203, blocks 1000 through 1017, 2000 through 2009, and 3000 through 3016.

d. In census tract 011204, blocks 1000 through 1019, 2000 through 2028, and 2030.

e. In census tract 011205, blocks 1000 through 1016, and 2000 through 2008.

f. In census tract 011206, blocks 1000 through 1022, and 2000 through 2026.

g. In census tract 011300, blocks 1000 through 1017, and 2000 through 2012.

h. In census tract 011700, blocks 4000 through 4005, and 4009 through 4017.

(11) *Eleventh Representative District. —*

The Eleventh Representative District shall consist of all of the following:

a. That portion of Kent County contained in the following census blocks:

1. In census tract 040100, blocks 1000 through 1043, 2003 through 2039, 3000 through 3014, and 4000 through 4020.

2. In census tract 040201, blocks 1031 through 1040, 1042 through 1044, and 1079 through 1081.

3. In census tract 041802, blocks 3006 through 3011, 3017, and 3019 through 3021.

4. In census tract 041804, blocks 2010, 2011, 2013 through 2023, and 2031.

5. In census tract 041900, blocks 1000 through 1006, 1008, 1026 through 1029, 1032 through 1051, 2000 through 2015, and 3000 through 3021.

b. That portion of New Castle County contained in the following census blocks:

1. In census tract 016805, blocks 1000 through 1030.

2. In census tract 016806, blocks 1004 through 1006, 1012 through 1028, 1032 through 1034, 2000 through 2015, 2018 through 2038, and 3000 through 3048.

3. In census tract 016808, blocks 2019 through 2023, 2026 through 2036, 2038, and 3008 through 3021.

4. In census tract 016901, blocks 1000 through 1041, and 2000 through 2037.

5. In census tract 016904, blocks 1010 through 1012, 1019 through 1041, 1045, 1046, 1049 through 1055, and 1085.

(12) *Twelfth Representative District. —*

The Twelfth Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. [Repealed.]

b. In census tract 001100, block 1002.

c. In census tract 001200, blocks 1000 through 1017, 2000 through 2007, 2015, 2016, and 2022.

d. In census tract 001300, blocks 1000 through 1012, 1014 through 1032, 2000 through 2025, 3000 through 3021, 3027, and 4000 through 4029.

e. In census tract 011500, blocks 1000 through 1011, 2000 through 2019, and 3000 through 3027.

f. In census tract 011600, blocks 1002 through 1005, 1012 through 1015, 2000 through 2002, 2007 through 2031, and 2033.

g. In census tract 011700, blocks 1000 through 1024, 2000 through 2027, 3000 through 3017, 3020 through 3026, 3028 through 3036, 4006 through 4008, and 4018 through 4036.

h. In census tract 011800, blocks 1000 through 1031, 2000 through 2026, 3000 through 3013, and 4000 through 4047.

i. In census tract 011900, blocks 1000 through 1016, 1018 through 1029, 1032 through 1035, 1038 through 1042, 2000 through 2005, 3000 through 3011, 3014 through 3021, and 3023.

j. In census tract 013501, blocks 1000, 1001, 1004 through 1006, 1010 through 1012, 4000 through 4016, and 5000 through 5012.

(13) *Thirteenth Representative District. —*

The Thirteenth Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 002400, blocks 4007 and 4021.

b. In census tract 002500, blocks 1018 through 1020, 2003, 2004, and 2009 through 2013.

c. In census tract 011900, blocks 1017, 1030, 1031, 1036, 1037, 3012, 3013, 3022, and 3024.

d. In census tract 012000, blocks 3013 through 3016, 3019, 3027, and 3028.

e. In census tract 012100, blocks 1000 through 1017, 2000 through 2015, and 3000 through 3023.

f. In census tract 012200, blocks 1000 through 1021, 2000 through 2016, 3000 through 3016, and 4000 through 4025.

g. In census tract 012300, blocks 1000 through 1028, and 2000 through 2016.

h. In census tract 012400, blocks 1000 through 1034, 2000 through 2014, 3000 through 3020, and 4000 through 4029.

i. In census tract 012500, blocks 1000 through 1023, 2000 through 2003, 2005 through 2016, 3000 through 3021, 4000 through 4011, 5000 through 5017, and 6000 through 6015.

j. In census tract 012600, blocks 1000 through 1013, 2000 through 2019, and 3000 through 3030.

k. In census tract 012700, blocks 1000, 1001, 1016, 1017, 5000, 5006, 5017, and 5018.

l. In census tract 012900, blocks 3026 through 3029, 3034 through 3049, and 3054.

(14) *Fourteenth Representative District. —*

The Fourteenth Representative District shall consist of that portion of Sussex County contained in the following census blocks:

a. In census tract 050904, blocks 1012, 1015, 1017 through 1019, 1031 through 1044, 2013 through 2023, and 2026 through 2046.

b. In census tract 050905, blocks 1003, 1008, 1010, 1015, 1039, 1049, and 1051.

c. In census tract 051008, blocks 1000 through 1020, 2000 through 2018, and 3000 through 3040.

d. In census tract 051009, blocks 1000 through 1011, 2000 through 2025, and 3000 through 3022.

e. In census tract 051010, blocks 1000 through 1005, 1009, 2000 through 2013, and 3000 through 3009.

f. In census tract 051011, blocks 1000 through 1018, 2000 through 2014, and 3000 through 3012.

g. In census tract 051015, blocks 1000 through 1022.

h. In census tract 051016, blocks 1000 through 1019, and 2000 through 2033.

i. In census tract 051017, blocks 1000 through 1029, 2000 through 2047, and 3000 through 3014.

j. In census tract 051101, blocks 1000 through 1018, 2000 through 2022, and 3000 through 3035.

k. In census tract 051102, blocks 1000 through 1027, 2000 through 2037, and 3000 through 3031.

l. In census tract 051103, blocks 1000 through 1013, blocks 2000 through 2058, and 3000 through 3003.

m. In census tract 98000, blocks 1000 through 1016.

n. In census tract 99000, blocks 0007 through 0009.

(15) *Fifteenth Representative District. —*

The Fifteeth Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 014808, blocks 1013 through 1019, 3000 through 3014, and 4002 through 4011.

b. In census tract 014809, blocks 1000 through 1005, 2000 through 2021, 3000 through 3011, 4000 through 4025, and 5000 through 5007.

c. In census tract 016301, blocks 2002 through 2017, 3000 through 3048, and 4000 through 4007.

d. In census tract 016307, blocks 1022, 1023, and 1025.

e. In census tract 016308, blocks 2021, 2023 through 2025.

f. In census tract 016401, 1000 through 1014, 2000 through 2029, 3000 through 3020, 4000 through 4004, 4006, 4007, and 4013.

g. In census tract 016404, blocks 1029, 1031 through 1037, 1041 through 1047, 1049 through 1070 and 1075.

(16) *Sixteenth Representative District. —*

The Sixteenth Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 001902, blocks 1000 through 1044, 2000 through 2027, 3019 through 3022, 3024 and 3025.

b. In census tract 015100, blocks 1000 through 1002, 1017, 1045, and 2010 through 2012.

c. In census tract 015200, blocks 5000 through 5022.

d. In census tract 015400, blocks 1000 through 1033, and blocks 2000 through 2014.

e. In census tract 015502, blocks 1000 through 1039, and 2000 through 2027.

f. In census tract 015600, blocks 1000 through 1026, and 2000 through 2023.

g. In census tract 015802, blocks 1000 through 1022, and 2000 through 2017.

h. In census tract 015900, blocks 1000 through 1020, 2000 through 2013, and 3000 through 3021.

i. In census tract 016000, blocks 1000 through 1011, and 2000 through 2011.

j. In census tract 016100, blocks 1000 through 1026, and 2000 through 2022.

k. In census tract 16200, blocks 1000 through 1002, 2000 through 2011, 3000 through 3007, and 3015.

l. In census tract 990100, blocks 0009 through 0013.

(17) *Seventeenth Representative District. —*

The Seventeenth Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 012700, blocks 3023, 3024, 5028, and 5029.

b. In census tract 012900, blocks 3050 through 3053.

c. In census tract 013800, blocks 2002 through 2010, 2015 through 2019, 2022, 2038, 3000, 3001, 3006, 3007, 3009, 3011 through 3014, 3016, and 3017.

d. In census tract 015000, blocks 1000 through 1042, 2000 through 2007, 3000 through 3011, 3017, 3018, 3020, 4000 through 4004, and 5000 through 5010.

e. In census tract 015100, blocks 1003 through 1016, 1018 through 1044, and 2000 through 2009.

f. In census tract 015200, blocks 1000 through 1013, 2000 through 2013, 3000 through 3014, 4000 through 4012, and 5023 through 5030.

g. In census tract 016200, blocks 1003 through 1020, 3008 through 3014, 3016, and 3017.

h. In census tract 016308, blocks 1000 through 1021, 2000 through 2020, 2022, 2026, and 2027.

i. In census tract 016309, blocks 1000 through 1034, and 2000 through 2041.

j. In census tract 016404, blocks 1000 through 1028, 1030, 1038 through 1040, 1048, 1071 through 1074, 2000 through 2042, and 3000 through 3014.

k. In census tract 990100, blocks 0014 through 0018.

(18) *Eighteenth Representative District. —*

The Eighteenth Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 013615, blocks 1003 through 1014.

b. In census tract 013800, blocks 1000 through 1026, 2011 through 2014, 2020, 2021, 2023 through 2044, 3008, 3010, 3015, and 3018 through 3030.

c. In census tract 013905, blocks 3000 and 3001.

d. In census tract 013906, blocks 1000 through 1002, 1014, and 1016.

e. In census tract 014000, blocks 1005 through 1007, 2000 through 2009, 3000 through 3006, and 4000 through 4016.

f. In census tract 014100, block 1000.

g. In census tract 014904, blocks 1000 through 1029, and 2000 through 2020.

h. In census tract 014906, blocks 1000 through 1015, and 3008.

i. In census tract 014907, blocks 1000 through 1013, and 2000 through 2014.

j. In census tract 015000, blocks 3012 through 3016, and 3019.

k. In census tract 016306, blocks 1003 through 1013.

(19) *Nineteenth Representative District. —*

The Nineteenth Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 012000, blocks 1000 through 1014, 2000 through 2029, 3000 through 3012, 3017, 3018, 3020 through 3026, and 3029 through 3039.

b. In census tract 012100, block 1006.

c. In census tract 012700, blocks 1002 through 1015, 1018 through 1028, 2000 through 2019, 3000 through 3022, 4000 through 4010, 5001 through 5005, 5007 through 5016, 5019 through 5027, 5030, and 5031.

d. In census tract 013000, blocks 1000 through 1017, and 2000 through 2018.

e. In census tract 013100, blocks 1000 through 1015, 2000 through 2010, and 3000 through 3009.

f. In census tract 013200, blocks 1000 through 1011, 2000 through 2008, and 3000 through 3004.

g. In census tract 013300, blocks 1000 through 1018, and 2000 through 2006.

h. In census tract 013400, blocks 1000 through 1012, 2000 through 2011, and 3000 through 3005.

i. In census tract 013501, blocks 2000 through 2020.

j. In census tract 013614, blocks 2000 through 2002, and 2004 through 2026.

k. In census tract 013615, blocks 3000 through 3025.

l. In census tract 013800, blocks 2000, 2001, and 3002 through 3005.

(20) *Twentieth Representative District. —*

The Twentieth Representative District shall consist of that portion of Sussex County contained in the following census blocks:

a. In census tract 050200, block 2018.

b. In census tract 050801, blocks 1018, 1020, 1021, 1028 through 1034, 2000 through 2033, and 3000 through 3038.

c. In census tract 050804, blocks 1000 through 1006, and 2000 through 2011.

d. In census tract 050805, blocks 1000 through 1025, and 2000 through 2075.

e. In census tract 050806, blocks 1000 through 1032, 2000 through 2021, 3000 through 3007, and 4000 through 4041.

f. In census tract 050807, blocks 1000 through 1013, and 2000 through 2037.

g. In census tract 050808, blocks 1000 through 1023, 2000 through 2038, and 3000 through 3015.

h. In census tract 050903, blocks 1000 through 1029, and 2000 through 2036.

i. In census tract 050904, blocks 1000 through 1011, 1013, 1014, 1016, 1020 through 1030, 2000 through 2012, 2024, and 2025.

j. In census tract 050905, blocks 1000 through 1007, 1009, 1011 through 1014, 1016 through 1038, 1040 through 1048, 1050, 2000 through 2024, 3001 through 3030, and 3032.

k. In census tract 051011, blocks 1019 through 1032.

l. In census tract 990000, blocks 0003 through 0006.

(21) *Twenty-first Representative District. —*

The Twenty-first Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 013300, blocks 2007 through 2017.

b. In census tract 013604, blocks 1000 through 1016, 2000 through 2025, and 3000 through 3008.

c. In census tract 013607, blocks 1008 through 1012, 1015, 2000 through 2004, 3000 through 3003, and 4000 through 4013.

d. In census tract 013608, blocks 1000 through 1021, and 2000 through 2011.

e. In census tract 013610, blocks 1010 and 1011.

f. In census tract 013611, blocks 1000 through 1021, 2001, 2002, 3000 through 3008, 4000, and 4001.

g. In census tract 013612, blocks 3016 through 3018.

h. In census tract 013613, blocks 2000 through 2018, and 3000 through 3015.

i. In census tract 013614, blocks 1000 through 1008, and 2003.

j. In census tract 013615, blocks 1000 through 1002, and 2000 through 2013.

k. In census tract 013700, blocks 1000 through 1006, 1021, 3000 through 3011, 3014, and 3015.

(22) *Twenty-second Representative District. —*

The Twenty-second Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 013501, blocks 1002, 1003, 1007 through 1009, and 3000 through 3022.

b. In census tract 013505, blocks 1000 through 1004, and 2000 through 2016.

c. In census tract 013506, blocks 1000 through 1009, 1011, 2000, 2001, and 3000 through 3010.

d. In census tract 013507, blocks 1000 through 1019.

e. In census tract 013508, blocks 1000 through 1019, 2000 through 2024, and 3000 through 3017.

f. In census tract 013607, blocks 1000 through 1007, 1013, and 1014.

g. In census tract 013612, blocks 1000 through 1011, 2000 through 2006, 3000 through 3015, 3019, and 3020.

h. In census tract 013613, blocks 1000 through 1011.

(23) *Twenty-third Representative District. —*

The Twenty-third Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 013506, blocks 1010, and 2002 through 2017.

b. In census tract 013610, blocks 1000 through 1009, 1012 through 1017, 2000 through 2012, 3000 through 3017, and 4000 through 4009.

c. In census tract 013611, block 2000.

d. In census tract 013700, blocks 3012 and 3013.

e. In census tract 014200, blocks 1014, 1023 and 1033.

f. In census tract 014301, blocks 1000 through 1027.

g. In census tract 014302, blocks 1000 through 1007, 2000 through 2011, and 3000 through 3018.

h. In census tract 014403, blocks 1000 through 1021, 2000 through 2018, and 3000 through 3008.

i. In census tract 014404, blocks 1000 through 1053, 1055 through 1066, and 2000 through 2017.

j. In census tract 014501, blocks 1000 through 1023.

(24) *Twenty-fourth Representative District. —*

The Twenty-fourth Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 013700, blocks 1007 through 1020, 1022, and 2000 through 2011.

b. In census tract 013901, blocks 1000 through 1013, 2000 through 2010, and 3000 through 3012.

c. In census tract 014000, blocks 1000 through 1004.

d. In census tract 014100, blocks 1001 through 1018, 2000 through 2016, and 3000 through 3012.

e. In census tract 014200, blocks 1000 through 1022, 1024 through 1032, and 1034 through 1045.

f. In census tract 014502, blocks 1000 through 1008, 1012 through 1021, 1025, 1030, and 1035 through 1037.

g. In census tract 014702, blocks 1000 through 1009, and 1040.

h. In census tract 014703, blocks 1000 through 1015, 2000 through 2015, 3000 through 3015, and 4000 through 4009.

i. In census tract 014705, blocks 1000 through 1015, 2000 through 2021, and 3000 through 3026.

(25) *Twenty-fifth Representative District. —*

The Twenty-fifth Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 014402, blocks 1000 through 1028, and 2000 through 2042.

b. In census tract 014404, blocks 1054, and 2018.

c. In census tract 014502, blocks 1009 through 1011, 1022 through 1024, 1026 through 1029, 1031 through 1034, 1038 through 1046, and 2000 through 2025.

d. In census tract 014702, blocks 1010 through 1039, 1041 through 1050.

e. In census tract 014706, blocks 2011, 2014, and 2015.

f. In census tract 014803, blocks 1000 through 1009, 2000 through 2021, and 3000 through 3019.

g. In census tract 014808, blocks 2000 through 2008, 2010 through 2012, 2014 through 2016, 2018 through 2021, and 2031.

h. In census tract 014813, blocks 1000 through 1023, 2000 through 2008, and 3000 through 3002.

i. In census tract 014814, blocks 1000 through 1012, 1018, and 2000 through 2011.

(26) *Twenty-sixth Representative District. —*

The Twenty-sixth Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 013903, blocks 1000 through1010, 2000 through 2007, and 3000 through 3012.

b. In census tract 013905, blocks 1000 through 1005, 2000 through 2003, and 3002 through 3005.

c. In census tract 013906, blocks 1003 through 1013, 1015, 2000 through 2019, and 3000 through 3010.

d. In census tract 014706, blocks 1000 through 1007, 2000 through 2010, 2012, and 2013.

e. In census tract 014808, blocks 1000 through 1012, 2009, 4000, and 4001.

f. In census tract 014903, blocks 1000 through 1011, 2000 through 2015, 3000 through 3006, 4009 through 4011, 5000 through 5004, and 6005 through 6008.

(27) *Twenty-seventh Representative District. —*

The Twenty-seventh Representative District shall consist of that portion of New Castle County contained in the following census blocks:

a. In census tract 014808, blocks 2013, 2017, and 2022 through 2030.

b. In census tract 014809, blocks 1006 through 1011.

c. In census tract 014810, blocks 1000 through 1036, 2000 through 2017, and 3000 through 3017.

d. In census tract 014811, blocks 1000 through 1027, 2000 through 2005, and 3000 through 3017.

e. In census tract 014812, blocks 1000 through 1012, 2000 through 2007, and 3000 through 3022.

f. In census tract 014814, blocks 1013 through 1017.

g. In census tract 016401, blocks 4005, 4008 through 4012, and 4014.

h. In census tract 016609, blocks 2000 through 2015, 3000 through 3022.

i. In census tract 016611, blocks 2000 through 2010.

(28) *Twenty-eighth Representative District. —*

The Twenty-eighth Representative District shall consist of all of the following:

a. That portion of Kent County contained in the following census blocks:

1. In census tract 040201, blocks 1000 through 1030, 1045 through 1075, 2000 through 2031, 3000 through 3015.

2. In census tract 040203, blocks 1000 through 1045, 2000 through 2028, 3000 through 3047.

3. In census tract 040204, blocks 1000 through 1098, 3000 through 3002.

4. In census tract 040205, blocks 1000 through 1032, 2000 through 2023, 3000 through 3022.

5. In census tract 040501, blocks 1000 through 1030, 2009 through 2022, 2024 through 2031, 3000, 3004 through 3006.

6. In census tract 040502, blocks 1000 through 1042, 2000 through 2031.

7. In census tract 041000, blocks 1000 through 1008, 3000 through 3004, 3031, 3049.

8. In census tract 043202, blocks 1000 through 1061, 1063, 1087.

9. In census tract 990000, blocks 0001 through 0003.

b. That portion of New Castle County contained in the following census blocks:

1. In census tract 016904, blocks 1047, 1048, 1056 through 1074, and 1076 through 1084.

(29) *Twenty-ninth Representative District. —*

The Twenty-ninth Representative District shall consist of that portion of Kent County contained in the following census blocks:

a. In census tract 040100, blocks 2000 through 2002, 2006, and 2021 through 2025.

b. In census tract 040201, blocks 1041, 1076 through 1078.

c. In census tract 040204, blocks 2000 through 2034, 3003 through 3025.

d. In census tract 040206, blocks 1000 through 1163.

e. In census tract 040501, blocks 2000 through 2008, 2023, 3001 through 3003, 3007 through 3028.

f. In census tract 040700, blocks 1000, 1001, 1009, 1010.

g. In census tract 041802, blocks 1026 through 1036, 1042 through 1052, 3000 through 3005, 3012 through 3016, and 3018.

h. In census tract 041803, blocks 1000 through 1079, 2000 through 2062.

i. In census tract 041804, blocks 2000 through 2009, 2012, 2024 through 2030, 3005 through 3014.

j. In census tract 043300, blocks 1000, 1001, 1017 through 1024.

(30) *Thirtieth Representative District. —*

The Thirtieth Representative District shall consist of that portion of Kent County contained in the following census blocks:

a. In census tract 041802, blocks 1053 through 1056.

b. In census tract 041900, blocks 1007, 1009 through 1025, 1030, and 1031.

c. In census tract, 042000, blocks 1000 through 1030, and 2000 through 2047.

d. In census tract 042100, blocks 1000 through 1013, 1017 through 1020, 1026, 1027, 1033 through 1040, 1042 through 1050, 2001 through 2013, 2017, 2055, 2059, 2060, 2067, 2079, and 2080.

e. In census tract 042801, blocks 1000 through 1067.

f. In census tract 042802, blocks 1000 through 1064, 2000 through 2028, 2030, 2042 through 2044, 2052 through 2064, 2069 through 2072, 2076, and 3000 through 3025.

g. In census tract 042900, blocks 1000 through 1045, 2047 through 2049, and 2051 through 2059.

h. In census tract 043000, blocks 1000 through 1041, 2000 through 2085, 3000 through 3044.

i. In census tract 043100, blocks 1000 through 1064, 2000 through 2099, 2100 through 2119.

(31) *Thirty-first Representative District. —*

The Thirty-first Representative District shall consist of that portion of Kent County contained in the following census blocks:

a. In census tract 040700, blocks 1002 through 1008, 1011 through 1013, 2000 through 2003, and 3000 through 3020.

b. In census tract 040900, blocks 1000 through 1034, and 2000 through 2010.

c. In census tract 041300, blocks 1000 through 1003, 1005 through 1008, 2000 through 2012, 2019 through 2021, 2031 through 2047, 2060, and 2061.

d. In census tract 041400, blocks 1000 through 1086, 1089 through 1092, and 2000 through 2030.

e. In census tract 041500, blocks 1000 through 1011.

f. In census tract 041802, blocks 1000 through 1011, 1013, and 2000 through 2033.

g. In census tract 041804, blocks 1000 through 1016, 3000 through 3004, and 3015 through 3019.

h. In census tract 043300, blocks 1002 through 1016, 1025 through 1032, 2000 through 2010, and 3000 through 3042.

(32) *Thirty-second Representative District. —*

The Thirty-second Representative District shall consist of that portion of Kent County contained in the following census blocks:

a. In census tract 041000, blocks 1009 through 1056, 2000 through 2028, 3005 through 3030, 3032 through 3048.

b. In census tract 041101, blocks 1000 through 1008, 2000 through 2008, 3000 through 3007.

c. In census tract 041200, blocks 1000 through 1032, 1046 through 1049, 2000 through 2031, 3000 through 3017.

d. In census tract 041300, blocks 1004, 1009 through 1022, 2013 through 2018, 2022 through 2030, 2048 through 2059.

e. In census tract 041500, blocks 1012 through 1037, 2000 through 2023.

f. In census tract 041600, blocks 1000 through 1021, and 1055.

g. In census tract 042203, blocks 2000 through 2031, 3000 through 3024.

h. In census tract 043202, blocks 1062, 1064 through 1086.

i. In census tract 980000, blocks 1000 through 1024.

j. In census tract 990000, blocks 0004, 0005, and 0007.

(33) *Thirty-third Representative District. —*

The Thirty-third Representative District shall consist of that portion of Kent County contained in the following census blocks:

a. In census tract 042206, blocks 1000 through 1022, 2000 through 2016.

b. In census tract 042207, blocks 1000 through 1038.

c. In census tract 042208, blocks 1000 through 1022, 2000 through 2049.

d. In census tract 042500, blocks 1000 through 1070, 2000 through 2007, 3000 through 3031.

e. In census tract 042802, blocks 2029, 2031 through 2041, 2045 through 2051, 2065 through 2068, 2073 through 2075, 2077, and 2078.

f. In census tract 042900, blocks 2000 through 2046, 2050.

g. In census tract 043202, blocks 2000 through 2036, 3000 through 3053, 4000 through 4033.

h. In census tract 043400, blocks 1000 through 1106, 2000 through 2029, 3000 through 3068.

i. In census tract 990000, block 0006.

(34) *Thirty-fourth Representative District. —*

The Thirty-fourth Representative District shall consist of that portion of Kent County contained in the following census blocks:

a. In census tract 041200, blocks 1033 through 1045, and 1050.

b. In census tract 041400, blocks 1087 and 1088.

c. In census tract 041500, blocks 2024 and 2025.

d. In census tract 041600, blocks 1022 through 1056.

e. In census tract 041701, blocks 1000 through 1048, 2000 through 2015, 3000 through 3024, and 4000 through 4026.

f. In census tract 041702, blocks 1000 through 1019, 2000 through 2026.

g. In census tract 041802, blocks 1012, 1014 through 1025, 1037 through 1041.

h. In census tract 042100, blocks 1014 through 1016, 1021 through 1025, 1028 through 1032, 1041, 2000, 2014 through 2016, 2018 through 2054, 2056 through 2058, 2061 through 2066, 2068 through 2078.

i. In census tract 042203, blocks 1000 through 1029.

j. In census tract 042204, blocks 1000 through 1017, 2000 through 2041.

k. In census tract 042205, blocks 1000 through 1034, 2000 through 2030.

(35) *Thirty-fifth Representative District. —*

The Thirty-fifth Representative District shall consist of that portion of Sussex County contained in the following census blocks:

a. In census tract 050101, blocks 1005, 1006, 1013 through 1043, 2003 through 2015.

b. In census tract 050200, blocks 1001 through 1008, 1010 through 1054.

c. In census tract 050302, blocks 1000 through 1047, 2000 through 2045, 3000 through 3052.

d. In census tract 050303, blocks 1000 through 1044, 2000 through 2083.

e. In census tract 050304, blocks 1000 through 1078, 2000 through 2039, 3000 through 3081.

f. In census tract 050406, blocks 1000 through 1010.

g. In census tract 050407, blocks 1000 through 1020, 1032, 2000 through 2025, 3000, and 3001.

h. In census tract 050408, blocks 1000 through 1026, 2000 through 2002, 2029.

i. In census tract 050501, blocks 1005 through 1009, 1017, 1042, 2000 through 2021, 3000 through 3017, 3030, 3050 through 3056, 3065 through 3067, 3069 through 3079.

(36) *Thirty-sixth Representative District. —*

The Thirty-sixth Representative District shall consist of that portion of Sussex County contained in the following census blocks:

a. In census tract 050101, blocks 1000 through 1004, 1007 through 1012, 2000 through 2002, and 3000 through 3040.

b. In census tract 050103, blocks 1000 through 1042, 2000 through 2044, 3000 through 3037, and 4000 through 4066.

c. In census tract 050104, blocks 1000 through 1049, 2000 through 2052, and 3000 through 3029.

d. In census tract 050105, blocks 1000 through 1030, 2000 through 2038, 3000 through 3018, and 4000 through 4027.

e. In census tract 050200, blocks 1000, 1009, 2000 through 2017, 2019 through 2021, and 3000 through 3088.

f. In census tract 050503, blocks 2000 through 2008, 2010, and 2015.

g. In census tract 050801, blocks 1000 through 1017, 1019, and 1022 through 1027.

h. In census tract 050905, blocks 3000, 3031, 4000 through 4022.

i. In census tract 990000, blocks 0001 and 0002.

(37) *Thirty-seventh Representative District. —*

The Thirty-seventh Representative District shall consist of that portion of Sussex County contained in the following census blocks:

a. In census tract 050501, blocks 1000 through 1004, 1010 through 1016, 1018 through 1041, 1043, 1044, 3018 through 3029, 3031 through 3049, 3057 through 3064, 3068, 3080, and 3081.

b. In census tract 050503, blocks 1000 through 1061, 2009, 2011 through 2014, 2016 through 2034, and 3000 through 3041.

c. In census tract 050505, blocks 1000 through 1058.

d. In census tract 050506, blocks 1000 through 1052, and 2000 through 2039.

e. In census tract 050601, blocks 1000, 1002 through 1029, 1033 through 1076, 1079 through 1081, 1090, 1093 through 1096, and 1098.

f. In census tract 050701, blocks 1006 through 1010, 2001 through 2010, and 3000 through 3039.

g. In census tract 050804, blocks 1004, 1007 through 1040, and 2012 through 2046.

h. In census tract 050805, block 1022.

i. In census tract 051013, blocks 2000 through 2015.

(38) *Thirty-eighth Representative District. —*

The Thirty-eighth Representative District shall consist of that portion of Sussex County contained in the following census blocks:

a. In census tract 051201, blocks 1000 through 1039, and 2000 through 2024.

b. In census tract 051202, blocks 1000 through 1028, and 2000 through 2037.

c. In census tract 051203, blocks 1000 through 1016, 2000 through 2007, 3000 through 3002, and 4000 through 4020.

d. In census tract 051204, blocks 1000 through 1027, 2000 through 2028, 3000 through 3008, and 4000 through 4027.

e. In census tract 051205, blocks 1000 through 1042, and 2000 through 2026.

f. In census tract 051302, blocks 1000, 1001, 1017 through 1023, 1031, 1033, 1057, 1058, 2000 through 2025, 2031, 2041 through 2043, and 3000 through 3079.

g. In census tract 051307, blocks 1000 through 1077.

h. In census tract 051308, blocks 1000 through 1046, and 3002.

i. In census tract 051309, blocks 1000 through 1016, and 2000 through 2019.

j. In census tract 051310, blocks 1000 through 1033.

k. In census tract 051311, blocks 1000 through 1041, and 2000 through 2008.

l. In census tract 051312, blocks 1000 through 1025, 2019 through 2021, 2035 through 2038, and 2041.

m. In census tract 051313, blocks 1000 through 1028, 2000 through 2044, and 3000 through 3040.

n. In census tract 051314, blocks 1000 through 1035, and 2000 through 2045.

o. In census tract 990000, block 0010.

(39) *Thirty-ninth Representative District. —*

The Thirty-ninth Representative District shall consist of that portion of Sussex County contained in the following census blocks:

a. In census tract 050401, blocks 1000 through 1063, and 2000 through 2058.

b. In census tract 050403, blocks 1000 through 1021, and 2000 through 2070.

c. In census tract 050405, blocks 1000 through 1051, and 2000 through 2117.

d. In census tract 050406, blocks 1011 through 1051, 2000 through 2048, 3000 through 3035, and 4000 through 4042.

e. In census tract 050407, blocks 1021 through 1031, 1033 through 1048, and 3002 through 3037.

f. In census tract 050408, blocks 1024, 2003 through 2028, 2030 through 2034, and 3000 through 3022.

g. In census tract 051701, blocks 2000 through 2018.

h. In census tract 051801, blocks 1000 through 1005, 1008 through 1011, and 2000 through 2007.

(40) *Fortieth Representative District. —*

The Fortieth Representative District shall consist of that portion of Sussex County contained in the following census blocks:

a. In census tract 050601, blocks 2004, 2005, 2011 through 2024, 2030, 3003 through 3007, 3013 through 3027, 3030, 3035, 3037 through 3039.

b. In census tract 051701, blocks 1000 through 1028, 1033 through 1043, 2016, 2019 through 2058, 3000 through 3045.

c. In census tract 051702, blocks 1011, 1012, 1020 through 1026, 1028 through 1035, 1113, 1116, 2000 through 2057, 3000 through 3077.

d. In census tract 051801, blocks 1006, 1007, 1012 through 1036, 2008 through 2032, 3000 through 3024, 4000 through 4041.

e. In census tract 051802, blocks 1000 through 1075, 2000 through 2028, 3000 through 3035.

f. In census tract 051900, blocks 1000 through 1060, 2000 through 2049, 3000 through 3061.

(41) *Forty-first Representative District. —*

The Forty-first Representative District shall consist of that portion of Sussex County contained in the following census blocks:

a. In census tract 050601, blocks 1001, 1030 through 1032, 1077, 1078, 1082 through 1089, 1091, 1092, 1097, 2000 through 2003, 2006 through 2010, 2025 through 2029, 2031, 3000 through 3002, 3008 through 3012, 3028, 3029, 3031 through 3034, 3036.

b. In census tract 050603, blocks 1000 through 1039, 2000 through 2047.

c. In census tract 050604, blocks 1000 through 1054, 2000 through 2024, 3000 through 3065.

d. In census tract 050703, blocks 1000, 1001, 1003, 1005, 1010, 1011, 1015, 1017, and 2017.

e. In census tract 051302, blocks 1002 through 1016, 1024 through 1030, 1032, 1034 through 1056, 2026 through 2030, 2032 through 2040.

f. In census tract 051308, blocks 2000 through 2021, 3000, 3001, 3003 through 3031.

g. In census tract 051312, blocks 2000 through 2018, 2022 through 2034, 2039, 2040, 2042.

h. In census tract 051400, blocks 1000 through 1039, 2000 through 2037, 3000 through 3049.

i. In census tract 051501, blocks 1000 through 1053, 2000 through 2030.

j. In census tract 051502, blocks 1000 through 1042, 2000 through 2048, 3000 through 3052.

k. In census tract 051701, blocks 1029 through 1032, and 1044.

l. In census tract 051702, blocks 1000 through 1010, 1013 through 1019, 1027, 1036 through 1112, 1114, and 1115.

(29 Del. C. 1953, §§ 621, 631, 641, 651; 54 Del. Laws, c. 361; 56 Del. Laws, c. 243; 56 Del. Laws, c. 259, § 1; 56 Del. Laws, c. 279, §§ 1-4; 57 Del. Laws, c. 555, §§ 3-5; 58 Del. Laws, c. 280, §§ 1, 3, 5; 58 Del. Laws, c. 310, §§ 1, 3; 63 Del. Laws, c. 183, § 1; 63 Del. Laws, c. 187, §§ 1-3, 7-25, 38-48; 63 Del. Laws, c. 228, §§ 3-6, 15(a), (b), 16, 17(a)-(d), 18(a), (b), 19-21; 64 Del. Laws, c. 459, §§ 1-3; 68 Del. Laws, c. 188, § 1; 68 Del. Laws, c. 190, § 1; 68 Del. Laws, c. 439, §§ 1-19; 69 Del. Laws, c. 95, §§ 1-3; 73 Del. Laws, c. 243, § 1; 73 Del. Laws, c. 274, § 1; 73 Del. Laws, c. 290, § 1; 78 Del. Laws, c. 105, § 3; 78 Del. Laws, c. 210, § 1; 83 Del. Laws, c. 258, § 1; 83 Del. Laws, c. 285, § 1.)

Subchapter III

General Assembly Senate Districts

§ 831. Boundaries of the General Assembly Senate Districts.

The boundaries of the General Assembly Senate Districts shall be as set forth in the Final Senate Maps and the Census Block Breakdown by Senate District with the census tracts and census blocks descriptions published on the General Assembly's website, and include, by district, the following census tracts and blocks:

(1) *District 01. —*

All that portion of New Castle County described in the following census tracts and blocks:

Tract 101.04

BlockGroup: 100030101041

1051

BlockGroup: 100030101042

2006 2007 2008 2009 2010

Tract 104

BlockGroup: 100030104001
1009 1010 1011 1019 1020 1021
BlockGroup: 100030104002
BlockGroup: 100030104003
3001 3004 3005 3006 3007 3008 3009 3010 3011 3012 3013 3014
3015 3016 3017 3018 3019 3020 3021 3022 3023 3024 3025 3026
BlockGroup: 100030104004
4003 4004 4005 4006 4007 4008 4019 4020 4021
Tract 105.02
BlockGroup: 100030105021
BlockGroup: 100030105022
BlockGroup: 100030105023
BlockGroup: 100030105024
4000 4001 4002 4003 4004 4005 4006 4007 4008 4009 4010 4011
4016 4017 4018 4019 4020
BlockGroup: 100030105025
Tract 107.03
Tract 107.04
BlockGroup: 100030107041
1000 1001 1002 1003 1013 1014
BlockGroup: 100030107042
2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021
2022 2023 2024 2025 2026 2027 2028 2029
BlockGroup: 100030107043
3000 3001 3002 3003 3004 3005 3006 3007
Tract 108
BlockGroup: 100030108001
BlockGroup: 100030108002
BlockGroup: 100030108003
3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011
3012 3013 3015 3016 3017 3018 3019 3020 3021 3022
Tract 109
Tract 11
Tract 110
Tract 111
BlockGroup: 100030111001
1051 1052 1053 1054 1055 1056 1057 1058 1059 1060 1065 1066
1067 1068 1069 1070
Tract 117
BlockGroup: 100030117002
2015 2016
BlockGroup: 100030117003
3005 3006 3007 3008 3009 3010 3011 3012 3013 3014 3017 3018
3019 3020 3021 3022 3023 3024 3025 3026 3027 3028 3029 3030
3031 3032 3033 3034 3035 3037 3038
Tract 118
BlockGroup: 100030118002
2017 2018 2019
Tract 119

BlockGroup: 100030119001
1000 1001 1002 1027
Tract 12
Tract 13
Tract 14
BlockGroup: 100030014001
1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013
1014
Tract 2
BlockGroup: 100030002001
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
BlockGroup: 100030002003
3000 3001 3002 3003 3004 3010 3011
BlockGroup: 100030002004
4000
BlockGroup: 100030002006
6000 6001 6002 6003 6004 6005 6006 6007 6008 6009 6010 6015
Tract 24
BlockGroup: 100030024001
1002
Tract 28
BlockGroup: 100030028001
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1017 1018 1019 1026 1027 1028 1029
1030 1035 1036 1037 1038 1039 1040 1041 1042 1043
Tract 3
BlockGroup: 100030003003
Tract 4
Tract 5
BlockGroup: 100030005003
3001 3002 3003 3009 3010 3011
Tract 111
BlockGroup: 100030111001
1051 1052 1053 1054 1055 1056 1057 1058 1059 1060 1065 1066
1067 1068 1069 1070
Tract 117
BlockGroup: 100030117002
2015 2016
BlockGroup: 100030117003
3005 3006 3007 3008 3009 3010 3011 3012 3013 3014 3017 3018
3019 3020 3021 3022 3023 3024 3025 3026 3027 3028 3029 3030
3031 3032 3033 3034 3035 3037 3038
Tract 118
BlockGroup: 100030118002
2017 2018 2019
Tract 119
BlockGroup: 100030119001
1000 1001 1002 1027
Tract 12

Tract 13
Tract 14
BlockGroup: 100030014001
1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013
1014
Tract 2
BlockGroup: 100030002001
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
BlockGroup: 100030002003
3000 3001 3002 3003 3004 3010 3011
BlockGroup: 100030002004
4000
BlockGroup: 100030002006
6000 6001 6002 6003 6004 6005 6006 6007 6008 6009 6010 6015
Tract 24
BlockGroup: 100030024001
1002
Tract 28
BlockGroup: 100030028001
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1017 1018 1019 1026 1027 1028 1029
1030 1035 1036 1037 1038 1039 1040 1041 1042 1043
Tract 3
BlockGroup: 100030003003
Tract 4
Tract 5
BlockGroup: 100030005003
3001 3002 3003 3009 3010 3011
Tract 5
BlockGroup: 100030005004
Tract 9901
BlockGroup: 100039901000
0004 0005 0006.
(2) *District 02. —*
All that portion of New Castle County described in the following census tracts and blocks:
Tract 105.02
BlockGroup: 100030105024
4012 4013 4014 4015 4021 4022 4023
Tract 107.04
BlockGroup: 100030107041
1004 1005 1006 1007 1008 1009 1010 1011 1012 1015 1016 1017
1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028
BlockGroup: 100030107042
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2030 2031
2032 2033 2034 2035 2036
BlockGroup: 100030107043
3008
Tract 108
BlockGroup: 100030108003

3014
Tract 151
Tract 152
BlockGroup: 100030152001
1007 1008 1009 1012 1013
BlockGroup: 100030152002
2002 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013
BlockGroup: 100030152003
BlockGroup: 100030152005
5000 5001 5004 5017
Tract 154
Tract 155.02
Tract 156
Tract 158.02
Tract 159
Tract 160
Tract 161
BlockGroup: 100030161001
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023
1024
BlockGroup: 100030161002
2000 2009
Tract 163.09
BlockGroup: 100030163092
Tract 163.09
BlockGroup: 100030163092
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011
2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023
2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2041
Tract 19.02
Tract 2
BlockGroup: 100030002001
1012 1013 1014 1015 1016 1017 1018 1019 1020 1021
BlockGroup: 100030002002
BlockGroup: 100030002003
3005 3006 3007 3008 3009 3012 3013 3014 3015 3016 3017 3018
BlockGroup: 100030002004
4001 4002 4003 4004 4005 4006 4007 4008 4009 4010 4011 4012
BlockGroup: 100030002005
BlockGroup: 100030002006
6011 6012 6013 6014 6016 6017 6018 6019 6020
Tract 29
BlockGroup: 100030029001
1000 1001 1002 1003 1004 1005 1006 1011 1012 1013 1014 1021
BlockGroup: 100030029002
2000 2001 2006 2007 2008 2009 2010 2011 2012 2013
Tract 3
BlockGroup: 100030003001

BlockGroup: 100030003002
Tract 30.02
Tract 5
BlockGroup: 100030005001
BlockGroup: 100030005002
BlockGroup: 100030005003
3000 3004 3005 3006 3007 3008
Tract 6.01
Tract 6.02
Tract 9
BlockGroup: 100030009001
1000 1001 1002 1003 1004 1007 1008 1009 1010 1011
BlockGroup: 100030009002
2000 2001
Tract 9801
Tract 9901
BlockGroup: 100039901000
0007 0008 0009 0010 0011 0012 0013.
(3) *District 03.* —
All that portion of New Castle County described in the following census tracts and blocks:
Tract 119
BlockGroup: 100030119001
1017 1030 1031 1036
Tract 122
BlockGroup: 100030122001
BlockGroup: 100030122002
2000 2001 2002 2003 2004 2005 2006
BlockGroup: 100030122003
3000 3001 3008 3009 3010 3011 3012
Tract 123
BlockGroup: 100030123001
1007
BlockGroup: 100030123002
2008 2009 2010 2011 2012 2013 2014 2016
Tract 124
BlockGroup: 100030124001
1000 1001 1002 1003 1004 1007 1008 1009 1010 1011 1012 1013
1014 1015 1016 1034
Tract 125
BlockGroup: 100030125001
BlockGroup: 100030125002
2000 2001 2002 2004
BlockGroup: 100030125003
3000
Tract 129
BlockGroup: 100030129001
BlockGroup: 100030129002
BlockGroup: 100030129003
3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011

3012 3013 3014 3015 3016 3017 3018 3019 3020 3021 3022 3023
3024 3025 3030 3031 3032 3033
Tract 14
BlockGroup: 100030014001
1000 1001 1015 1016 1017 1018 1019 1020 1021
BlockGroup: 100030014002
Tract 15
Tract 152
BlockGroup: 100030152005
5002 5003 5005 5006 5007 5008 5009 5010 5011 5012 5013 5014
5015 5016 5018 5019 5020 5021 5022
Tract 16
Tract 21
Tract 22
Tract 23
Tract 24
BlockGroup: 100030024001
1000 1001 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012
1013 1014 1015 1016 1017 1018
BlockGroup: 100030024002
BlockGroup: 100030024003
BlockGroup: 100030024004
Tract 25
Tract 26
Tract 27
Tract 28
BlockGroup: 100030028001
1020 1021 1022 1023 1024 1025 1031 1032 1033 1034 1044 1045
1046 1047 1048 1049 1050 1051 1052 1053 1054 1055 1056 1057
1058 1059 1060 1061 1062 1063 1064 1065 1066 1067 1068 1069
1070 1071
BlockGroup: 100030028002
Tract 29
BlockGroup: 100030029001
1007 1008 1009 1010 1015 1016 1017 1018 1019 1020 1022 1023
BlockGroup: 100030029002
2002 2003 2004 2005
BlockGroup: 100030029003
BlockGroup: 100030029004
Tract 9
BlockGroup: 100030009001
1005 1006 1012 1013 1014 1015
BlockGroup: 100030009002
2002 2003 2004 2005 2006 2007 2008
BlockGroup: 100030009003.
(4) *District 04. —*
All that portion of New Castle County described in the following census tracts and blocks:
Tract 112.01
BlockGroup: 100030112011

1000 1001 1002 1010 1011
BlockGroup: 100030112012
Tract 112.02
BlockGroup: 100030112022
2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2026
2027 2028 2029 2030 2031 2032 2033 2034
Tract 116
BlockGroup: 100030116001
BlockGroup: 100030116002
2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019
2020 2021 2022 2023 2024 2025 2026 2029 2030 2031 2033
Tract 117
BlockGroup: 100030117001
BlockGroup: 100030117002
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011
2012 2013 2014 2017 2018 2019 2020 2021 2022 2023 2024 2025
2026 2027
BlockGroup: 100030117003
3000 3001 3002 3003 3004 3015 3016 3036
BlockGroup: 100030117004
Tract 118
BlockGroup: 100030118001
BlockGroup: 100030118002
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011
2012 2013 2014 2015 2016 2020 2021 2022 2023 2024 2025 2026
BlockGroup: 100030118003
BlockGroup: 100030118004
Tract 119
BlockGroup: 100030119001
1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014
1015 1016 1018 1019 1020 1021 1022 1023 1024 1025 1026 1028
1029 1032 1033 1034 1035 1038 1039 1040 1041 1042
BlockGroup: 100030119002
BlockGroup: 100030119003
3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011
3014 3015 3016 3017 3018 3019 3020 3021 3023
Tract 135.01
BlockGroup: 100030135011
BlockGroup: 100030135014
4000 4001 4002 4003 4005 4009 4010 4011 4012 4013 4014 4015
4016
BlockGroup: 100030135015
Tract 135.05
Tract 135.07
Tract 135.08
Tract 136.07
Tract 136.12
BlockGroup: 100030136121
BlockGroup: 100030136122

2000 2001 2003 2004 2005 2006
BlockGroup: 100030136123
Tract 136.13
BlockGroup: 100030136132.
(5) *District 05. —*
All that portion of New Castle County described in the following census tracts and blocks:
Tract 101.04
BlockGroup: 100030101041
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023
1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035
1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046 1047
1048 1049 1050 1052
BlockGroup: 100030101042
2000 2001 2002 2003 2004 2005 2011 2012
Tract 101.05
Tract 101.06
Tract 102
Tract 103
Tract 104
BlockGroup: 100030104001
1000 1001 1002 1003 1004 1005 1006 1007 1008 1012 1013 1014
1015 1016 1017 1018
BlockGroup: 100030104003
3000 3002 3003
BlockGroup: 100030104004
4000 4001 4002 4009 4010 4011 4012 4013 4014 4015 4016 4017
4018
Tract 111
BlockGroup: 100030111001
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023
1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035
1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046 1047
1048 1049 1050 1061 1062 1063 1064 1071 1072
Tract 112.01
BlockGroup: 100030112011
1003 1004 1005 1006 1007 1008 1009 1012
Tract 112.02
BlockGroup: 100030112021
BlockGroup: 100030112022
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011
2023 2024 2025
Tract 112.03
Tract 112.04
Tract 112.05
Tract 112.06
Tract 113
Tract 114

Tract 115
Tract 116
BlockGroup: 100030116002
2000 2001 2002 2003 2004 2005 2006 2007 2027 2028 2032
Tract 9901
BlockGroup: 100039901000
0001 0002 0003.
(6) *District 06. —*
All that portion of Sussex County described in the following census tracts and blocks:
Tract 501.03
BlockGroup: 100050501031
1005 1006 1007 1008 1009 1010 1011 1020 1021 1022 1023 1024
1025 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037
1038 1039 1040 1041 1042
Tract 508.01
Tract 508.04
BlockGroup: 100050508041
1000 1001 1002 1003 1005 1006
BlockGroup: 100050508042
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011
Tract 508.05
BlockGroup: 100050508052
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011
2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023
2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035
2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047
2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2063 2064
2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075
Tract 508.06
Tract 508.07
Tract 508.08
Tract 509.03
Tract 509.04
Tract 509.05
Tract 510.08
Tract 510.09
Tract 510.10
Tract 510.11
Tract 510.12
BlockGroup: 100050510121
1000 1001 1002 1003 1004 1006
Tract 510.13
BlockGroup: 100050510132
2000
Tract 510.15
Tract 510.16
Tract 510.17
Tract 511.01
Tract 511.02

Tract 511.03
Tract 9800
Tract 9900
BlockGroup: 100059900000
0002 0003 0004 0005 0006 0007 0008 0009.
(7) *District 7. —*
All that portion of New Castle County described in the following census tracts and blocks:
Tract 119
BlockGroup: 100030119001
1037
BlockGroup: 100030119003
3012 3013 3022 3024
Tract 120
Tract 121
Tract 122
BlockGroup: 100030122002
2007 2008 2009 2010 2011 2012 2013 2014 2015 2016
BlockGroup: 100030122003
3002 3003 3004 3005 3006 3007 3013 3014 3015 3016
BlockGroup: 100030122004
Tract 123
BlockGroup: 100030123001
1000 1001 1002 1003 1004 1005 1006 1008 1009 1010 1011 1012
1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024
1025 1026 1027 1028
BlockGroup: 100030123002
2000 2001 2002 2003 2004 2005 2006 2007 2015
Tract 124
BlockGroup: 100030124001
1005 1006 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026
1027 1028 1029 1030 1031 1032 1033
BlockGroup: 100030124002
BlockGroup: 100030124003
BlockGroup: 100030124004
Tract 125
BlockGroup: 100030125002
2003 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015
2016
BlockGroup: 100030125003
3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011 3012
3013 3014 3015 3016 3017 3018 3019 3020 3021
BlockGroup: 100030125004
BlockGroup: 100030125005
BlockGroup: 100030125006
Tract 126
Tract 127
BlockGroup: 100030127001
1000 1001 1002 1016 1017
BlockGroup: 100030127003

3003 3007 3008 3009 3010 3011 3012 3013 3014
BlockGroup: 100030127004
4003 4004
BlockGroup: 100030127005
5000 5006 5017 5018
Tract 129
BlockGroup: 100030129003
3026 3027 3028 3029 3034 3035 3036 3037 3038 3039 3040 3041
3042 3043 3044 3045 3046 3047 3048 3049 3054
Tract 130
Tract 131
Tract 132
Tract 133
BlockGroup: 100030133001
BlockGroup: 100030133002
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011
2012 2014 2015 2016
Tract 134
Tract 135.01
BlockGroup: 100030135012
BlockGroup: 100030135013
BlockGroup: 100030135014
4004 4006 4007 4008
Tract 136.12
BlockGroup: 100030136122
2002
Tract 136.13
BlockGroup: 100030136131
BlockGroup: 100030136133
Tract 136.14
BlockGroup: 100030136142
Tract 138
BlockGroup: 100030138003
3002 3003 3004 3005.
(8) *District 08.* —
All that portion of New Castle County described in the following census tracts and blocks:
Tract 135.06
Tract 136.10
Tract 136.11
BlockGroup: 100030136111
BlockGroup: 100030136112
Tract 137
BlockGroup: 100030137003
3012 3013
Tract 142
BlockGroup: 100030142001
1014 1023 1033
Tract 143.01
Tract 143.02

Tract 144.02
Tract 144.03
Tract 144.04
Tract 145.01
Tract 145.02
BlockGroup: 100030145021
1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013
1016 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029
1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1041
1042 1043 1044 1045 1046
BlockGroup: 100030145022
Tract 147.02
BlockGroup: 100030147021
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023
1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035
1036 1037 1038 1040 1041 1042 1043 1044 1045 1046 1047 1048
1049
Tract 148.03.
(9) *District 09. —*
All that portion of New Castle County described in the following census tracts and blocks:
Tract 127
BlockGroup: 100030127001
1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014
1015 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028
BlockGroup: 100030127002
BlockGroup: 100030127003
3000 3001 3002 3004 3005 3006 3015 3016 3017 3018 3019 3020
3021 3022 3023 3024
BlockGroup: 100030127004
4000 4001 4002 4005 4006 4007 4008 4009 4010
BlockGroup: 100030127005
5001 5002 5003 5004 5005 5007 5008 5009 5010 5011 5012 5013
5014 5015 5016 5019 5020 5021 5022 5023 5024 5025 5026 5027
5028 5029 5030 5031
Tract 129
BlockGroup: 100030129003
3050 3051 3052 3053
Tract 133
BlockGroup: 100030133002
2013 2017
Tract 136.04
Tract 136.08
Tract 136.11
BlockGroup: 100030136113
BlockGroup: 100030136114
Tract 136.14
BlockGroup: 100030136141
Tract 136.15

Tract 137
BlockGroup: 100030137001
BlockGroup: 100030137002
BlockGroup: 100030137003
3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011
3014 3015
Tract 138
BlockGroup: 100030138001
BlockGroup: 100030138002
BlockGroup: 100030138003
3000 3001 3006 3007 3008 3009 3010 3011 3012 3013 3014 3015
3016 3017 3018 3019 3020 3021 3022 3023 3024 3025 3026 3027
3028 3029 3030
Tract 139.01
BlockGroup: 100030139011
1001
Tract 139.05
BlockGroup: 100030139053
3000 3001
Tract 139.06
BlockGroup: 100030139061
1000 1001 1002 1014 1016
Tract 140
Tract 141
Tract 142
BlockGroup: 100030142001
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1015 1016 1017 1018 1019 1020 1021 1022 1024 1025
1026 1027 1028 1029 1030 1031 1032 1034 1035 1036 1037 1038
1039 1040 1041 1042 1043 1044 1045
Tract 145.02
BlockGroup: 100030145021
1000 1001 1014 1015 1017 1018
Tract 147.03
Tract 147.05
BlockGroup: 100030147051
1000 1001 002a 1003 1007 1009 1010 1013 1014 1015
BlockGroup: 100030147052
2012 2013 2014
BlockGroup: 100030147053
3000 3013 3014 3016 3017 3024 3026
Tract 149.07
BlockGroup: 100030149071
1000 1001 1002
Tract 150
BlockGroup: 100030150003
3015 3016.
(10) *District 10. —*
All that portion of New Castle County described in the following census tracts and blocks:

Tract 148.11
Tract 148.12
Tract 166.09
BlockGroup: 100030166091
BlockGroup: 100030166092
2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012
2013 2014 2015
BlockGroup: 100030166093
Tract 166.10
Tract 166.11
BlockGroup: 100030166112
2001 2002 2003 2004 2005 2006 2007 2008 2009 2010
Tract 166.12
Tract 166.13
Tract 166.14
BlockGroup: 100030166141
BlockGroup: 100030166142
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011
2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023
2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035
2036 2037 2038 2040 2041 2042 2043 2044 2045 2046
BlockGroup: 100030166143
3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011
3012 3013 3014 3015 3016 3017 3018 3021 3022 3023 3024 3025
3026 3027 3031 3032 3033 3034 3035 3036 3037 3038 3039 3044
3045 3046 3047 3048 3051
Tract 168.06
BlockGroup: 100030168061
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1017 1029 1030 1031
BlockGroup: 100030168062
Tract 168.06
BlockGroup: 100030168062
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011
2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023
2025 2026 2027 2030 2032
Tract 168.08
BlockGroup: 100030168082
2008 2009 2011 2012 2013 2014 2023 2025 2026 2027 2028.
(11) *District 11.* —
All that portion of New Castle County described in the following census tracts and blocks:
Tract 139.01
BlockGroup: 100030139011
1000 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012
1013
BlockGroup: 100030139012
BlockGroup: 100030139013
Tract 139.03
Tract 139.05

BlockGroup: 100030139051
BlockGroup: 100030139052
BlockGroup: 100030139053
3002 3003 3004 3005
Tract 139.06
BlockGroup: 100030139061
1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1015
BlockGroup: 100030139062
BlockGroup: 100030139063
Tract 147.02
BlockGroup: 100030147021
1039 1050
Tract 147.05
BlockGroup: 100030147051
002B 1004 1005 1006 1008 1011 1012
BlockGroup: 100030147052
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011
2015 2016 2017 2018 2019 2020 2021
BlockGroup: 100030147053
3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011 3012
3015 3018 3019 3020 3021 3022 3023 3025
Tract 147.06
Tract 148.08
Tract 148.09
BlockGroup: 100030148094
4000 4005 4006 4023
Tract 148.13
Tract 148.14
Tract 149.03.
(12) *District 12. —*
All that portion of New Castle County described in the following census tracts and blocks:
Tract 148.09
BlockGroup: 100030148091
BlockGroup: 100030148092
BlockGroup: 100030148093
BlockGroup: 100030148095
Tract 148.10
Tract 161
BlockGroup: 100030161001
1025 1026
BlockGroup: 100030161002
2001 2002 2003 2004 2005 2006 2007 2008 2010 2011 2012 2013
2014 2015 2016 2017 2018 2019 2020 2021 2022
Tract 162
Tract 163.01
BlockGroup: 100030163013
3029 3030 3031 3032 3033 3034
BlockGroup: 100030163014
4007

Tract 163.07
BlockGroup: 100030163071
1022 1023 1025
Tract 163.08
Tract 163.09
BlockGroup: 100030163091
BlockGroup: 100030163092
2035 2036 2037 2038 2039 2040
Tract 164.01
Tract 164.04
Tract 166.08
Tract 166.09
BlockGroup: 100030166092
2000
Tract 166.11
BlockGroup: 100030166111
BlockGroup: 100030166112
2000
BlockGroup: 100030166113
Tract 9901
BlockGroup: 100039901000
0014 0015 0016 0017 0018 0019 0020 0021 0022.
(13) *District 13.* —
All that portion of New Castle County described in the following census tracts and blocks:
Tract 148.09
BlockGroup: 100030148094
4001 4002 4003 4004 4007 4008 4009 4010 4011 4012 4013 4014
4015 4016 4017 4018 4019 4020 4021 4022 4024 4025
Tract 149.04
Tract 149.06
Tract 149.07
BlockGroup: 100030149071
1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013
BlockGroup: 100030149072
BlockGroup: 100030149073
Tract 149.08
Tract 149.09
Tract 150
BlockGroup: 100030150001
BlockGroup: 100030150002
BlockGroup: 100030150003
3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011
3012 3013 3014 3017 3018 3019 3020
BlockGroup: 100030150004
BlockGroup: 100030150005
Tract 152
BlockGroup: 100030152001
1000 1001 1002 1003 1004 1005 1006 1010 1011
BlockGroup: 100030152002

2000 2001 2003
BlockGroup: 100030152004
BlockGroup: 100030152005
5023 5024 5025 5026 5027 5028 5029 5030
Tract 163.01
BlockGroup: 100030163011
BlockGroup: 100030163012
BlockGroup: 100030163013
3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011
3012 3013 3014 3015 3016 3017 3018 3019 3020 3021 3022 3023
3024 3025 3026 3027 3028 3035 3036 3037 3038 3039 3040 3041
3042 3043 3044 3045 3046 3047 3048
BlockGroup: 100030163014
4000 4001 4002 4003 4004 4005 4006
Tract 163.06
Tract 163.07
BlockGroup: 100030163071
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1024 1026
1027 1028.
(14) *District 14. —*
All those portions of Kent and New Castle Counties described in the following census tracts and blocks:
Tract 402.01
Tract 402.03
Tract 402.04
Tract 402.05
Tract 402.06
BlockGroup: 100010402061
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023
1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035
1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046 1047
1057 1058 1059 1060 1061 1062 1063 1064 1065 1066 1067 1068
1069 1070 1071 1072 1073 1074 1075 1076 1077 1078 1079 1080
1087 1088 1089 1090 1091 1092 1093 1094 1095 1096 1097 1100
1101 1102 1103 1104 1105 1106 1107 1108 1109 1110 1111 1112
1113 1114 1115 1116 1117 1118 1119 1120 1121 1122 1123 1149
1151 1152 1153 1154 1155 1156 1157 1158 1161 1163
Tract 405.01
BlockGroup: 100010405013
3000 3004 3005 3006
Tract 405.02
BlockGroup: 100010405021
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023
1024 1025 1026 1027 1032 1042
Tract 418.03
BlockGroup: 100010418031
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011

1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024
1025 1026 1039 1040 1041 1042 1043 1044 1045 1046 1047 1048
1049 1050 1051 1052 1053 1054 1055 1056 1057 1058 1059 1066
1073 1074 1075 1076 1077 1078 1079
Tract 432.02
BlockGroup: 100010432021
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023
1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035
1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046 1047
1048 1049 1087
Tract 9900
BlockGroup: 100019900000
0001 0002
Tract 166.14
BlockGroup: 100030166142
2039
BlockGroup: 100030166143
Tract 166.14
BlockGroup: 100030166143
3019 3020 3028 3029 3030 3040 3041 3042 3043 3049 3050
Tract 168.05
Tract 168.06
BlockGroup: 100030168061
1012 1013 1014 1015 1016 1018 1019 1020 1021 1022 1023 1024
1025 1026 1027 1028 1032 1033 1034
BlockGroup: 100030168062
2024 2028 2029 2031 2033 2034 2035 2036 2037 2038
BlockGroup: 100030168063
Tract 168.07
Tract 168.08
BlockGroup: 100030168081
BlockGroup: 100030168082
2000 2001 2002 2003 2004 2005 2006 2007 2010 2015 2016 2017
2018 2019 2020 2021 2022 2024 2029 2030 2031 2032 2033 2034
2035 2036 2037 2038
BlockGroup: 100030168083
BlockGroup: 100030168084
BlockGroup: 100030168085
Tract 169.01
Tract 169.04
Tract 9901
BlockGroup: 100039901000
0023 0024.
(15) *District 15. —*
All that portion of Kent County described in the following census tracts and blocks:
Tract 401
Tract 402.06
BlockGroup: 100010402061

1048 1049 1050 1051 1052 1053 1054 1055 1056 1081 1082 1083
1084 1085 1086 1098 1099 1124 1125 1126 1127 1128 1129 1130
1131 1132 1133 1134 1135 1136 1137 1138 1139 1140 1141 1142
1143 1144 1145 1146 1147 1148 1150 1159 1160 1162
Tract 417.01
BlockGroup: 100010417011
1034 1035 1036 1045 1046 1047 1048
BlockGroup: 100010417014
4010 4011 4019 4020 4021 4022 4023 4024
Tract 418.02
BlockGroup: 100010418021
1012 1022 1023 1025 1026 1027 1028 1030 1031 1032 1033 1034
1035 1036 1042 1043 1044 1045 1046 1047 1048 1049 1050 1051
1052 1053 1054 1055 1056
BlockGroup: 100010418023
Tract 418.02
BlockGroup: 100010418023
3004 3005 3006 3007 3008 3009 3010 3011 3013 3014 3015 3016
3017 3018 3019 3020 3021
Tract 418.03
BlockGroup: 100010418031
1012 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037
1038 1072
BlockGroup: 100010418032
Tract 418.04
BlockGroup: 100010418042
Tract 419
Tract 420
Tract 421
BlockGroup: 100010421001
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023
1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035
1036 1037 1038 1039 1042 1043 1044 1045 1046 1047
BlockGroup: 100010421002
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011
2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023
2024 2025 2026 2027 2028 2029 2030 2031 2032 2048 2049 2050
2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062
2063 2067 2068 2070 2071 2072 2073 2077 2079 2080
Tract 422.05
BlockGroup: 100010422051
1033
Tract 428.01
Tract 428.02
BlockGroup: 100010428021
BlockGroup: 100010428022
2003 2004 2027 2028 2029 2031 2032 2033 2034 2035 2036 2037
2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049

2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061
2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073
2074 2075 2077 2078
BlockGroup: 100010428023
Tract 429
BlockGroup: 100010429001
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023
1024 1025 1026 1027 1028 1029 1030 1031 1033 1034 1035 1036
1037 1038 1039 1040 1041 1042 1043 1044 1045
BlockGroup: 100010429002
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011
Tract 429
BlockGroup: 100010429002
2012 2013 2014 2015 2017 2018 2019 2020 2021
Tract 430
Tract 431
Tract 434
BlockGroup: 100010434003
3032 3033 3034 3065 3068.
(16) *District 16. —*
All that portion of Kent County described in the following census tracts and blocks:
Tract 405.02
BlockGroup: 100010405022
2000 2001 2002 2003
Tract 410
BlockGroup: 100010410001
1000 1001 1002 1003 1004 1005 1006 1007 1008
BlockGroup: 100010410003
3000 3001 3002 3003 3004 3005 3006 3016 3017 3018 3019 3020
3021 3022 3023 3024 3025 3026 3027 3028 3029 3030 3031 3032
3033 3034 3035 3036 3037 3038 3039 3040 3041 3042 3043 3044
3045 3046 3047 3049
Tract 411.01
Tract 412
Tract 416
Tract 417.02
Tract 421
BlockGroup: 100010421001
1040 1041 1048 1049 1050
BlockGroup: 100010421002
2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044
2045 2046 2047 2064 2065 2066 2069 2074 2075 2076 2078
Tract 422.03
Tract 422.04
Tract 422.05
BlockGroup: 100010422051
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023

1024 1025 1026 1027 1028 1029 1030 1031 1032 1034
BlockGroup: 100010422052
Tract 422.06
Tract 422.07
Tract 422.08
Tract 428.02
BlockGroup: 100010428022
2000 2001 2002 2005 2006 2007 2008 2009 2010 2011 2012 2013
2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025
Tract 428.02
BlockGroup: 100010428022
2026 2030 2076
Tract 432.02
BlockGroup: 100010432021
1050 1051 1052 1053 1054 1055 1056 1057 1058 1059 1060 1061
1062 1063 1064 1065 1066 1067 1068 1069 1070 1071 1072 1073
1074 1075 1076 1077 1078 1079 1080 1081 1082 1083 1084 1085
1086
BlockGroup: 100010432022
BlockGroup: 100010432023
BlockGroup: 100010432024
4000 4001 4002 4003 4004 4005 4006 4007 4008 4009 4010 4011
4012 4013 4014 4015 4016 4017 4018 4019 4020 4021 4023 4024
4025 4026 4027 4031 4032
Tract 434
BlockGroup: 100010434001
BlockGroup: 100010434003
3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011
3012 3013 3014 3015 3016 3017 3018 3019 3020 3021 3022 3023
3026 3027 3028 3029 3030 3031 3035 3066
Tract 9800
Tract 9900
BlockGroup: 100019900000
0003 0004 0005 0006 0007.
(17) *District 17.* —
All that portion of Kent County described in the following census tracts and blocks:
Tract 405.01
BlockGroup: 100010405011
BlockGroup: 100010405012
BlockGroup: 100010405013
3001 3002 3003 3007 3008 3009 3010 3011 3012 3013 3014 3015
3016 3017 3018 3019 3020 3021 3022 3023 3024 3025 3026 3027
3028
Tract 405.02
BlockGroup: 100010405021
1028 1029 1030 1031 1033 1034 1035 1036 1037 1038 1039 1040
1041
BlockGroup: 100010405022
2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015

2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027
2028 2029 2030 2031
Tract 407
Tract 409
Tract 410
BlockGroup: 100010410001
Tract 410
BlockGroup: 100010410001
1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020
1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032
1033 1034 1035 1036 1037 1038 1039 1040 1041 1042 1043 1044
1045 1046 1047 1048 1049 1050 1051 1052 1053 1054 1055 1056
BlockGroup: 100010410002
BlockGroup: 100010410003
3007 3008 3009 3010 3011 3012 3013 3014 3015 3048
Tract 413
Tract 414
Tract 415
Tract 417.01
BlockGroup: 100010417011
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023
1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1037 1038
1039 1040 1041 1042 1043 1044
BlockGroup: 100010417012
BlockGroup: 100010417013
BlockGroup: 100010417014
4000 4001 4002 4003 4004 4005 4006 4007 4008 4009 4012 4013
4014 4015 4016 4017 4018 4025 4026
Tract 418.02
BlockGroup: 100010418021
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1013 1014 1015 1016 1017 1018 1019 1020 1021 1024 1029 1037
1038 1039 1040 1041
BlockGroup: 100010418022
BlockGroup: 100010418023
3000 3001 3002 3003 3012
Tract 418.03
BlockGroup: 100010418031
1060 1061 1062 1063 1064 1065 1067 1068 1069 1070 1071
Tract 418.04
BlockGroup: 100010418041
BlockGroup: 100010418043
Tract 433.
(18) *District 18. —*
All those portions of Kent and Sussex Counties described in the following census tracts and blocks:
Tract 425
Tract 429
BlockGroup: 100010429001

1032
BlockGroup: 100010429002
2016 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032
Tract 429
BlockGroup: 100010429002
2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044
2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056
2057 2058 2059
Tract 432.02
BlockGroup: 100010432024
4022 4028 4029 4030 4033
Tract 434
BlockGroup: 100010434002
BlockGroup: 100010434003
3024 3025 3036 3037 3038 3039 3040 3041 3042 3043 3044 3045
3046 3047 3048 3049 3050 3051 3052 3053 3054 3055 3056 3057
3058 3059 3060 3061 3062 3063 3064 3067
Tract 501.01
Tract 501.03
BlockGroup: 100050501031
1000 1001 1002 1003 1004 1012 1013 1014 1015 1016 1017 1018
1019 1026
BlockGroup: 100050501032
BlockGroup: 100050501033
BlockGroup: 100050501034
Tract 501.04
Tract 501.05
Tract 502
Tract 503.02
Tract 503.03
Tract 503.04
Tract 504.06
BlockGroup: 100050504061
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010
Tract 504.07
BlockGroup: 100050504071
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1017 1018 1019 1020 1032
BlockGroup: 100050504072
2000 2001 2002 2003 2004 2005 2006 2011 2012 2013 2014 2020
2021 2022 2023
Tract 505.01
BlockGroup: 100050505012
BlockGroup: 100050505013
3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011
3014 3015 3016 3017
Tract 505.03
BlockGroup: 100050505032
2000 2001 2002 2003 2004 2005 2006 2007 2008 2010 2015
Tract 508.05

BlockGroup: 100050508051
1000 1001 1002 1003 1004 1005 1008 1009
Tract 9900
BlockGroup: 100059900000
0001.
(19) *District 19. —*
All that portion of Sussex County described in the following census tracts and blocks:
Tract 504.07
BlockGroup: 100050504072
2007 2008 2009 2010 2015 2016 2017 2018 2019 2024 2025
BlockGroup: 100050504073
3000 3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011
3012 3013 3014 3015 3016 3017 3018 3019 3020 3021 3022 3023
3024 3025 3026 3030 3031 3032 3033 3034 3035 3036 3037
Tract 504.08
BlockGroup: 100050504081
BlockGroup: 100050504082
2000 2001 2002 2003 2004 2005 2006 2007 2009 2020 2021 2022
2023 2024 2025 2026 2027 2028 2029 2034
BlockGroup: 100050504083
3000
Tract 505.01
BlockGroup: 100050505011
BlockGroup: 100050505013
3012 3013 3018 3019 3020 3021 3022 3023 3024 3025 3026 3027
3028 3029 3030 3031 3032 3033 3034 3035 3036 3037 3038 3039
3040 3041 3042 3043 3044 3045 3046 3047 3048 3049 3050 3051
3052 3053 3054 3055 3056 3057 3058 3059 3060 3061 3062 3063
3064 3065 3066 3067 3068 3069 3070 3071 3072 3073 3074 3075
3076 3077 3078 3079 3080 3081
Tract 505.03
BlockGroup: 100050505031
BlockGroup: 100050505032
2009 2011 2012 2013 2014 2016 2017 2018 2019 2020 2021 2022
2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034
BlockGroup: 100050505033
Tract 505.05
Tract 505.06
Tract 506.01
BlockGroup: 100050506011
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023
1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035
1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046 1047
1048 1049 1050 1051 1052 1053 1054 1055 1056 1057 1058 1059
1060 1061 1062 1063 1064 1065 1066 1067 1068 1069 1070 1071
1072 1073 1074 1075 1076 1077 1078 1079 1080 1081 1082 1083
1084 1085 1086 1088 1090 1091 1092 1093 1094 1095 1096 1097
1098
BlockGroup: 100050506013

3000 3001 3002 3008 3009 3012 3028
Tract 506.03
BlockGroup: 100050506032
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2011 2012
2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024
2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036
2037 2039 2040 2043 2044 2045 2047
Tract 507.01
BlockGroup: 100050507011
1006 1007 1008 1009 1010
BlockGroup: 100050507012
BlockGroup: 100050507013
Tract 507.06
BlockGroup: 100050507061
BlockGroup: 100050507062
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011
2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023
2024 2025 2026 2027 2028 2029 2030 2031 2033 2034 2035 2036
2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048
2049 2050 2051 2052 2053 2054
BlockGroup: 100050507063
Tract 507.07
BlockGroup: 100050507071
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1013 1014 1015 1016 1021 1022 1023 1024 1025 1030
BlockGroup: 100050507072
Tract 507.08
BlockGroup: 100050507081
1000
Tract 507.09
Tract 507.10
Tract 507.11
Tract 508.04
BlockGroup: 100050508041
1004 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017
1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029
Tract 508.04
BlockGroup: 100050508041
1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040
BlockGroup: 100050508042
2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023
2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035
2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046
Tract 508.05
BlockGroup: 100050508051
1006 1007 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019
1020 1021 1022 1023 1024 1025
BlockGroup: 100050508052
2058 2059 2060 2061 2062
Tract 510.12

BlockGroup: 100050510121
1005 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017
1018 1019 1020 1021 1022 1023
BlockGroup: 100050510122
Tract 510.13
BlockGroup: 100050510131
BlockGroup: 100050510132
2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012
2013 2014 2015 2016 2017 2018
Tract 510.14.
(20) *District 20. —*
All that portion of Sussex County described in the following census tracts and blocks:
Tract 506.01
BlockGroup: 100050506011
1087 1089
Tract 506.03
BlockGroup: 100050506031
BlockGroup: 100050506032
2010 2038 2041 2042
Tract 506.04
BlockGroup: 100050506041
1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011
1012 1030 1032 1034 1035 1036 1037 1038 1043 1044
BlockGroup: 100050506042
BlockGroup: 100050506043
Tract 507.01
BlockGroup: 100050507011
1000 1001 1002 1003 1004 1005 1011 1012 1013 1014 1015 1016
1017 1018 1019 1020 1021 1022 1023 1024
Tract 507.03
Tract 507.06
BlockGroup: 100050507062
2032
Tract 507.07
BlockGroup: 100050507071
1017 1018 1019 1020 1026 1027 1028 1029
Tract 507.08
BlockGroup: 100050507081
1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012
1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024
1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036
1037 1038 1039
Tract 512.01
Tract 512.02
Tract 512.03
Tract 512.04
Tract 512.05
Tract 513.02
Tract 513.07
Tract 513.08

Tract 513.09
Tract 513.10
Tract 513.11
Tract 513.12
Tract 513.13
Tract 513.14
Tract 514
BlockGroup: 100050514001
1000 1001 1002 1003 1004 1005 1006 1009 1011 1012 1013 1014
1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026
1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038
1039
BlockGroup: 100050514002
BlockGroup: 100050514003
3000 3001 3002 3003 3004 3006 3007 3008 3009 3010 3011 3012
3013 3014 3015 3016 3017 3018 3022 3023 3024 3025 3026 3027
3028 3029 3030 3031 3032 3033 3034 3035 3036 3037 3038 3039
3040 3041 3042 3043 3044 3045 3046 3047 3048 3049
Tract 515.01
Tract 515.02
BlockGroup: 100050515021
BlockGroup: 100050515022
2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011
2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023
2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035
2036 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048
Tract 515.02
BlockGroup: 100050515023
3000 3001 3012 3013
Tract 9900
BlockGroup: 100059900000
0010.
(21) *District 21.* —
All that portion of Sussex County described in the following census tracts and blocks:
Tract 504.01
Tract 504.03
Tract 504.05
Tract 504.06
BlockGroup: 100050504061
1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022
1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034
1035 1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046
1047 1048 1049 1050 1051
BlockGroup: 100050504062
BlockGroup: 100050504063
BlockGroup: 100050504064
Tract 504.07
BlockGroup: 100050504071
1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1033
1034 1035 1036 1037 1038 1039 1040 1041 1042 1043 1044 1045

1046 1047 1048
BlockGroup: 100050504073
3027 3028 3029
Tract 504.08
BlockGroup: 100050504082
2008 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2030
2031 2032 2033
BlockGroup: 100050504083
3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011 3012
3013 3014 3015 3016 3017 3018 3019 3020 3021 3022
Tract 506.01
BlockGroup: 100050506012
BlockGroup: 100050506013
3003 3004 3005 3006 3007 3010 3011 3013 3014 3015 3016 3017
3018 3019 3020 3021 3022 3023 3024 3025 3026 3027 3029 3030
3031 3032 3033 3034 3035 3036 3037 3038 3039
Tract 506.03
BlockGroup: 100050506032
2046
Tract 506.04
BlockGroup: 100050506041
Tract 515.02
BlockGroup: 100050515023
3000 3001 3012 3013
Tract 9900
BlockGroup: 100059900000
0010
Tract 504.01
Tract 504.03
Tract 504.05
Tract 504.06
BlockGroup: 100050504061
1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022
1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034
1035 1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046
1047 1048 1049 1050 1051
BlockGroup: 100050504062
BlockGroup: 100050504063
BlockGroup: 100050504064
Tract 504.07
BlockGroup: 100050504071
1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1033
1034 1035 1036 1037 1038 1039 1040 1041 1042 1043 1044 1045
1046 1047 1048
BlockGroup: 100050504073
3027 3028 3029
Tract 504.08
BlockGroup: 100050504082
2008 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2030
2031 2032 2033

BlockGroup: 100050504083
3001 3002 3003 3004 3005 3006 3007 3008 3009 3010 3011 3012
3013 3014 3015 3016 3017 3018 3019 3020 3021 3022
Tract 506.01
BlockGroup: 100050506012
BlockGroup: 100050506013
3003 3004 3005 3006 3007 3010 3011 3013 3014 3015 3016 3017
3018 3019 3020 3021 3022 3023 3024 3025 3026 3027 3029 3030
3031 3032 3033 3034 3035 3036 3037 3038 3039
Tract 506.03
BlockGroup: 100050506032
2046
Tract 506.04
BlockGroup: 100050506041
1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024
Tract 506.04
BlockGroup: 100050506041
1025 1026 1027 1028 1029 1031 1033 1039 1040 1041 1042 1045
1046 1047 1048 1049 1050 1051 1052 1053 1054
Tract 514
BlockGroup: 100050514001
1007 1008 1010
BlockGroup: 100050514003
3005 3019 3020 3021
Tract 515.02
BlockGroup: 100050515022
2037
BlockGroup: 100050515023
3002 3003 3004 3005 3006 3007 3008 3009 3010 3011 3014 3015
3016 3017 3018 3019 3020 3021 3022 3023 3024 3025 3026 3027
3028 3029 3030 3031 3032 3033 3034 3035 3036 3037 3038 3039
3040 3041 3042 3043 3044 3045 3046 3047 3048 3049 3050 3051
3052
Tract 517.01
Tract 517.02
Tract 518.01
Tract 518.02
Tract 519.

(29 Del. C. 1953, §§ 622, 632, 642, 652; 54 Del. Laws, c. 361; 56 Del. Laws, c. 243; 56 Del. Laws, c. 259, § 1; 56 Del. Laws, c. 280, § 6; 57 Del. Laws, c. 555, §§ 1, 2; 58 Del. Laws, c. 280, §§ 2, 4, 8; 58 Del. Laws, c. 310, §§ 2, 4, 5; 58 Del. Laws, c. 350; 58 Del. Laws, c. 399, §§ 1-14; 63 Del. Laws, c. 183, § 1; 63 Del. Laws, c. 187, §§ 4-6, 26-37, 44-48, 53-57; 63 Del. Laws, c. 228, §§ 1, 2, 7(a)-(c), 8, 9(a)-(c), 10(a), (b), 11-13, 14(a)-(c), 20, 21; 65 Del. Laws, c. 84, §§ 1, 2; 65 Del. Laws, c. 252, §§ 1, 2; 68 Del. Laws, c. 188, § 1; 68 Del. Laws, c. 190, § 1; 68 Del. Laws, c. 439, §§ 20-43; 73 Del. Laws, c. 274, § 2; 73 Del. Laws, c. 290, § 2; 78 Del. Laws, c. 105, § 4; 78 Del. Laws, c. 210, § 2; 83 Del. Laws, c. 258, § 1; 83 Del. Laws, c. 285, § 2.)

Subchapter IV

Effectuation

§ 841. Filing of maps.

Maps of the several representative and senatorial districts shall be prepared by the Department of Elections. The maps shall be certified as to correctness by the President of the State Board of Elections and the State Election Commissioner and recorded in the offices of

the recorder of deeds for the respective counties. Two true and correct copies of these maps shall also be filed, within 10 business days of becoming final, in the offices of the State Department of Elections and provided to the respective state chairpersons of the 2 major political parties and the State Archivist and Records Administrator.

(29 Del. C. 1953, § 661; 54 Del. Laws, c. 361; 56 Del. Laws, c. 243; 58 Del. Laws, c. 280, § 20; 63 Del. Laws, c. 183, § 1; 68 Del. Laws, c. 188, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 382, § 3; 73 Del. Laws, c. 243, § 1; 78 Del. Laws, c. 105, § 5; 83 Del. Laws, c. 258, § 1; 83 Del. Laws, c. 285, § 3.)

§ 842. Evidence.

When the maps referred to in this chapter are so recorded in the respective recorder of deeds' offices, they shall be prima facie evidence in all judicial proceedings as to the correctness of the boundaries shown thereon.

(29 Del. C. 1953, § 662; 56 Del. Laws, c. 243; 63 Del. Laws, c. 183, § 1; 68 Del. Laws, c. 188, § 1; 73 Del. Laws, c. 243, § 1; 78 Del. Laws, c. 105, § 5.)

§ 843. Copies of maps.

The State Election Commissioner and the separate departments of elections shall cause such additional copies of the maps to be prepared and distributed as they deem necessary to properly advise the public.

(29 Del. C. 1953, § 663; 56 Del. Laws, c. 243; 63 Del. Laws, c. 183, § 1; 68 Del. Laws, c. 188, § 1; 73 Del. Laws, c. 243, § 1; 78 Del. Laws, c. 105, § 5.)

§ 844. Designation of roadways.

The term "avenue," "boulevard," "drive," "highway," "lane," "parkway," "place," "road," "route," "street," "turnpike" or any abbreviations thereof shall be used interchangeably so as to make the descriptions used in this chapter conform to maps currently in existence.

(29 Del. C. 1953, § 664; 56 Del. Laws, c. 259, § 2; 63 Del. Laws, c. 183, § 1; 68 Del. Laws, c. 188, § 1; 73 Del. Laws, c. 243, § 1; 78 Del. Laws, c. 105, § 5.)

§ 845. House district descriptions.

In the descriptions of the various House of Representatives districts, all references to a road, highway, street, drive, place, parkway, lane, avenue, boulevard, route, turnpike, river, stream, branch, gut, boundary line or other physical feature shall refer to the center line thereof unless otherwise specified.

(68 Del. Laws, c. 188, § 1; 73 Del. Laws, c. 243, § 1; 78 Del. Laws, c. 105, § 5.)

§ 846. Senate district descriptions.

In the descriptions of the various Senate districts, all references to a road, highway, street, drive, place, parkway, lane, avenue, boulevard, route, turnpike, river, stream, branch, gut, boundary line or other physical feature shall refer to the center line thereof unless otherwise specified.

(78 Del. Laws, c. 105, § 6.)

Part II
The General Assembly
Chapter 9
Legislative Bills, Laws, Journals and Committees

§ 901. Altering, defacing, or concealing bills or acts; penalties.

(a) (1) It is unlawful to wilfully do any of the following to an act passed by the General Assembly or a bill pending before a House of the General Assembly, a committee of a House of the General Assembly, or a joint committee of the General Assembly:

a. Add to.

b. Alter.

c. Deface.

d. Erase.

e. Obliterate.

f. Mutilate.

g. Blot.

h. Blur.

i. Steal.

j. Hide.

k. Conceal.

l. Destroy.

m. Misplace with the intent to conceal.

(2) A violation of paragraph (a)(1) of this section is a felony and is to be punished by a fine of not less than $100 nor more than $5,000 and costs of prosecution and imprisonment of not less than 1 year nor more than 10 years.

(b) For purposes of this section:

(1) "Act" means a bill that has been enacted under § 18 of Article III of the Delaware Constitution.

(2) "Bill pending" means a bill that is introduced but has not yet been enacted under § 18 of Article III of the Delaware Constitution.

(c) An alteration or amendment of an act passed by the General Assembly or a bill pending before a House of the General Assembly, a committee of a House of the General Assembly, or a joint committee of the General Assembly made in the regular course of proceedings, including under Chapter 2 of Title 1 and §§ 904 and 906 of this title, is not a violation of this section.

(d) This section does not prevent or limit a House of the General Assembly from punishing an individual who violates paragraph (a)(1) of this section for contempt according to parliamentary usage. A punishment for contempt by a House of the General Assembly does not prevent or limit a prosecution under this section.

(19 Del. Laws, c. 276, §§ 1-4; Code 1915, § 363; Code 1935, § 4; 29 Del. C. 1953, § 901; 65 Del. Laws, c. 425, § 1; 83 Del. Laws, c. 458, § 11; 84 Del. Laws, c. 233, § 55.)

§ 902. Preservation of bills and resolutions passed.

All bills and resolutions passed by the General Assembly which are published in the Session Laws are to be preserved by being printed, stenciled, or typewritten and not copied or transcribed with the pen. The original of all bills and resolutions are to be produced in a manner approved by the State Archivist and Records Administrator and the Director of the Division of Legislative Services, or the Director's designee, for permanency and legibility.

(27 Del. Laws, c. 12, § 1; Code 1915, § 366; Code 1935, § 337; 29 Del. C. 1953, § 902; 53 Del. Laws, c. 7, §§ 2, 3; 59 Del. Laws, c. 253, § 7; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 382, § 4; 83 Del. Laws, c. 458, § 12; 84 Del. Laws, c. 255, § 30.)

§ 903. Appointment and duties of Bill Clerks.

(a) The Senate and the House of Representatives shall appoint a Bill Clerk for their respective House of the General Assembly.

(b) A Bill Clerk shall have general supervision over all bills and resolutions introduced at a session of the General Assembly. When a bill or resolution passes both Houses of the General Assembly, the Bill Clerks shall attach a parchment backing to the bill or resolution and initial and seal or stamp each page of the bill or resolution and present them to the President Pro Tempore of the Senate and the Speaker of the House of Representatives for their signatures. The Bill Clerks shall certify with the Secretary of the Senate and Clerk of the House, on the backing of the bill or resolution, that the bill or resolution is the same as that which passed both Houses, and the Bill Clerk of the House in which the bill or resolution was introduced shall then deliver the bill or resolution, with an engrossment under § 904(a) of this title, if necessary, to the Secretary of the Senate, for a Senate bill or resolution, or the Chief Clerk of the House, for a House bill or resolution.

(27 Del. Laws, c. 12, §§ 2, 3; Code 1935, § 337; 29 Del. C. 1953, § 903; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 458, § 13.)

§ 904. Engrossment; duty of Secretary of the Senate and Chief Clerk of the House as to passed bills or resolutions.

(a)(1) If a bill or resolution is amended, the Division of Legislative Services shall prepare an engrossed copy of the bill or joint resolution for the Governor and publication in the Session Laws. The Division shall prepare an engrossed copy of the bill, joint resolution, simple resolution, or concurrent resolution for publication on the General Assembly's website.

(2) In preparing the engrossed copy of a bill or resolution, the Division of Legislative Services may correct manifest clerical, typographical, and grammatical errors created during the amendment process.

(3) In preparing the engrossed copy of a bill or resolution, the Division of Legislative Services shall proofread the engrossed copy before release to ensure accurate engrossment.

(b) The Secretary of the Senate or the Chief Clerk of the House, as appropriate, shall do all of the following:

(1) Present to the Governor a bill or resolution that is required to be presented to the Governor under § 18 of Article III of the Delaware Constitution.

(2) Document the Governor's receipt of a bill or resolution presented under paragraph (b)(1) of this section.

(3) Report to their respective Houses and the Division of Legislative Services on each bill or resolution presented under paragraph (b)(1) of this section.

(c) The Secretary of the Senate and the Chief Clerk of the House shall report to their respective Houses on a bill or resolution that becomes law without the Governor's signature under § 18 of Article III of the Delaware Constitution. The Division of Legislative Services shall publish the bill or resolution under § 906 of this title in the same manner as if the Governor had signed it.

(d) The Secretary of the Senate and the Chief Clerk of the House shall report to their respective members on the action taken by the Governor on each bill or resolution presented.

(27 Del. Laws, c. 12, §§ 3-7; Code 1935, § 337; 29 Del. C. 1953, § 904; 53 Del. Laws, c. 7, § 1; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 458, § 14; 84 Del. Laws, c. 233, § 56; 84 Del. Laws, c. 255, § 31; 84 Del. Laws, c. 514, §§ 49, 50.)

§ 905. Legislative journal; compiling; publication; content; disposition of originals.

(a) The legislative journals for the Senate and the House of Representatives required under § 10 of Article II of the Delaware Constitution must be published following each general election for the 2-year period immediately preceding the election.

(b) (1) The full title of a bill, joint resolution, or concurrent resolution must be published not more than 3 times in either journal, once when introduced or presented in either House, once when voted on in either House, and once in the index. The full title of a simple resolution must be published in its respective journal only twice, once when introduced and once in the index.

(2) If a bill or resolution is published elsewhere in either journal, the bill or resolution is to be designated only by the initial and number assigned to the bill or resolution at introduction.

(c) The Secretary of the Senate shall prepare the journal text of, and index for, the Senate and the Chief Clerk of the House of Representatives shall prepare the journal text of, and index for, the House of Representatives.

(d) [Repealed.]

(e) The legislative journals must include committee action on a bill or resolution. The committee action on a bill or resolution must include all of the following:

(1) The title to the bill or resolution only by the initial and number assigned to the bill or resolution at introduction.

(2) The action taken on the bill or resolution without naming the members of the committee.

(f) The rules of the Senate must be published in full in the Senate journal and the rules of the House must be published in full in the House journal. Joint rules of the Senate and House must be published in both journals.

(g) (1) The yeas and nays which are required to be published in the journal must be line in compact form.

(2) The certificate of election of not more than 1 member from each county is to be published in full. A brief record that certificates of election of all other members were duly received and found to be correct suffices.

(3) Not more than 1 member's constitutional oath of office and not more than 1 attache's or employee's oath is to be published in full. A brief record that all other oaths were administered suffices.

(h) The publication of the legislative journals is to be done under contract made by the Director of the Division of Legislative Services, or the Director's designee, and under the supervision of the Secretary of the Senate and Chief Clerk of the House of Representatives, as appropriate. The Secretary of the Senate and the Chief Clerk of the House, as soon as their respective journals have been published, shall deliver the originals together with all communications, petitions, and other related papers to the State Archivist and Records Administrator for proper disposition.

(Code 1852, §§ 31, 32; 17 Del. Laws, c. 35, § 2; 23 Del. Laws, c. 82; Code 1915, § 375; 40 Del. Laws, c. 76; Code 1935, § 344; 47 Del. Laws, c. 181; 48 Del. Laws, c. 146; 29 Del. C. 1953, § 905; 55 Del. Laws, c. 384, § 5; 59 Del. Laws, c. 253, § 8; 61 Del. Laws, c. 46, §§ 1-3; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 382, § 5; 83 Del. Laws, c. 458, § 15; 84 Del. Laws, c. 255, § 32.)

§ 906. Publication of Session Laws; typographical errors; Executive Register.

(a) (1) The Director of the Division of Legislative Services ("Director"), or the Director's designee, shall, as soon as practicable after the adjournment of the General Assembly, have published accurately in volume form, with an index thereto, copies of all of the following:

a. Bills enacted.

b. All resolutions enacted requiring the approval of the Governor, executive orders, and proclamations of the Governor, other than proclamations directing the repeal of corporate charters which are promulgated pursuant to legislative enactment.

c. Municipal charters or amendments to municipal charters adopted pursuant to a referendum and filed with the Secretary of State pursuant to Chapter 8 of Title 22.

d. Other legislative and executive papers as may be required by Legislative Council.

(2) The volume published under subsection (a) of this section is to be known as the Session Laws or the Laws of Delaware.

(3) The publication of the Session Laws is to be done under contract made by the Director, or the Director's designee, and in accordance with the specifications furnished by the Director.

(4) In the preparation of the Session Laws for publication, the Director, or the Director's designee, may do the following:

a. For a portion of a Session Law that is to be codified by the Code Revisors, and with the Code Revisors' agreement, correct manifest clerical, typographical, and grammatical errors.

b. For a portion of a Session Law that is not to be codified by the Code Revisors, correct manifest clerical, typographical, and grammatical errors.

(b) The Secretary of State shall maintain and annually publish, in a manner as the Secretary of State determines, an Executive Register containing copies or abstracts of all official acts of the Governor and an index thereto, excepting therefrom acts and resolutions of the General Assembly.

(21 Del. Laws, c. 9, §§ 1, 2; 23 Del. Laws, c. 82, § 5; 24 Del. Laws, c. 14; Code 1915, § 368; 36 Del. Laws, c. 77, § 2; Code 1935, § 338; 46 Del. Laws, c. 4; 29 Del. C. 1953, § 907; 49 Del. Laws, c. 66; 50 Del. Laws, c. 453, § 1; 50 Del. Laws, c. 584, § 1; 51 Del. Laws, c. 134, § 4; 55 Del. Laws, c. 350, § 1; 55 Del. Laws, c. 384, §§ 1, 2; 56 Del. Laws, c. 89, § 1; 59 Del. Laws, c. 253, § 9; 61 Del. Laws, c. 257, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 458, § 16; 84 Del. Laws, c. 255, § 33.)

§ 907. Publication of private acts [Repealed].

(13 Del. Laws, c. 1, § 1; Code 1915, § 371; Code 1935, § 340; 29 Del. C. 1953, § 908; 59 Del. Laws, c. 253, § 10; 70 Del. Laws, c. 186, § 1; repealed by 83 Del. Laws, c. 458, § 17, effective Oct. 14, 2022.)

§ 908. Recording of private acts [Repealed].

(Code 1852, § 30; Code 1915, § 374; Code 1935, § 343; 29 Del. C. 1953, § 909; 70 Del. Laws, c. 186, § 1; repealed by 83 Del. Laws, c. 458, § 18, effective Oct. 14, 2022.)

§ 909. Fees for certified copies of private acts [Repealed].

(13 Del. Laws, c. 1, § 4; 18 Del. Laws, c. 9; 19 Del. Laws, c. 551; 20 Del. Laws, c. 180; Code 1915, § 373; Code 1935, § 342; 29 Del. C. 1953, § 910; 70 Del. Laws, c. 186, § 1; repealed by 83 Del. Laws, c. 458, § 19, effective Oct. 14, 2022.)

§ 910. Consideration of agency rules during legislative interim.

(a) When an agency adopts a rule or regulation, or makes a substantive amendment to a rule or regulation of the agency during the legislative interim between July 1 and the second Tuesday in January, and the chair of a standing committee of either house believes in good faith that the rule, regulation, or amendment to the rule or regulation impacts or is within the subject-matter jurisdiction of the committee, the chair may schedule a meeting of the committee to consider the rule, regulation, or amendment to the rule or regulation.

(b) When more than 1 standing committee wishes to hold a meeting to consider the same rule, regulation, or amendment to the rule or regulation, the standing committees shall become a joint committee and shall remain as a joint committee for that purpose until the first day of the next following General Assembly session, or until the adjournment of the joint committee, whichever comes first. A standing committee may withdraw from the joint committee at any time. Each joint committee consisting of standing committees from both Houses of the General Assembly must be co-chaired by a House standing committee chair and a Senate standing committee chair.

(c) Each joint committee shall have the power, by a majority vote of its members, to draft a committee report setting forth its suggestions and recommendations, and to request the President Pro Tempore of the Senate or the Speaker of the House to call a special session to consider committee recommendations. Each joint committee shall provide its committee report to the Joint Legislative Oversight and Sunset Committee.

(68 Del. Laws, c. 159, § 4; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 260, § 3; 83 Del. Laws, c. 458, § 20.)

§ 911. Deliberative process.

(a) (1) A bill, resolution, or other legislative matter assigned to a standing committee must pass through a deliberative process before being brought to the floor of either House, unless the bill or resolution is sooner petitioned out of committee.

(2) The deliberative process required under paragraph (a)(1) of this section must include regularly scheduled preannounced meetings at which the standing committee does all of the following:

a. Receives testimony from the general public, including those affected by the proposed legislation.

b. Considers an analysis of the proposed legislation, including a fiscal note or fee impact statement prepared by the Office of the Controller General.

c. After notice to the sponsor, makes time available for each prime sponsor to explain the legislation and answer questions from the standing committee.

(b) Each Thursday each standing committee shall release a committee agenda which must include all matters to be considered by the committee at that meeting, a listing of all bills in the committee, and any other announcements from the committee including the times, places, and dates of future meetings.

(c) Minutes must be taken at each formal standing committee meeting, and the results of a committee vote must be recorded. A committee member who dissents from a committee decision may state the member's dissent and reasoning in the minutes.

(61 Del. Laws, c. 420, § 1; 83 Del. Laws, c. 458, § 21.)

§ 912. Vote requirement for ratification of amendments to United States Constitution.

The General Assembly shall approve a proposed amendment to the United States Constitution by a majority of the members elected to each House of the General Assembly in a roll call vote. The vote on the proposed amendment must be entered on the journals of each House with the "ayes" and "nays" taken on the vote.

(62 Del. Laws, c. 110, § 1; 83 Del. Laws, c. 458, § 22.)

§ 913. Legislation affecting fees charged by state agencies.

(a) The Office of the Controller General shall prepare a statement to be attached to legislation that proposes a fee to be charged by, or an increase in a fee charged by, a state agency. The statement must include an explanation of all of the following:

(1) The purpose of the proposed fee or fee increase.

(2) A general identification of the persons, business entities, or organizations affected by the legislation.

(3) Impact of the proposed fee or fee increase on these affected persons, business entities, or organizations.

(4) Intended use by the agency of the revenues generated by the proposed fee or fee increase.

(b) (1) The Office of the Controller General shall contact the state agency in preparation of the statement. The Office of the Controller General shall review or audit the information provided by the agency as deemed necessary to evaluate the reasons presented for the proposed fee or fee increase and shall include in the statement a report of its findings.

(2) The Office of the Controller General shall attach the statement to the legislation before the legislation's initial committee consideration in the House of origin.

(c) Each House may waive the requirements of this section as to legislation pending before the House by a vote of the majority of all members elected to the House.

(68 Del. Laws, c. 216, § 1; 83 Del. Laws, c. 458, § 23.)

§ 914. Procedure for notice to the public of a proposed amendment to the Delaware Constitution.

(a) For purposes of this section:

(1) "Newspaper of general circulation" means a newspaper that meets all of the following:

a. Is published at least on a weekly basis.

b. Is distributed throughout a county.

c. Is published in the language most commonly spoken in the area in which it circulates.

(2) "Newspaper of general circulation" does not include any of the following:

a. A newspaper intended primarily for members of a particular professional or occupational group.

b. A newspaper whose primary function is to carry legal notices.

(3) "Proposed amendment" means the full text of the legislation proposing an amendment to the Delaware Constitution.

(b) The notice required for a proposed amendment under § 1 of Article XVI of the Delaware Constitution must occur as follows:

(1) The proposed amendment must be published not more than 120 days before the next general election and not less than 90 days before the next general election in at least 1 newspaper of general circulation in each county.

(2) The proposed amendment must be posted for at least the 90 days before the next general election prominently on the Department of Elections' and General Assembly's websites.

(c) The individual responsible for ensuring dissemination of the proposed amendment under subsection (b) of this section is as follows:

(1) The Secretary of the Senate, for an amendment proposed by a Senate bill.

(2) The Chief Clerk of the House of Representatives, for an amendment proposed by a House bill.

(d) The Secretary of the Senate, Chief Clerk of the House of Representatives, State Election Commissioner, and Director of the Division of Legislative Services shall review and approve the notice to be disseminated under subsection (b) of this section.

(e) (1) The individual responsible for dissemination under subsection (c) of this section shall provide immediate notice of doing so to all of the following:

a. The Governor.

b. The members of the General Assembly.

c. The Director and the Librarian of the Division of Legislative Services.

d. The State Archivist and Records Administrator.

(2) The notice provided under paragraph (e)(1) of this section must include all of the following:

a. A list of the newspapers in which the publication of the proposed amendment required under paragraph (b)(1) of this section occurred and the date of publication in those newspapers.

b. The place within the websites in which the posting required under paragraph (b)(2) of this section is to be found and the date of the posting.

(83 Del. Laws, c. 217, § 1; 84 Del. Laws, c. 16, § 1; 84 Del. Laws, c. 255, § 34.)

§ 915. Legislative Hall Art and History Advisory Commission.

(a) The Legislative Hall Art and History Advisory Commission ("Commission") is established within the General Assembly to advise and make recommendations to Legislative Council on the gift, loan, or purchase of art, monuments, and historical exhibits to be displayed in Legislative Hall or on the grounds of Legislative Hall on a permanent or temporary basis.

(b) In developing recommendations to Legislative Council, the Commission shall do all of the following:

(1) Receive proposals from artists and historians, art and history organizations, and other individuals and evaluate the extent to which the proposals meet the criteria under subsection (c) of this section.

(2) If recommended, include a summary of how the recommendation meets the criteria under subsection (c) of this section and the cost and logistical needs to implement the recommendation.

(c) Art, monuments, and historical exhibits to be displayed in Legislative Hall or on the grounds of Legislative Hall must engage individuals to do 1 or more of the following:

(1) Reflect on the rich and diverse history, cultures, and artistic and historical contributions of the people of Delaware.

(2) Participate in the artistic, historical, political, or cultural life of this State.

(3) Understand Delaware government.

(4) Appreciate the varied landscapes of Delaware.

(d) The Commission consists of the following members, or a designee selected by a member serving by virtue of position:

(1) Six residents of this State with knowledge or experience in art or Delaware history and appointed as follows:

a. Two residents appointed by the Governor.

b. Two residents appointed by the Speaker of the House of Representatives.

c. Two residents appointed by the President Pro Tempore of the Senate.

(2) The Chief Clerk of the House of Representatives.

(3) The Secretary of the Senate.

(4) The Director of the Division of Legislative Services, who shall also serve as Secretary to the Commission.

(5) The Chair of the Delaware Heritage Commission.

(6) The Director of the Division of Historical and Cultural Affairs.

(7) The Director of the Division of the Arts.

(8) The Director of the Delaware Public Archives.

(9) The Executive Director of the Delaware Historical Society.

(10) The Executive Director of the Delaware Art Museum.

(e) (1) A member of the Commission appointed under paragraph (d)(1) of this section serves at the pleasure of the appointing authority.

(2) The Governor, Speaker of the House of Representatives, and President Pro Tempore of the Senate shall make reasonable efforts to ensure each county is represented by the members of the Commission appointed under paragraph (d)(1) of this section.

(3) A member may be removed by the member's appointing authority for any reason, including gross inefficiency, misfeasance, nonfeasance, malfeasance, or neglect of duty.

a. A member is deemed in neglect of duty if the member is absent from 3 consecutive commission meetings without good cause or fails to attend at least 50% of all regular commission meetings in a calendar year.

b. A member who is deemed in neglect of duty is considered to have resigned.

(f) The Secretary of the Senate is the Chair of the Commission in odd-numbered years and Vice-Chair in even-numbered years and the Chief Clerk of the House of Representatives is Chair of the Commission in even-numbered years and Vice-Chair in odd-numbered years.

(g) (1) A quorum of the Commission is a majority of its members.

(2) Official action by the Commission, including making findings and recommendations, requires the approval of a quorum of the Commission.

(3) The Commission may adopt rules necessary for its operation.

(4) The Commission may invite individuals with relevant expertise to participate in commission discussions. An individual invited to participate in commission discussions is not a member of the Commission.

(5) A member of the Commission with the ability to designate another individual to attend a commission meeting must provide the designation in writing to the Chair. An individual attending a meeting for a member as a designee has the same duties and rights as the member.

(h) A member of the Commission may not receive compensation but may be reimbursed for the member's actual and necessary expenses incurred in the performance of the member's official duties.

(i) Legislative Council, or the Commission with approval of Legislative Council, may accept donations of money, property, and personal services related to art, monuments, and historical exhibits recommended by the Commission and approved by Legislative Council.

(j) Art, monuments, and historical exhibits recommended by the Commission and approved by Legislative Council may be placed in any location in Legislative Hall or on the grounds of Legislative Hall, if the location is approved by Legislative Council.

(k) The Division of Legislative Services shall provide staff support to the Commission.

(84 Del. Laws, c. 480, § 1; 84 Del. Laws, c. 255, § 36.)

Part II
The General Assembly
Chapter 10
Legislative Conflicts of Interest

§ 1001. Findings; purpose.

(a) The General Assembly hereby declares that public office is a public trust and that any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust. In serving the public interest, it is a legislator's right and responsibility to vote upon all questions before the House of which he or she is a member and to participate in the business of the House and its committees, and in doing so, he or she is presumed to be acting in good faith and in the public interest.

(b) The General Assembly also acknowledges that the exercise of legislative rights is subject to limitations provided in article II, § 20 of the Delaware Constitution when personal or private interests conflict with the public interest.

(c) The purpose of this chapter is to define the limitations of article II, § 20 of the Delaware Constitution and to provide for its implementation and enforcement.

(67 Del. Laws, c. 419, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1002. Restrictions relating to personal or private interest.

(a) A legislator who has a personal or private interest in any measure or bill pending in the General Assembly shall disclose the fact to the House of which the legislator is a member and shall not participate in the debate nor vote thereon; provided, that upon the request of any other member of the House or Senate, as the case may be, a legislator who has such a personal or private interest may nevertheless respond to questions concerning any such measure or bill. A personal or private interest in a measure or bill is an interest which tends to impair a legislator's independence of judgment in the performance of the legislator's legislative duties with respect to that measure or bill.

(b) A legislator has an interest which tends to impair his or her independence of judgment in the performance of his or her legislative duties with regard to any bill or measure when any of the following apply:

(1) The enactment or defeat of the measure or bill would result in a financial benefit or detriment to accrue to the legislator or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons.

(2) The legislator or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by a measure or bill to a lesser or greater extent than like enterprises or other interests in the same enterprise.

(3) A person required to register as a lobbyist under Chapter 58 of this title is a close relative of the legislator and that person acts to promote, advocate, influence, or oppose the measure or bill.

(c) Disclosure required under subsection (a) of this section shall be made in open session:

(1) Prior to the vote on the measure or bill by any committee of which the legislator is a member; and

(2) Prior to the vote on the measure or bill in the House of which the legislator is a member.

(d) A legislator who violates the provisions of this section shall be subject to such sanction as shall be prescribed by the House of which the legislator is a member pursuant to rules adopted under article II, § 9 of the Delaware Constitution.

(67 Del. Laws, c. 419, § 1; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 283, § 41; 84 Del. Laws, c. 42, § 1.)

§ 1003. Legislative Ethics Committees.

(a) The House and the Senate shall each establish an Ethics Committee which shall have the responsibilities assigned in this section with respect to the enforcement of this chapter and such other responsibilities as may be assigned by the House or the Senate as the case may be. Each Ethics Committee may, upon the request of a member, provide a written advisory opinion as to the application of this chapter to a particular situation. Any member who acts in good faith in reliance upon any such written advisory opinion shall not be subject to any disciplinary proceeding by the respective House with respect to the matters covered by the advisory opinion provided there was a full disclosure to the Ethics Committee of all facts necessary for the opinion. All proceedings before an Ethics Committee in connection with an advisory opinion shall be confidential, subject to the following:

(1) The legislator involved may waive the privilege of confidentiality;

(2) The proceedings shall no longer be confidential and may be made public in any subsequent disciplinary proceeding if the legislator acts in disregard of an advisory opinion; and

(3) Each Ethics Committee shall maintain records of its proceedings and advisory opinions which shall be available for reference by the Committee, subsequent Committees and their staff.

(b) Each Committee shall investigate allegations of violations of this chapter by the members of the respective House and shall make recommendations to the respective House with respect thereto. If in the course of any proceeding, advisory or investigative, the Committee shall become aware of any substantial evidence of a violation of any law involving legislative conduct subject to its jurisdiction it shall report the same to the appropriate federal or state authorities.

(67 Del. Laws, c. 419, § 1.)

§ 1004. Definitions.

For the purposes of this chapter:

(1) A “close relative” means a person’s parents, spouse, children (natural or adopted) and siblings of the whole and half-blood.

(2) A person has a “financial interest” in a private enterprise if he or she:

a. Has a legal or equitable ownership interest in the enterprise of more than 10% (1% in the case of a corporation whose stock is regularly traded on an established securities market); or

b. Is associated with the enterprise and received from the enterprise during the last calendar year or might reasonably be expected to receive from the enterprise during the current or the next calendar year income in excess of $5,000 for services as an employee, officer, director, trustee or independent contractor; or

c. Is a creditor of a private enterprise in an amount equal to 10% or more of the debt of that enterprise (1% or more in the case of a corporation whose securities are regularly traded on an established securities market).

(3) A “person” means an individual, partnership, corporation, trust, joint venture and any other association of individuals or entities.

(4) A “private enterprise” means any activity whether conducted for profit or not for profit and includes the ownership of real or personal property; provided, that “private enterprise” does not include any activity of the State, any political subdivision or any agency, authority or instrumentality thereof.

(67 Del. Laws, c. 419, § 1; 70 Del. Laws, c. 186, § 1.)

Part II
The General Assembly
Chapter 11
Legislative Council
Subchapter I
General Provisions

§ 1101. Creation of Legislative Council; composition.

There is created a Legislative Council which shall be composed of 10 members of the General Assembly as follows:

(1) From the Senate: The President Pro Tem, the Majority Leader, the Minority Leader, 1 member appointed by the President Pro Tem and 1 member appointed by the Minority Leader.

(2) From the House: The Speaker of the House, the Majority Leader, the Minority Leader, 1 member appointed by the Speaker and 1 member appointed by the Minority Leader.

(29 Del. C. 1953, § 1101; 55 Del. Laws, c. 322; 59 Del. Laws, c. 253, § 14.)

§ 1102. Term of office; vacancy.

(a) The members of the Council who are not appointed shall serve during their term of office in the General Assembly and until their successors are selected. The members of the Council who are appointed shall be appointed at the first annual session of every new General Assembly and shall serve during their term of office in the General Assembly and until their successors are selected.

(b) In the case of a vacancy in the office of any member of the Council who is not appointed, a successor shall serve during such member's term of office in the General Assembly and until a successor has been selected. In the case of a vacancy in the office of any member of the Council who is appointed, a successor shall be appointed by the member of the Council occupying, at the time of the vacancy, the office from which the appointment was made.

(29 Del. C. 1953, § 1102; 55 Del. Laws, c. 322; 70 Del. Laws, c. 186, § 1.)

§ 1103. Chairperson and Vice-Chairperson of the Council.

(a) The President Pro Tem shall be Chairperson of the Council during odd-numbered years and Vice-Chairperson during even-numbered years.

(b) The Speaker shall be Chairperson of the Council during even-numbered years and Vice-Chairperson during odd-numbered years.

(29 Del. C. 1953, § 1103; 55 Del. Laws, c. 322; 70 Del. Laws, c. 186, § 1.)

§ 1104. Duties of the Council.

The Council shall:

(1) Summarize and digest information on matters relating to the general welfare of the State;

(2) On its own initiative or at the direction of the General Assembly or of the Senate or House, make studies on subjects of interest and concern and, based thereon, recommend such legislation as the welfare of the State may require;

(3) Recommend such codification and general revision of the Constitution and the laws of the State as may from time to time be necessary;

(4) Recommend such changes in the rules and procedures of the Senate and House as may advance the consideration of legislation by the General Assembly;

(5) Cooperate with and assist the work of interim committees or of commissions appointed at the direction of the General Assembly or of the Senate or House;

(6) Cooperate with the appropriate committees of the General Assembly or of the Senate or House to assure efficient utilization of its employees;

(7) Arrange for the obtaining of the printing needs and supplies and equipment of the General Assembly, subject to the laws of the State relating to the purchasing of state supplies;

(8) Employ such staff as it deems necessary to carry out this chapter;

(9) Prepare or cause to be prepared and drafted such bills, amendments, joint and concurrent resolutions, resolutions, memorials and revisions and substitutes thereto which are proposed to be introduced into the General Assembly as may be requested by any member of the General Assembly and otherwise render assistance, aid, information, counsel and advice in the preparation and drafting of any such proposed legislation;

(10) Collect or call to be collected all available information relating to any matter which is the subject of proposed legislation by the General Assembly, to examine acts of any other state and to investigate all available sources of information;

(11) Answer any and all inquiries for bills, resolutions, committee reports and abstracts, excerpts or copies of Laws of Delaware within the limits of available time and moneys and charging out-of-pocket expenses where such is determined appropriate for such abstracts, excerpts or copies;

(12) In general, act as a reference bureau for all matters relating or pertaining to legislative matters and subjects, whether enacted by this State or any other state or whether proposed by this or other states, at the request of any member of the General Assembly.

(29 Del. C. 1953, § 1104; 55 Del. Laws, c. 322; 59 Del. Laws, c. 253, § 13.)

§ 1105. Powers of the Council.

The Council shall:

(1) Receive recommendations and suggestions for studies or legislation from all sources;

(2) Appoint committees and subcommittees which shall include only members of the General Assembly and at least 1 Council member and which shall be subject to the authority of the Council;

(3) Adopt such rules and procedures as may be necessary or appropriate to carry out its duties;

(4) Request information from any officer or agency of the State or of its political subdivisions bearing on subjects under consideration by the Council or by any of its committees or subcommittees.

(29 Del. C. 1953, § 1105; 55 Del. Laws, c. 322.)

§ 1106. Director of the Division of Legislative Services; qualifications; compensation; removal.

(a) The Council shall appoint, with the consent of a majority of the members elected to each House of the General Assembly, a Director of the Division of Legislative Services ("Director") who shall serve full time. The Director shall:

(1) Be licensed to practice law before the Supreme Court of this State; or

(2) Have been awarded a master of arts or master of science degree from an accredited college or university; or

(3) Have been awarded a bachelor of arts or a bachelor of science degree from an accredited college or university and have had 3 years experience in governmental research.

(b) The Director shall receive such compensation as shall be determined by the Council, subject to the limitations contained in the annual appropriation act.

(c) The Director, upon appointment, shall serve for so long as the Director properly performs the duties of Director and shall not be removed except for cause and only then upon the affirmative vote of 8 members of the Council.

(d) *Division of Legislative Services. —*

There is created a Division of Legislative Services to assist the Director of the Division of Legislative Services in performing the functions assigned under § 1107 of this title and other Delaware law.

(29 Del. C. 1953, § 1106; 55 Del. Laws, c. 322; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 255, § 35; 85 Del. Laws, c. 120, § 1.)

§ 1107. Duties of the Director of the Division of Legislative Services.

(a) The Director of the Division of Legislative Services ("Director") shall:

(1) Organize and supervise the Division of Legislative Services;

(2) Submit and publish such reports as the Council directs;

(3) Employ or engage assistants, stenographers and other persons or research agencies, subject to the approval of the Council;

(4) Assist any member of the General Assembly with respect to present or prospective legislation within the limits of the Director's staff and budget.

(b) The Director shall be the Secretary of the Council. The Director shall prepare the agenda for meetings pursuant to the direction of the Chairperson. The Director shall cause to be kept the minutes of the Council and shall submit a copy thereof to the members of the General Assembly within 15 days of each meeting of the Council.

(29 Del. C. 1953, § 1107; 55 Del. Laws, c. 322; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 255, § 36.)

§ 1108. Meetings; quorum.

(a) The Council shall meet at the call of the Chairperson and at such place as the Chairperson shall designate. Meetings of the Council shall also be called by the Chairperson upon the written request of 6 members and upon 48 hours' notice to the members of the Council.

(b) No less than 6 members of the Council shall constitute a quorum, and no act of the Council shall be valid unless approved by at least 6 members.

(29 Del. C. 1953, § 1108; 55 Del. Laws, c. 322; 66 Del. Laws, c. 54, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1109. Annual report.

The Council shall submit an annual report of its activities to the members of the General Assembly and to the Governor, which shall become a part of the journal of the Senate and House.

(29 Del. C. 1953, § 1109; 55 Del. Laws, c. 322.)

§ 1110. Controller General; responsibility; duties; compensation.

(a) (1) The Council shall appoint a Controller General who, primarily, shall work with and assist the General Assembly's Joint Finance Committee and Joint Committee on Capital Improvement.

(2) The Council shall provide for additional employees, including a Deputy Controller General, as may be necessary to enable the Controller General to perform the functions assigned under this section or other law of this State.

(3) There is created an Office of the Controller General to assist the Controller General in performing the functions assigned under this section and other Delaware law.

(b) (1) If the Controller General dies, resigns, or is removed, the Deputy Controller General serves as Acting Controller General until the Council appoints a Controller General.

(2) The Controller General may, during an absence from the State, appoint the Deputy Controller General to serve as Acting Controller General during the Controller General's absence.

(3) The Controller General or Council may appoint the Deputy Controller General to serve as Acting Controller General when the Controller General is temporarily incapacitated.

(c) (1) The Controller General shall do all of the following:

a. Participate in any or all hearings held by the Joint Finance Committee, the Joint Committee on Capital Improvement, the Director of the Office of Management and Budget, or other state agencies in connection with contemplated general fund budget appropriations, capital improvement programs, or supplementary appropriations.

b. Prepare fiscal projections under Chapter 19 of this title.

c. Prepare fee impact statements under § 913 of this title.

d. Perform other duties as may be assigned or delegated by the Council.

(2) The Controller General may do all of the following:

a. Access records of all state agencies. A state agency shall provide the access requested by the Controller General.

b. Request from a state agency all reasonable information and data as directed by the Joint Finance Committee or Joint Committee on Capital Improvement to assist the General Assembly in the effective discharge of its state financial responsibilities. A state agency shall provide information and data requested by the Controller General.

(d) The Controller General may perform management and program reviews. Management and program reviews include any analyses necessary to determine operational efficiency and effectiveness, compliance with the laws of this State, and legislative intent.

(e) The Controller General, Deputy Controller General, and any other individuals employed to assist the Controller General shall receive compensation, including salaries and other necessary expenses, as determined by the Council, subject to the limitations imposed in the annual appropriation act.

(29 Del. C. 1953, § 1110; 57 Del. Laws, c. 277; 62 Del. Laws, c. 277, § 18; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(13); 83 Del. Laws, c. 274, § 1; 85 Del. Laws, c. 120, § 2.)

Subchapter II

Session Laws and Legislative Journals

§ 1120. Custody.

The Director of the Division of Legislative Services, or the Director's designee, shall receive and exercise control over all inventory of Session Laws and legislative journals for sale and distribution as provided by law.

(59 Del. Laws, c. 253, § 12; 64 Del. Laws, c. 329, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 255, § 37.)

§ 1121. Sale.

The Director of the Division of Legislative Services, or the Director's designee, shall make available for sale all inventories of Session Laws and legislative journals in the State for such sum not less than the cost for preparation. All sums received from the sale of books shall become a part of the General Fund of this State. Sale of the Delaware Code and the Delaware Code pocket parts shall be in accordance with § 108 of Title 1.

(59 Del. Laws, c. 253, § 12; 64 Del. Laws, c. 329, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 255, § 38.)

§ 1122. Distribution to state agencies and legislators.

The Director of the Division of Legislative Services ("Director"), or the Director's designee, shall distribute gratis copies of the Session Laws and legislative journals in the inventory to such agencies and public officials of the State as show a need for them.

As soon as possible after publication, the Director, or the Director's designee, shall distribute gratis to each person who was a member of the General Assembly to which the books related a copy of the Session Laws enacted by that General Assembly and a copy of the journals of that session.

(59 Del. Laws, c. 253, § 12; 64 Del. Laws, c. 329, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 255, § 39.)

§ 1123. Free distribution with libraries.

The Director of the Division of Legislative Services, or the Director's designee, shall transmit a copy of the Session Laws and a copy of the journal of each House as soon after the books are published as practical to each of the following: The Library of Congress, the Delaware Historical Society, the Wilmington Institute Free Library, and to public law libraries within the State, 2 copies each. No agency except a public law library shall be entitled to receive gratis more than 1 copy of each book from the State, from whatever source received.

(59 Del. Laws, c. 253, § 12; 64 Del. Laws, c. 329, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 255, § 40.)

§ 1124. Exchanging.

The Director of the Division of Legislative Services, or the Director's designee, in conjunction with the State Law Library in Kent County shall forward a copy of the Session Laws and the legislative journals published by or under the authority of the State to each state, territory or district of the United States which exchanges its books with the State Law Library in Kent County and may exchange books with any province of Canada and foreign country that exchanges its books with the State Law Library in Kent County. In the event that any state, territory, district, province or country does not exchange Session Laws and legislative journals published by it or under its authority or does not exchange a book or set of books equivalent to sets of books published by the State, then the Director, or the Director's designee, may refuse to transmit to such state, territory, district, province or country such books of the State. The Director, or the Director's designee, may also exchange books of the State for books of equal value received from other sources.

(59 Del. Laws, c. 253, § 12; 64 Del. Laws, c. 329, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 255, § 41.)

Subchapter III

Agency Regulations

§ 1131. Legislative findings.

The General Assembly has conferred on boards, commissions, departments and other agencies of the Executive Branch of State Government the authority to adopt regulations. The General Assembly has found that this delegation of authority has resulted in regulations being promulgated without effective review or oversight and conformity to legislative intent. The General Assembly finds that they must provide a procedure of oversight and review of regulations pursuant to this delegation of legislative power to curtail excessive regulations and to establish a system of accountability. It is the intent of this subchapter to establish an effective method of ongoing review, accountability and oversight of regulations. It is further the intent of this subchapter to provide review by requiring a comment period following the proposal of regulations and requiring the agency to review any comments submitted.

(69 Del. Laws, c. 107, § 4; 71 Del. Laws, c. 48, § 1.)

§ 1132. Definitions.

As used in this subchapter:

(1) "Agency" means as defined in § 10102 of this title.

(2) "Division" means the Division of Legislative Services as established pursuant to this chapter.

(3) "Official regulation" means a regulation in its final form as adopted by an order as defined in § 10118 of this title and filed with the Registrar of Regulations.

(4) "Register of Regulations" means a publication authorized and recognized by law published for public information purposes, providing public notice of changes in agency regulations, whether new, modified or repealed, together with supplemental information as deemed appropriate by the Registrar.

(5) "Registrar" means an employee of the Division charged with the responsibility of compiling, maintaining and publishing the Register of Regulations.

(6) "Regulation" means as defined in § 10102 of this title.

(69 Del. Laws, c. 107, § 4; 71 Del. Laws, c. 48, § 2; 72 Del. Laws, c. 88, § 1; 84 Del. Laws, c. 255, § 42; 85 Del. Laws, c. 68, § 41.)

§ 1133. Register of Regulations.

The Division shall establish, maintain and publish an official Register of Regulations at the Division. The Register of Regulations shall provide public notice of all proposed regulation or regulations to be adopted, amended or repealed, indexed by agency and subject matter with:

(1) Text or summary of the proposed regulation or regulations to be adopted, amended or repealed, nature of the proceedings including a synopsis of the subject, substance, issues and possible terms of the agency action and a reference to the legal authority of the agency to act;

(2) A statement of the manner in which persons may present their views:

a. If in writing, of the place to which and the final date by which such views may be submitted;

b. If at a public hearing, the date, time and place of the hearing;

(3) The place or places where the proposed regulations to be adopted, amended or repealed may be inspected or copied;

(4) The fee or other requirements for obtaining copies of same.

(69 Del. Laws, c. 107, § 4; 71 Del. Laws, c. 48, § 3; 72 Del. Laws, c. 88, § 2.)

§ 1134. Powers and duties of the Registrar in preparation and maintenance of the Register of Regulations.

(a) The Registrar in the course of compiling and maintaining the Register of Regulations shall:

(1) In writing, notify all agencies authorized to make regulations that they are to submit to the Division copies of all proposed regulations as well as all subsequent amendments, repeals, additions or new or proposed regulations as they are proposed and statements of purpose thereof;

(2) Advise agencies as to the form and style of the regulations, as well as, to the extent practicable, the classification thereof into categories of substance, procedure and organization;

(3) Have the authority to make revisions to both proposed and existing regulations that do not alter the sense, meaning or effect of such regulations, including, but not limited to:

a. Renumbering and rearranging sections or parts of sections;

b. Transferring of sections or dividing of sections so as to give to distinct subject matters a separate section number, but without changing the meaning;

c. Inserting or changing the wording of headnotes;

d. Change reference numbers to agree with renumbered regulations or sections thereof;

e. Substituting the proper section or regulation number for the terms “this regulation”, “the preceding section” and the like;

f. Striking out figures where they are merely a repetition of written words and vice versa;

g. Changing capitalization for the purpose of uniformity;

h. Correcting of manifest typographical and grammatical errors; and

i. Making any other purely formal or clerical changes in keeping with the purpose of the revision.

(4) Have the authority to promulgate rules and regulations;

(5) Have authority to publish the full text or a summary of proposed, final or emergency regulations; and

(6) Publish the following month all proposed regulations received by the 15th of the month preceding.

(b) The Registrar may include in the Register of Regulations such other governmental information as the Registrar deems appropriate.

(69 Del. Laws, c. 107, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 48, §§ 4, 12; 72 Del. Laws, c. 88, § 3.)

§ 1135. Duties of state agencies.

Each agency shall submit to the Division a general description of its organization, its methods of operation, the name, address and telephone number of a contact person or persons that will be responsible for submitting proposed, adopted or regulations to be repealed to the Registrar, and a current copy of existing regulations. The contact person shall have a general working knowledge of the agency’s functions, responsibilities and internal procedures and familiarity with the Administrative Procedures Act. The submission shall include a brief statement of the nature and requirements of all rules of practice and the procedure used by the agency to exercise its statutory authority of promulgating regulations.

(69 Del. Laws, c. 107, § 4; 69 Del. Laws, c. 181, § 2; 71 Del. Laws, c. 48, §§ 5, 6.)

§ 1136. Public distribution of the register.

The Division shall cause the register to be published for public distribution on the first day of each calendar month. The register shall be made available to the public for inspection and copies provided to any person so requesting same for a nominal fee to be set by the Registrar. The amount to be charged for copies of the register shall approximate and reasonably reflect all costs necessary to defray the expenses of the register as well as the proportional expenses incurred by the Division in carrying out the responsibilities of this subchapter. In addition, copies of the register shall be provided gratis to the law libraries located within each county, to all public libraries in each county, to the 2 state daily newspapers and the Director of the Division of Libraries. Any additions and corrections to the register shall likewise be made available as soon as practicable.

(69 Del. Laws, c. 107, § 4.)

Part II
The General Assembly

Chapter 15
Commission on Uniform State Laws

§ 1501. Continuation; composition; qualifications of members.

(a) The Commission on Modernization of State Laws referred to in this chapter as the "Commission" is continued and renamed the Commission on Uniform State Laws.

(b) The Commission shall consist of 5 persons. Four Commissioners shall be appointed by the Governor, and shall serve at the Governor's pleasure. No more than 2 appointed Commissioners shall reside in any county, and there shall be at least 1 Commissioner from each county. All Commissioners shall hold office until their successors are appointed.

(c) The Director of the Division of Legislative Services shall also be a Commissioner. If the Director is not eligible to be a Commissioner, or declines to serve, the Director may designate an employee of the Division of Legislative Services, who is qualified to be a Commissioner, to serve as a Commissioner.

(d) Any person who is elected to be a life member of the National Conference of Commissioners on Uniform State Laws shall also be a Commissioner. The Commissioner serving pursuant to this subsection shall not be counted as one of the Commissioners appointed pursuant to subsection (b) of this section.

(e) Each of the Commissioners shall be a member of the Bar of this State in good standing.

(29 Del. Laws, c. 60, § 1; 29 Del. C. 1953, § 1501; 53 Del. Laws, c. 191; 59 Del. Laws, c. 253, § 16; 61 Del. Laws, c. 483, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 255, § 43.)

§ 1502. Powers and duties; reports.

The Commissioners shall examine all subjects on which uniformity with the laws of other states is desirable, shall represent this State in the National Conference of Commissioners on Uniform State Laws and, in convention, conference or congress of like commissions of other states, shall consider and draft uniform or model laws to be submitted for the approval and adoption by the several states and this State and shall devise and recommend such courses of action as shall best accomplish the purpose of this chapter. The Commissioners shall report to the Governor, to the General Assembly and to the Legislative Council before the convening of each regular session of the General Assembly.

(29 Del. Laws, c. 60, § 2; 29 Del. C. 1953, § 1502; 53 Del. Laws, c. 191; 59 Del. Laws, c. 253, § 17; 61 Del. Laws, c. 483, § 2.)

§ 1503. Expenses; contributions to the National Conference of Commissioners on Uniform State Laws.

The Commissioners may hire personnel and shall be entitled to receive their actual disbursements for expenses in performing the duties of their office. The Commissioners may contribute a reasonable sum toward the expense of holding the National Conference of Commissioners on Uniform State Laws. The amounts needed by the Commission for its operations and its contribution to the National Conference of Commissioners on Uniform State Laws shall be appropriated annually or biennially by the General Assembly.

(29 Del. Laws, c. 60, § 3; 29 Del. C. 1953, § 1503; 53 Del. Laws, c. 191.)

Part II
The General Assembly

Chapter 16

Registration of Legislative Agents [Repealed].

§§ 1601-1607. Definitions; registration of legislative agents with Legislative Council; employer's authorization to act; compensation of agent not to be substantially dependent on outcome of legislative action of General Assembly; reports by legislative agents; when registration, report or authorization is considered as filed; violation and penalties [Repealed].

Repealed by 69 Del. Laws, c. 467, § 28, eff. Jan. 15, 1996.

Part II
The General Assembly

Chapter 17
Emergency Interim Legislative Succession

§ 1701. Short title.

This chapter is known as and may be cited as the “Emergency Interim Legislative Succession Act.”

(29 Del. C. 1953, § 1701; 53 Del. Laws, c. 140; 81 Del. Laws, c. 449, § 8.)

§ 1702. Declaration of policy.

The General Assembly declares all of the following:

(1) The possibility of an emergency event exists that may result in the death or inability to act of a large proportion of the membership of the General Assembly.

(2) To comply with existing legal requirements pertaining to the General Assembly during an emergency event would be impracticable, would cause undue delay, and would jeopardize continuity of operation of a legally constituted General Assembly.

(3) It is necessary to adopt special provisions as set out in this chapter for the effective operation of the General Assembly.

(29 Del. C. 1953, § 1702; 53 Del. Laws, c. 140; 81 Del. Laws, c. 449, § 9.)

§ 1703. Definitions.

As used in this chapter:

(1) “Attack” means any action or series of actions causing, or which may cause, substantial damage or injury to persons or property by any means, including through biological, chemical, radiological, or nuclear means or through the use of other weapons, technologies, or processes.

(2) “Emergency event” means an impending or existing attack, act of terrorism, disease, accident, or other natural or man-made disaster that does 1 or more of the following:

a. Threatens the life, health, or safety of the public.

b. Has, or has the potential to, damage or destroy property or disrupt service, commerce, or other economic activities.

c. Makes the continuation of normal government operations difficult or impossible.

(3) “Incumbent member” means the individual holding an office under this chapter before the emergency event.

(4) “Member” means a member of the General Assembly under Article II of the Delaware Constitution.

(5) “Unavailable” means absent from the place of session other than on official business of the General Assembly or unable, for physical, mental, or legal reasons, to exercise the powers and discharge the duties of a member of the General Assembly, whether or not such absence or inability would give rise to a vacancy under the Delaware Constitution or other law of this State.

(29 Del. C. 1953, § 1703; 53 Del. Laws, c. 140; 81 Del. Laws, c. 449, § 10.)

§ 1704. Designation of emergency interim successors to members.

Each member shall do all of the following:

(1) Designate not fewer than 3 nor more than 7 emergency interim successors to the member’s powers and duties.

(2) Specify the order of succession of the individuals selected under paragraph (1) of this section.

(3) Review and revise the designations of emergency interim successors to the member’s powers and duties to ensure that at all times there are at least 3 qualified emergency interim successors.

(29 Del. C. 1953, § 1704; 53 Del. Laws, c. 140; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 449, § 11.)

§ 1705. Status, qualifications, and term of emergency interim successors.

(a) An emergency interim successor is an individual who is designated for possible temporary succession to the powers and duties, but not the office, of a member.

(b) An individual may not be designated or serve as an emergency interim successor unless the individual may, under the Delaware Constitution or other law of this State, hold the office of the member to whose powers and duties the individual is designated to succeed. However, no provision of the Delaware Constitution or other law of this State prohibiting a member from holding another office or prohibiting the holder of another office from being a member is applicable to an emergency interim successor.

(c) An emergency interim successor serves at the pleasure of the member designating the individual or of any subsequent incumbent of the legislative office.

(29 Del. C. 1953, § 1705; 53 Del. Laws, c. 140; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 449, § 12.)

§ 1706. Contingent method of designating emergency interim successors.

(a) Before an emergency event, if a member fails to designate the required minimum number of emergency interim successors within 30 days of the member's taking of the oath of office, or, after such period, if for any reason the number of emergency interim successors for any member falls below the required minimum and remains below such minimum for a period of 30 days, then the required minimum number of emergency interim successors must be designated under the following procedures:

(1) The President Pro Tempore of the Senate shall designate as many emergency interim successors for the members of the majority party in the Senate as are required to achieve such minimum number.

(2) The Minority Leader of the Senate shall designate as many emergency interim successors for the members of the minority party in the Senate as are required to achieve such minimum number.

(3) The Speaker of the House of Representatives shall designate as many emergency interim successors for the members of the majority party in the House of Representatives as are required to achieve such minimum number.

(4) The Minority Leader of the House of Representatives shall designate as many emergency interim successors for the members of the minority party in the House of Representatives as are required to achieve such minimum number.

(b) The President Pro Tempore of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives may not assign to any of their designees a rank in order of succession higher than that of any remaining emergency interim successor previously designated by a member for succession to the member's own powers and duties.

(c) (1) Each emergency interim successor designated under subsection (a) of this section serves at the pleasure of the individual designating the successor.

(2) Notwithstanding paragraph (c)(1) of this section, the member for whom the emergency interim successor is designated may change the rank in order of succession, or replace at the member's pleasure, any emergency interim successor designated under subsection (a) of this section.

(29 Del. C. 1953, § 1706; 53 Del. Laws, c. 140; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 449, § 13.)

§ 1707. Recording and publication.

(a) Following a member's election, the Secretary of the Senate or the Chief Clerk of the House of Representatives, whichever is appropriate, shall distribute to the member information regarding the member's responsibilities under this chapter and a form to make the designation under § 1704 of this title.

(b) The designation of an emergency interim successor becomes effective when the member making the designation under § 1704 or § 1706 of this title files with the Secretary of State and the Director of the Division of Legislative Services all of the following information:

(1) The successor's name.

(2) Contact information, including address, home and mobile phone number, and electronic mail address.

(3) Rank in order of succession.

(c) The removal of an emergency interim successor or change in order of succession becomes effective when the member so acting files this information with the Secretary of State and the Director of the Division of Legislative Services.

(d) The Secretary of State shall inform the Governor, the Delaware Emergency Management Agency, and all emergency interim successors of all such designations, removals, and changes in order of succession.

(29 Del. C. 1953, § 1707; 53 Del. Laws, c. 140; 81 Del. Laws, c. 449, § 14; 84 Del. Laws, c. 255, § 44.)

§ 1708. Oath of emergency interim successors.

At the time of an individual's designation as a member's emergency interim successor, the individual shall take the oath required for the member to whose powers and duties the successor is designated to succeed. No other oath is required.

(29 Del. C. 1953, § 1708; 53 Del. Laws, c. 140; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 449, § 15.)

§ 1709. Duty of emergency interim successors and members.

(a) Each emergency interim successor shall keep generally informed as to the duties, procedures, practices, and current business of the General Assembly.

(b) Each member shall assist the member's emergency interim successors to keep informed as required under subsection (a) of this section.

(29 Del. C. 1953, § 1709; 53 Del. Laws, c. 140; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 449, § 16.)

§ 1710. Place of meeting of the General Assembly.

If in anticipation of, during, or after an emergency event, the Governor deems the place of session of the General Assembly then prescribed to be unsafe, the Governor may change it to any place within or without the State which the Governor deems safer and convenient.

(29 Del. C. 1953, § 1710; 53 Del. Laws, c. 140; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 449, § 17.)

§ 1711. Convening of General Assembly in event of an emergency event.

(a) If an emergency event requiring action by the General Assembly occurs, the Governor shall call the General Assembly into session as soon as practicable or within 90 days following the inception of the emergency event, whichever occurs first.

(b) If the Governor fails to issue the call under subsection (a) of this section, the General Assembly shall, on the ninetieth day from the date of inception of the emergency event, automatically convene at the place where the Governor then has an office.

(c) Each member and each emergency interim successor, unless the emergency interim successor is certain that the member to whose powers and duties the emergency interim successor is designated to succeed or an emergency interim successor higher in order of succession is available, shall proceed to the place of holding the General Assembly as expeditiously as practicable.

(d) Limitations on the length of legislative session and the subjects that may be acted upon during legislative session that are contained in the Delaware Constitution do not apply to any legislative session convened under this section, in session at the inception of the emergency event, or in session after the emergency event and during the application of this chapter.

(29 Del. C. 1953, § 1711; 53 Del. Laws, c. 140; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 449, § 18.)

§ 1712. Assumption of powers and duties of member of emergency interim successor.

(a) If, in the event of an emergency event, a member is unavailable, the member's emergency interim successor highest in order of succession who is not unavailable shall exercise the powers and assume the duties of the member, except for the power and duty to appoint emergency interim successors under this chapter.

(b) An emergency interim successor shall exercise the powers and assume the duties under subsection (a) of this section until 1 of the following can act:

(1) The incumbent member.

(2) An emergency interim successor higher in order of succession.

(3) A member appointed or elected and legally qualified.

(c) Each House of the General Assembly shall, in accordance with its own rules, determine who is entitled under this chapter to exercise the powers and assume the duties of its members.

(d) All provisions of the Delaware Constitution and other laws of this State pertaining to the ouster of a member are applicable to an emergency interim successor who is exercising the powers and assuming the duties of a member.

(29 Del. C. 1953, § 1712; 53 Del. Laws, c. 140; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 449, § 19.)

§ 1713. Privileges, immunities, and compensation of emergency interim successors.

(a) If an emergency interim successor exercises the powers and assumes the duties of a member, the successor must be accorded the privileges and immunities, compensation, allowances, and other perquisites of office to which a member is entitled.

(b) In the event of an emergency event, each emergency interim successor, whether or not called upon to exercise the powers and assume the duties of a member, must be accorded the privileges and immunities of a member while traveling to and from a place of session and must be compensated for such travel in the same manner and amount as a member.

(c) This section does not affect the privileges and immunities, compensation, allowances, or other perquisites of office of an incumbent member.

(29 Del. C. 1953, § 1713; 53 Del. Laws, c. 140; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 449, § 20.)

§ 1714. Quorum and vote requirements.

In the event of an emergency event, all of the following apply:

(1) Quorum requirements for the General Assembly are suspended.

(2) If the affirmative vote of a specified proportion of members for approval of a bill, resolution, or other action would otherwise be required, the same proportion of those present to vote on the bill, resolution, or other action is sufficient.

(29 Del. C. 1953, § 1714; 53 Del. Laws, c. 140; 81 Del. Laws, c. 449, § 21.)

§ 1715. Termination of operation of this chapter.

(a) The following expires 2 years following the inception of an emergency event:

(1) The authority of emergency interim successors to succeed to the powers and duties of members under § 1712 of this title.

(2) The operation of this chapter relating to quorum and the number of affirmative votes required for General Assembly action under § 1714 of this title.

(3) Limitations on the length of sessions and the subjects which may be acted upon under § 1711(d) of this title.

(b) Notwithstanding subsection (a) of this section, nothing in this chapter prevents the resumption before the time limit under subsection (a) of this section of the filling of legislative vacancies in the General Assembly and the calling of elections for the General Assembly in accordance with applicable provisions of the Delaware Constitution or other law of this State.

(c) The Governor, acting by proclamation, or the General Assembly, acting by concurrent resolution, may extend or restore the operation of this chapter upon a finding that the emergency event or its effects render the extension or restoration necessary. An extension or restoration under this subsection may not be established for a period of more than 1 year.

(29 Del. C. 1953, § 1715; 53 Del. Laws, c. 140; 81 Del. Laws, c. 449, § 22.)

Part II
The General Assembly

Chapter 19
Fiscal Projections

§ 1901. Bills and joint resolutions which appropriate or mandate or contemplate a subsequent appropriation.

(a) Any bill or joint resolution in either House of the General Assembly which authorizes expenditures not previously authorized within the annual budget for the fiscal year in which the expenditure is to be incurred or which because of the provisions of the bill or joint resolution would authorize expenditures not specifically provided for in the bill or joint resolution shall include a 3-year fiscal projection. The 3-year fiscal projection shall be attached by the sponsor prior to its initial committee consideration in the House of origin.

(b) Any bill or joint resolution in either House of the General Assembly which relates to any public pension or retirement plan applicable to any person including, but not limited to, any public employee, officer or appointee of the State that would authorize or necessarily involve expenditures not authorized within the annual budget for the fiscal year in which the expenditure is to be incurred or which, because of the provisions of the bill or joint resolution, would authorize or necessarily involve expenditures not specifically provided for in the bill or joint resolution, shall include a fiscal projection reflecting the estimated actuarial long-term cost of the proposed bill or resolution whether or not such pension or retirement plan is funded on an actuarial reserve basis. The long-term fiscal projection shall be attached by the sponsor prior to its initial committee consideration in the House of origin.

(29 Del. C. 1953, § 1901; 59 Del. Laws, c. 41, § 1; 60 Del. Laws, c. 58, § 1; 62 Del. Laws, c. 178, § 1.)

§ 1902. Contents of fiscal projection.

The 3-year projection shall be a statement describing, as accurately as can reasonably be ascertained, all requirements, obligations assumed by the State and other consequences of the bill or joint resolution having a fiscal impact on the State for each of the 3 fiscal years following the effective date of the bill or joint resolution. Such fiscal projection shall, where applicable, include full cost data including, but not limited to, salaries, operating costs, other employment costs (fringe benefits), capital outlay and debt service. Fiscal projections required in this chapter shall be prepared on forms prescribed by the Controller General. If the fiscal projection is not prepared by the Controller General, it shall contain a statement by the Controller General that the Controller General concurs in the sponsor's projection of the fiscal impact of the bill or joint resolution as set forth in the fiscal projection or that the Controller General finds contrary or additional fiscal data which should be included in the fiscal projection. The Controller General shall point out particular ways in which the bill or joint resolution may escalate costs or reduce revenue to the State. The fiscal projection must also state how the estimates were calculated and from what facts or assumptions. In the case of a bill or joint resolution authorizing expenditures or relating to pension or retirement plan as defined by § 1901(b) of this title, such projection shall, in addition to the other requirements of this section, state the estimated actuarial long-term cost of the proposed bill or joint resolution as obtained by the Controller General from the Board of Pension Trustees or other qualified actuarial source. All fiscal projections shall be reviewed or prepared by the Controller General and the same shall be reported to the sponsor in writing.

(29 Del. C. 1953, § 1902; 59 Del. Laws, c. 41, § 1; 62 Del. Laws, c. 178, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1903. Fiscal projection when revenue reduced.

Any bill or joint resolution which would have the effect of reducing state revenue must have a 1-year projection attached thereto, which projection shall describe, as accurately as can reasonably be ascertained, the loss of revenue to the State for the first full fiscal year after the effective date of the legislation and the rationale used in determining such fiscal impact. The Controller General's responsibility herein shall be the same as in § 1902 of this title.

(29 Del. C. 1953, § 1903; 59 Del. Laws, c. 41, § 1.)

§ 1904. Revision of fiscal projection.

The Controller General shall revise the fiscal projection with each successive state of the legislative process in which any amendment or substitute bill is introduced which changes the fiscal effect of the bill or joint resolution. Such revised fiscal projections must be included with each such amendment or substitute bill at the time of introduction. Fiscal projections previously attached to the bill or joint resolution shall remain with the bill or joint resolution and shall not be removed.

(29 Del. C. 1953, § 1904; 59 Del. Laws, c. 41, § 1.)

§ 1905. Federal matching funds.

Any bill or joint resolution which provides for the expenditure of state funds not authorized in the annual budget bill for the fiscal year in which the expenditure is to be incurred, in order to qualify for or otherwise receive federal funds, shall include a 3-year fiscal projection. The fiscal projection shall describe, as accurately as can reasonably be ascertained, the total anticipated expenditures of such program or

agency, the total amount to be expended or committed by the federal government for each of the 3 fiscal years, the total amount to be expended by the State for each of the 3 fiscal years and when the federal funding is likely to be concluded.

(29 Del. C. 1953, § 1905; 59 Del. Laws, c. 41, § 1.)

§ 1906. Local school district funds.

Any bill or resolution in either House of the General Assembly which provides for or requires the expenditure of any local school district current expense funds shall include a 3-year fiscal projection. The 3-year fiscal projection shall be attached by the sponsor prior to its initial committee consideration in the House of origin.

(63 Del. Laws, c. 287, § 2.)

§ 1907. Effect on legislative analysis.

No provision of this chapter shall be deemed to prevent or limit the preparation of any analysis of any bill or joint resolution by the staff of the Legislative Council or by attorneys of the Senate or House of Representatives when such analysis is requested by a member of the General Assembly.

(29 Del. C. 1953, § 1906; 59 Del. Laws, c. 41, § 1; 63 Del. Laws, c. 287, § 1.)

§ 1908. Waiver by majority.

Each House may waive the requirements of this chapter as to any specific legislation pending before such House by a vote of the majority of all members elected to such House.

(29 Del. C. 1953, § 1907; 59 Del. Laws, c. 41, § 1; 63 Del. Laws, c. 287, § 1.)

Part III
State Offices Created by Constitution

Chapter 21
Governor

§ 2101. Salary.

The annual salary of the Governor shall be $107,000, commencing with the day of inauguration.

(Code 1852, § 466; 21 Del. Laws, c. 51; 23 Del. Laws, c. 61; Code 1915, § 389; 34 Del. Laws, c. 53, § 1; Code 1935, §§ 363, 373A; 47 Del. Laws, c. 348, § 1; 48 Del. Laws, c. 150, § 1; 29 Del. C. 1953, § 2101; 51 Del. Laws, c. 1; 54 Del. Laws, c. 376; 56 Del. Laws, c. 411, § 1; 63 Del. Laws, c. 351, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 1, § 1.)

§ 2102. Request for judicial opinions.

The Governor may, whenever the Governor requires it for public information or to enable the Governor to discharge the duties of office with fidelity, request the members of the Supreme Court to give their opinions in writing touching the proper construction of any provision in the Constitution of this State or of the United States or the constitutionality of any law enacted by the General Assembly of this State.

(Code 1852, § 482; Code 1915, § 402; Code 1935, § 374; 29 Del. C. 1953, § 2102; 70 Del. Laws, c. 186, § 1.)

§ 2103. Suspension of execution of death sentence.

The Governor, in every act suspending the execution of a sentence of death, shall appoint a day for doing such execution, and specify 2 hours between which it shall be done.

(Code 1852, § 483; Code 1915, § 403; Code 1935, § 375; 29 Del. C. 1953, § 2103.)

§ 2104. Review of National Guard.

The Governor may review the volunteer forces or the National Guard of the State at the Governor's pleasure.

(Code 1852, § 485; Code 1915, § 405; Code 1935, § 376; 29 Del. C. 1953, § 2104; 70 Del. Laws, c. 186, § 1.)

§ 2105. Rewards for arrest and conviction.

The Governor may, whenever there are reasonable grounds for the belief that the laws of this State have been violated and it is necessary for the purpose of securing the arrest of the persons offending that a reward should be offered for the arrest and conviction of such persons, issue a proclamation offering such reward as in the opinion of the Governor and the Attorney General is proper for such arrest and conviction. Upon the arrest and conviction, the amount so offered shall be paid upon a warrant drawn by the Governor on the State Treasurer in favor of the persons, certified by the Attorney General to be entitled thereto, out of any money in the Treasury not otherwise appropriated. The reward shall not exceed the sum of $250 in cases of felonies not capital and shall not exceed the sum of $2,000 in capital felonies. No reward shall be paid to any officer who arrests such person in the regular discharge of the officer's duty by virtue of process in the officer's hands to be executed nor to any person who has arrested the offender previous to the publication of the reward.

(15 Del. Laws, c. 345; 20 Del. Laws, c. 598; 26 Del. Laws, c. 280; Code 1915, § 406; Code 1935, § 377; 29 Del. C. 1953, § 2105; 70 Del. Laws, c. 186, § 1.)

§ 2106. Use of signature stamp.

In the preparation of marriage licenses and other licenses, the Governor may stamp the same with an autograph signature stamp.

(22 Del. Laws, c. 272, § 1; Code 1915, §§ 273, 427A; 28 Del. Laws, c. 40; Code 1935, §§ 245, 385; 29 Del. C. 1953, § 2106.)

§ 2107. Mother's Day proclamation.

The Governor may issue annually a proclamation calling upon the state officials to display the United States flag on all state and school buildings and the people of the State to display the flag at their homes, lodges, churches and places of business and other suitable places on the second Sunday in May, known as Mother's Day, founded by Anna Jarvis, as a public expression of love and reverence for the mothers of our State and the women serving it and as an inspiration for better homes and closer ties between them and the State.

(31 Del. Laws, c. 73; Code 1935, § 380; 29 Del. C. 1953, § 2107; 70 Del. Laws, c. 186, § 1.)

§ 2108. Arbor and Bird Day proclamation.

The Governor may set apart each year by proclamation 1 day to be designated as Arbor and Bird Day and may request its observance by all public schools, private schools, colleges and other institutions by the planting of trees and the adornment of the school and public grounds and by suitable exercises, having for their object the advancement of the study of arbor culture and promotion of the spirit of protection to birds and trees and the cultivation of an appreciative sentiment concerning them.

(22 Del. Laws, c. 216, § 8; Code 1915, § 2420; Code 1935, § 2895; 29 Del. C. 1953, § 2108.)

§ 2109. Observance of Delaware Swedish Colonial Day.

(a) The Governor shall proclaim March 29 of each year as Delaware Swedish Colonial Day.

(b) The Governor shall issue a proclamation calling upon officials of the government to display the flags of the United States and of the State on all governmental buildings on March 29 of each year to be known as Delaware Swedish Colonial Day and inviting the people of the State to observe Delaware Swedish Colonial Day in schools, churches, patriotic and historical societies and other organizations with appropriate ceremonies in commemoration of the landing of the Swedes upon the soil of Delaware.

(42 Del. Laws, c. 207; 29 Del. C. 1953, § 2109.)

§ 2110. Observance of American Education Week.

The Governor may issue a proclamation calling upon all teachers of schools to arrange special programs during American Education Week and calling upon the people of the entire State to observe it in some fitting manner.

(42 Del. Laws, c. 127; 29 Del. C. 1953, § 2110.)

§ 2111. Observance of Delaware Head Start Week.

(a) The Governor shall proclaim the last week of the month of March each year as Delaware Head Start Week.

(b) The Governor shall issue annually a proclamation calling upon all administrators, staff and volunteers at all Head Start Programs and Early Childhood Assistance Programs in the State to arrange special programs during and in observance of Delaware Head Start Week and calling upon the people of the entire State to observe it in some fitting manner.

(72 Del. Laws, c. 283, § 1.)

§ 2112. Special powers in case of extreme fire hazard; penalty.

(a) The Governor may, by proclamation, upon the recommendation of the State Forester of the existence of extreme wild fire hazard under conditions of drought or other conditions or situations creating a fire hazard detrimental to the public interest, declare, designate and establish definite areas within which it shall be unlawful, during the period covered by the proclamation, to set fire to or in any manner cause to be set on fire any marsh, woods, cuttings of forest growth, leaves, grass or other material or to kindle a camp fire or have any out-of-door fire. The Governor may also, by proclamation, suspend any open hunting season of wildlife under the above conditions within any designated areas.

(b) Any such proclamation shall be in full force and effect at the expiration of 24 hours after public notice is given in the manner the Governor shall determine and shall remain in full force until rescinded by the Governor.

(c) Whoever violates this section shall be fined not less than $25 nor more than $100, or imprisoned not less than 30 days nor more than 90 days, or both.

(29 Del. C. 1953, § 2111; 49 Del. Laws, c. 15; 72 Del. Laws, c. 283, § 1.)

§ 2113. Father’s Day proclamation.

The Governor may issue annually a proclamation calling upon state officials to display the United States flag on all state and school buildings, and the people of this State to display the flag at their homes, lodges, churches and places of business and other suitable places, on the third Sunday in June, known as Father’s Day, as a public expression of love and reverence for the fathers of our State and as an inspiration for better homes and closer ties between fathers and the State.

(70 Del. Laws, c. 352, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 283, § 1.)

§ 2114. Police Officers Appreciation Day.

The Governor may issue annually a proclamation calling upon state officials to display the United States flag on all state and school buildings, and the people of this State to display the flag at their homes, lodges, churches and places of business and other suitable places, on the second Wednesday in June, known as Police Officers Appreciation Day, as a public expression of appreciation for those in our State who dedicate their lives to law enforcement.

(72 Del. Laws, c. 40, § 1; 72 Del. Laws, c. 283, § 1.)

§ 2115. Correctional officers and Employees Recognition and Appreciation Week.

The Governor may issue annually a proclamation designating the first week in May as Correctional Officers and Employees Recognition and Appreciation Week and calling upon State officials to display the United States flag on all State and school buildings, and the people of this State to display the flag at their homes, lodges, churches and places of business and other suitable places as a public expression of recognition and appreciation for those in our State who have dedicated their lives to protecting the rights of the public to be safeguarded from criminal activity and who are responsible for the care, custody and dignity of human beings in their charge.

(72 Del. Laws, c. 76, § 1; 72 Del. Laws, c. 283, § 1.)

Part III
State Offices Created by Constitution

Chapter 22
Governor-Elect Transitional Fund

§ 2201. Establishment of Governor-elect Transitional Fund.

There is established in the General Fund a fund to be known and designated as the "Governor-elect Transitional Fund." All moneys in the Governor-elect Transitional Fund are perpetually appropriated and dedicated for the purposes set forth in this chapter.

(29 Del. C. 1953, § 2201; 57 Del. Laws, c. 488, § 1.)

§ 2202. Certification of election of Governor.

As soon as possible after every general election at which a Governor has been elected, the Commissioner of Elections shall certify to the Director of the Office of Management and Budget and the State Auditor the fact and results of such election.

(29 Del. C. 1953, § 2202; 57 Del. Laws, c. 488, § 1; 75 Del. Laws, c. 88, § 21(13).)

§ 2203. Facilities to be furnished to Governor-elect.

The Director of the Office of Management and Budget, in cooperation with the Governor shall, upon request of the Governor-elect, furnish the following services and facilities to the Governor-elect from moneys set aside in the Governor-elect Transitional Fund:

(1) Suitable office space, furniture, fixtures and equipment;

(2) Payment of salaries and expenses of staff personnel designated by the Governor-elect;

(3) Payment of travel expenses for the Governor-elect and staff personnel;

(4) Payment of incidental office expenses, including postage, communications and supplies.

(29 Del. C. 1953, § 2203; 57 Del. Laws, c. 488, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(13).)

§ 2204. Time during which available to Governor-elect.

The moneys authorized for use of the Governor-elect, as provided in this chapter, shall be available from the date of certification as provided in § 2202 of this title until the Governor-elect officially assumes the office of Governor.

(29 Del. C. 1953, § 2204; 57 Del. Laws, c. 488, § 1.)

§ 2205. When Fund not to be used.

In the case where the Governor-elect is the incumbent Governor, there shall be no expenditures of funds for the provision of facilities to such incumbent pursuant to this chapter.

(29 Del. C. 1953, § 2205; 57 Del. Laws, c. 488, § 1.)

§ 2206. Appropriation.

The sum of $15,000 shall be paid by the State Treasurer out of the General Fund and out of funds not otherwise appropriated in any year in which the provisions of this chapter are operative. These funds shall be considered as an automatic appropriation.

(29 Del. C. 1953, § 2206; 57 Del. Laws, c. 488, § 2.)

Part III
State Offices Created by Constitution

Chapter 23
Secretary of State

§ 2301. Salary.

The Secretary of State is to be paid an annual salary as determined by the General Assembly in the annual appropriations act.

(Code 1852, § 466; 23 Del. Laws, c. 62, § 2; Code 1915, § 391; 36 Del. Laws, c. 81, § 1; Code 1935, §§ 365, 373A; 45 Del. Laws, c. 76, § 1; 48 Del. Laws, c. 150, § 1; 29 Del. C. 1953, § 2301; 54 Del. Laws, c. 57, § 1; 55 Del. Laws, c. 404, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 455, § 18; 85 Del. Laws, c. 43, § 1.)

§ 2302. Bond [Repealed].

Repealed by 73 Del. Laws, c. 421, § 1, effective July 22, 2002.

§ 2303. Assistant to the Secretary of State; appointment; duties.

The Secretary of State may appoint from among the employees of the Secretary's office an Assistant to the Secretary of State who shall perform such duties as directed by law or by the Secretary of State to perform.

(Code 1935, § 384B; 47 Del. Laws, c. 180, § 2; 29 Del. C. 1953, § 2303; 70 Del. Laws, c. 186, § 1.)

§ 2304. Keeper of Great Seal and records.

The Secretary of State shall be keeper of the Great Seal of the State, and through the Delaware Public Archives of all acts and public resolutions of the General Assembly and of all archival records and public papers belonging to the Executive Department.

(Code 1852, § 486; Code 1915, § 422; Code 1935, § 381; 29 Del. C. 1953, § 2304; 72 Del. Laws, c. 91, § 70.)

§ 2305. Seal of office; documents authenticated by Great Seal as evidence.

(a) The Secretary of State shall have a seal of office. All marriage licenses shall be under the Secretary's seal, shall be signed by the Governor and countersigned by the Secretary. Copies of records and other papers of the Secretary's office authenticated by this seal or by the Great Seal shall be evidence.

(b) The Secretary of State may from time to time replace the seal or seals of the Secretary's office. When such replacement is made, the old seal or seals shall be destroyed in the Secretary's presence.

(Code 1852, § 488; Code 1915, §§ 226A, 427; 40 Del. Laws, c. 30, § 1; Code 1935, § 384; 29 Del. C. 1953, § 2305; 50 Del. Laws, c. 341, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2306. Use of Great Seal and Privy Seal; restrictions; reproduction of seals and other insignia subject to approval; penalties.

(a) The Secretary of State as the keeper of the Great Seal and the Privy Seal shall restrict the use of the Great Seal and the Privy Seal to documents, records, publications and other business transactions of the State.

(b) The seals, coat of arms, state flag, emblems and other insignia of this State may be used, reproduced or published with the written consent of the Secretary of State, provided that use is restricted to educational uses such as encyclopedias, reference books, historical publications or similar uses which do not involve advertising or other means of personal gain or which abrogate the rights of the citizenry of the State.

(c) Whoever violates or fails to comply with this section shall be fined not less than $100 nor more than $250.

(d) Notwithstanding anything to the contrary contained in any act enacted prior to April 17, 1961, authorizing the Governor, the State Treasurer and the Secretary of State to act as issuing officers in issuing bonds of this State or in any other law, the Secretary of State may, in executing said bonds on behalf of the State, cause a facsimile of the Great Seal of the State to be engraved or printed thereon and, in any such case, it shall not be necessary to affix to or impress on said bonds the Great Seal of the State.

(48 Del. Laws, c. 255, §§ 1-3; 29 Del. C. 1953, § 2306; 53 Del. Laws, c. 22.)

§ 2307. Preservation of legislative records.

(a) The Delaware Public Archives shall sort, arrange, label and file, according to legislative session, all original bills, resolutions, committee reports and other legislative records, keeping the Senate records separate and distinct from those of the House.

(b) The Secretary of the Senate and the Clerk of the House shall, at the end of each session of the General Assembly, deliver to the Delaware Public Archives all the original bills, resolutions, petitions and other legislative records of the session to be labeled and preserved by the Delaware Public Archives.

(17 Del. Laws, c. 35, §§ 1-2; Code 1915, § 423; Code 1935, § 382; 29 Del. C. 1953, § 2307; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 91, §§ 68, 69.)

§ 2308. Commissions and other instruments under the Great Seal.

The Secretary of State shall make and register commissions and affix the Great Seal to the commissions and to all other instruments and records required to be under the Great Seal or of which it is the proper authentication.

(Code 1852, § 487; Code 1915, § 426; Code 1935, § 383; 29 Del. C. 1953, § 2308.)

§ 2309. Certification of records.

Except when the Great Seal of the State is required to be affixed to a certification of a record, the certification of all records, licenses, registrations, papers or other documents required to be certified by the Secretary of State shall be made under the signature and seal of office of the Secretary of State. The signature may be a printed facsimile, except when the signature of the Secretary is requested or required by law, or when the Great Seal of the State is affixed thereto, or when the document is to be authenticated, in which case the signature may be a printed facsimile when attested by the Assistant to the Secretary of State.

(Code 1935, § 384A; 47 Del. Laws, c. 180, § 1; 29 Del. C. 1953, § 2310; 62 Del. Laws, c. 47, § 1.)

§ 2310. Preparation, delivery and accounting of marriage licenses.

The Department of Health and Social Services, pursuant to § 113 of Title 13, shall prepare and deliver to the clerks of the peace marriage licenses required by law, duly signed and sealed, and shall keep a correct account of the same. The death of any officer authorized to sign marriage licenses for the State shall not void marriage licenses then duly signed by such officer.

(Code 1852, §§ 489, 490; Code 1915, § 428; Code 1935, § 386; 29 Del. C. 1953, § 2311; 57 Del. Laws, c. 560, § 1.)

§ 2311. Disposition of moneys received; Division of Corporations Corporate Revolving Fund; Secretary of State Special Operations Fund.

(a) All fees which are by law taxable by and payable to the Secretary of State, except those fees collected pursuant to §§ 9-525(d)(3), 15-1207(b), 17-1107(b), and 18-1105(b) of Title 6, § 3813(b) of Title 12, § 391(h) of Title 8 and §§ 2318 and 4307 of this title, shall be collected by the Secretary of State and paid into the State Treasury, provided however that an amount equal to 23% of all fees assessed pursuant to § 9-525 of Title 6 (excluding any fees assessed pursuant to § 9-525(d)(3) of Title 6 and any fees assessed pursuant to § 9-525(a)(2) of Title 6 in excess of $15), and an annual amount not to exceed $1 million equal to the sum of:

(1) All fees and taxes collected pursuant to Chapter 69 of Title 18 required by law to be transferred to the General Fund, and

(2) Those fees collected pursuant to §§ 3813(a)(2) and 3862(1) of Title 12,

shall be remitted monthly to the treasury of the City of Wilmington. To ensure implementation of this subsection, the Insurance Commissioner shall, transfer any amounts collected subsequent to June 30, 2007, pursuant to Chapter 69 of Title 18 and required by law to be transferred to the General Fund to the Secretary of State.

(b) There is hereby created, within the Division of Corporations, a special fund to be designated as the Division of Corporations Corporate Revolving Fund which shall be used in the operation of the Division of Corporations in the performance of special requests for services and the funding of appropriated special funds positions.

(c) All fees which are by law payable to the Secretary of State pursuant to §§ 9-525(d)(3), 15-1207(b), 17-1107(b), and 18-1105(b) of Title 6, § 3813(b) of Title 12 and § 391(h) of Title 8 and § 4307 of this title shall be deposited in the State Treasury to the credit of said Division of Corporations Corporate Revolving Fund. No other fees or taxes collected by the Secretary of State shall be deposited in said Fund.

(d) Funds in the Division of Corporations Corporate Revolving Fund shall be used by the Division of Corporations in the performance of the functions and duties involved in creating and maintaining the capability to perform services in response to special requests for the same day service and 24-hour turnaround service.

(e) The maximum unencumbered balance which shall remain in the Division of Corporations, Corporate Revolving Fund at the end of Fiscal Year 2001 shall be $1,300,000 and any amount in excess thereof shall be transferred to the General Fund of the State. The maximum unencumbered balance which shall remain in the Division of Corporations, Corporate Revolving Fund at the end of Fiscal Year 2002 and any subsequent fiscal year thereafter shall be $1,000,000 and any amount in excess thereof shall be transferred to the General Fund of the State.

(f) There is hereby created, within the office of the Secretary of State, a special fund to be designated as the Secretary of State Special Operations Fund. Funds deposited in said Special Operations Fund shall be used to maintain and improve the capability to perform the operations, functions and duties of the Secretary of State, including but not limited to maintaining and improving the statewide communications network maintained by the Secretary of State, creating, maintaining and improving electronic files, creating, maintaining and improving the ability to provide remote access to electronic files maintained by the Secretary of State and funding appropriated positions relating to such activities.

(g) All fees which are by law payable to the Secretary of State pursuant to § 2318 of this title shall be deposited in the State Treasury to the credit of said Secretary of State Special Operations Fund. No other fees or taxes collected by the Secretary of State shall be deposited in said Fund.

(Code 1852, § 493; 23 Del. Laws, c. 62, §§ 3-4; 24 Del. Laws, c. 91; Code 1915, § 431; Code 1935, § 389; 29 Del. C. 1953, § 2312; 65 Del. Laws, c. 234, § 1; 66 Del. Laws, c. 303, § 137; 66 Del. Laws, c. 352, §§ 15-17; 68 Del. Laws, c. 312, §§ 11, 12; 70

Del. Laws, c. 186, § 1; 71 Del. Laws, c. 354, § 111; 72 Del. Laws, c. 395, § 131; 73 Del. Laws, c. 74, § 120; 74 Del. Laws, c. 52, §§ 39, 40; 75 Del. Laws, c. 218, § 4(a); 76 Del. Laws, c. 285, § 1; 77 Del. Laws, c. 78, §§ 65, 66.)

§ 2312. Record of newspaper publications.

The Secretary of State shall make an entry in the Executive Register of every publication made by the Secretary in a newspaper stating the name of the paper.

(Code 1852, § 495; Code 1915, § 433; Code 1935, § 391; 29 Del. C. 1953, § 2313; 70 Del. Laws, c. 186, § 1.)

§ 2313. Books and accounts open to inspection of legislative committees.

The books, papers and accounts of the Secretary of State shall be open to inspection of committees of the Senate and House of Representatives, and the Secretary shall furnish the committees with copies and extracts as required.

(Code 1852, § 496; Code 1915, § 434; Code 1935, § 392; 29 Del. C. 1953, § 2314; 70 Del. Laws, c. 186, § 1.)

§ 2314. Printing and publication of laws; certification of costs.

The Secretary of State shall publish and distribute the laws as required by §§ 902-910 of this title, and, the binding being done to the Secretary's acceptance, shall certify the sum due therefor according to contract, stating the pages, price and all items of charge.

(Code 1852, § 497; Code 1915, § 435; Code 1935, § 393; 29 Del. C. 1953, § 2315; 70 Del. Laws, c. 186, § 1.)

§ 2315. Fees.

The fees to be charged by the Secretary of State for the use of the State are as follows:

For issuing certificate in private case under the Great Seal $ 3.00

For issuing certificate in private case under the seal of office 2.00

For copying, per line .05

For receiving, filing and indexing certificates, statements, affidavits, decrees, agreements, surveys, reports and any other papers pertaining to corporations, except as otherwise provided in Title 8 10.00

For receiving, filing and indexing every paper now or hereafter provided by law to be filed with the Secretary of State, except as otherwise provided in Title 8 10.00

For recording, filing and indexing certificates, articles of association and any other paper required by law to be recorded by the Secretary of State, the same fees as provided by law for the recorder, except as otherwise provided in Title 8.

For proceeding for reinstatement, including the receiving, filing and indexing and all necessary certificates 15.00

For filing certificates of foreign corporations including the receiving, filing, indexing and issuing necessary certificates, $13 of which shall be paid to each prothonotary for filing and certificate. 30.00

For certifying acts or resolutions of a private nature, acts of a private character pertaining to the acknowledgement or recording of deeds or other papers or to titles or conveyances of real estate, the fees prescribed in § 909 of this title [repealed].

For commission to Attorney General and notaries public, each 15.00

For commission to justices of the peace 10.00

For commission to constables, when appointed by the Governor 10.00

(Code 1852, §§ 501-505; 13 Del. Laws, c. 117, § 16; 19 Del. Laws, c. 551; 20 Del. Laws, c. 180; 21 Del. Laws, c. 16, § 1; 21 Del. Laws, c. 59, § 2; 25 Del. Laws, c. 240, § 1; Code 1915, § 264; Code 1935, § 237; 29 Del. C. 1953, § 2315; 61 Del. Laws, c. 387, § 1; 62 Del. Laws, c. 40, §§ 1, 2; 64 Del. Laws, c. 317, § 5; 74 Del. Laws, c. 52, § 41; 83 Del. Laws, c. 458, § 19; 84 Del. Laws, c. 117, § 15.)

§ 2316. Collection of commission fees from gubernatorial appointees.

Whenever the Governor commissions to office any person, whom the Governor is or may be authorized by the Constitution or by law to commission and whose appointment is required to be confirmed by the Senate, the Secretary of State shall collect from every such person as fee for the commission which the Secretary shall receive, the proportionate part of the fee which the Secretary is by law required to demand and receive for the full term to which the appointment to the office is limited in the ratio which the time from the date of the appointment to the last day of the next session of the Senate bears to the full term to which the appointment is limited.

(21 Del. Laws, c. 46, § 1; Code 1915, § 265; Code 1935, § 238; 29 Del. C. 1953, § 2317; 70 Del. Laws, c. 186, § 1.)

§ 2317. Furnishing of copies of acts to state or county officers.

(a) Upon request of any state or county officer, the Delaware Public Archives shall furnish to the officer, without cost, a certified copy of any act of the General Assembly pertaining to the duties of the official making the request.

(b) The Secretary of State shall, at the end of each session of the General Assembly, send to the Auditor a certified copy of any act passed during the session granting a tax for the support of government or concerning any duty to be performed by the Secretary.

(Code 1852, § 494; 27 Del. Laws, c. 77; Code 1915, §§ 432, 437; Code 1935, §§ 390, 395; 29 Del. C. 1953, § 2318; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 91, § 72.)

§ 2318. Remote access to electronic files, authentications and apostilles.

(a) The Secretary of State may, in the Secretary's discretion, permit persons remote access to electronic files maintained by the Secretary of State, and may from time to time make, amend, alter and rescind rules and regulations governing remote access to such electronic files.

(b) The Secretary of State shall establish, and may from time to time amend or alter, a schedule of fees and charges payable to the Secretary of State by, and shall collect such fees and charges for the use of the State from, persons permitted remote access to electronic files, such schedule not to exceed $30 for each fee or charge excepting persons permitted remote access to electronic files maintained by the Secretary of State pursuant to Title 6, Article IX of the Uniform Commercial Code, such schedule not to exceed $75 for each fee or charge.

(c) The Secretary of State shall establish, and may from time to time amend or alter, a schedule of fees and charges payable to the Secretary of State by, and shall collect such fees and charges for the use of the State from, persons requesting authentications and/or apostilles, such schedule not to exceed $40 for each fee or charge for regular service plus an additional sum of up to:

(1) $40 for each service requested to be completed within a 24-hour period from the time of the request;

(2) $50 for each service to be completed within the same day of the request; and

(3) $500 for each service to be completed within a 2-hour period from the time of the request.

Such schedule shall provide for a maximum fee of $30 to be charged in each instance where a natural person acting on that person's own behalf requests more than 1 authentication and/or apostille for a noncommercial purpose, including but not limited to adoptions and custody cases.

(66 Del. Laws, c. 352, § 18; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 52, § 42; 77 Del. Laws, c. 78, §§ 67, 68.)

§ 2319. Provision and installation of hardware and software; training; maintenance and support [Repealed].

(70 Del. Laws, c. 587, § 42; repealed by 83 Del. Laws, c. 377, § 20, effective Aug. 1, 2022.)

Part III
State Offices Created by Constitution
Chapter 25
State Department of Justice
Subchapter I
General Powers

§ 2501. Purpose.

The purpose of this chapter is to accomplish efficiency by centralizing in 1 department the State's facilities for the rendering of legal services to the Governor, General Assembly, officers, departments, boards, agencies, commissions and instrumentalities of the state government and to provide for the enforcement of the criminal law of this State.

(29 Del. C. 1953, § 2501; 56 Del. Laws, c. 326, § 1.)

§ 2502. Department of Justice established.

There is created a State Department of Justice under the supervision, direction and control of the Attorney General.

(29 Del. C. 1953, § 2502; 56 Del. Laws, c. 326, § 1.)

§ 2503. Definition of Attorney General.

Whenever "Attorney General" is referred to or designated in the Constitution, any statute, rules of any court, contract, document or usage, such reference or designation shall include any person duly appointed by the Attorney General pursuant to § 2505 of this title, except where the term "Attorney General" is immediately followed by "himself or herself" or "in person" or where the context otherwise indicates.

(29 Del. C. 1953, § 2503; 56 Del. Laws, c. 326, § 1; 59 Del. Laws, c. 289, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2504. Powers, duties and authority of the State Department of Justice.

The State Department of Justice and the Attorney General shall have the following powers, duties and authority:

(1) To continue to exercise the powers and perform the duties by the Constitution, statutes and common law vested in and imposed upon the Attorney General prior to January 1, 1969;

(2) Notwithstanding any other laws, to provide legal advice, counsel and services for administrative offices, agencies, departments, boards, commissions and officers of the state government concerning any matter arising in connection with the exercising of their official powers or duties and to publish or cause to be published such opinions in book form every 2 years. The courts, counties and incorporated municipalities are excepted from this chapter;

(3) Notwithstanding any other laws, to represent as counsel in all proceedings or actions which may be brought on behalf of or against them in their official capacity in any court, except in actions in which the State has a conflicting interest, all officers, agencies, departments, boards, commissions and instrumentalities of state government;

(4) To investigate matters involving the public peace, safety and justice and to subpoena witnesses and evidence in connection therewith; provided, however, that nothing in this subdivision shall restrict the general powers of the General Assembly to investigate matters involving the public peace, safety and justice and to subpoena witnesses and evidence in connection therewith;

(5) To direct the activities of state detectives;

(6) To have charge of all criminal proceedings as prior to January 1, 1969;

(7) To recommend revisions in the Constitution and statutes of this State with particular reference to law enforcement;

(8) To draft or cause to be drafted such bills or amendments as may be requested by any state officer or any department, division, commission or other state agency and otherwise render assistance, aid, information, counsel and advice in the preparation and drafting of any such proposed legislation; and

(9) To represent witnesses for the State or individuals who have cooperated with state investigative agencies when they are sued as a result of, or on account of, their cooperation with any agency of the State in any investigation or prosecution conducted by the State unless such representation creates a conflict with the interests of the State.

(29 Del. C. 1953, § 2504; 56 Del. Laws, c. 326, § 1; 58 Del. Laws, c. 253, § 8; 59 Del. Laws, c. 253, §§ 18, 19; 64 Del. Laws, c. 418; 65 Del. Laws, c. 134, § 1.)

§ 2505. Chief Deputy, State Solicitor, State Prosecutor, assistants, special assistants and law clerks.

(a) The Attorney General may appoint, from the practicing members of the Bar of this State, a lawyer resident in this State who shall be the Chief Deputy Attorney General and who shall have such powers, duties and responsibilities as designated by the Attorney General and shall serve on a full-time basis. In the event that the office of Attorney General becomes vacant, or should the Attorney General be unable to discharge the powers and duties of the office due to illness or incapacitation, the Chief Deputy Attorney General shall discharge

the powers and duties of the Attorney General for a period not to exceed 90 days or until the Governor appoints a successor, whichever occurs first.

(b) The Attorney General may appoint, from the practicing members of the Bar of this State, a lawyer resident in this State who shall be designated as the State Solicitor, who shall serve on a full-time basis under the direct control of the Attorney General. The State Solicitor shall be responsible for all civil actions and matters wherein the State or its agencies or subdivisions are involved and shall have such powers and duties as the Attorney General shall designate.

(c) The Attorney General may appoint, from the practicing members of the Bar of this State, a lawyer resident in this State who shall be designated as the State Prosecutor and who shall serve on a full-time basis under the direct control of the Attorney General. The State Prosecutor shall be responsible for the prosecution of all criminal matters and shall have such powers and duties as the Attorney General shall designate.

(d) The Attorney General may appoint, within the limits of the appropriations made to the State Department of Justice, persons, authorized by rule of the State Supreme Court to practice law in the courts of this State, to be assistants or special assistants, who shall have such powers, duties and responsibilities as designated by the Attorney General.

(e) The Attorney General may appoint, within the limits of the appropriations made to the State Department of Justice, law clerks, who shall have such powers, duties and responsibilities as the Attorney General shall designate.

(f) The Attorney General may assign an assistant or special assistant to serve in any legal capacity in or for any office, department, board, agency, commission or instrumentality of the state government on a part-time or full-time basis whenever, in the judgment of the Attorney General, such assignment will contribute to the efficiency of the operation of such office, department, board, agency, commission or instrumentality; but such assistant shall remain under the supervision and control of the Attorney General while so serving.

(g) The powers of all assistants shall be statewide.

(h) The Attorney General shall devote full time to the office and shall not practice law for the term to which the Attorney General is elected. The Attorney General shall determine whether any assistants other than those designated as full time in this section shall be excluded from the practice of law. The salaries of the Chief Deputy and assistants shall be as fixed by the Attorney General within the appropriations made to the State Department of Justice and the limitations of § 2506 of this title.

(i) The Attorney General may appoint persons authorized by rule of the State Supreme Court to practice law in this State, in addition to those authorized by appropriations to the Department to be assistants and special assistants, to be compensated from federal funds and funds other than those funds appropriated to the State Department of Justice, to have such powers, duties and responsibilities as designated by the Attorney General. The tenure provisions of § 2511 of this title, however, shall not apply to such assistants and special assistants and the State shall not be obligated to continue their employment when or in the event such federal funds or such other funds are no longer available to pay their salaries.

(j) The Attorney General may appoint from the practicing members of the Bar of this State all of the following who shall serve on a full-time basis under the direct control of the Attorney General and have such responsibilities, powers and duties as the Attorney General shall designate:

(1) A lawyer resident in this State who shall be designated as the Chief Prosecutor of a particular county.

(2) A lawyer who shall be designated head or assistant head of any Division of the State Department of Justice.

(k) The Attorney General shall ensure that any assistant or special assistant regularly assigned to the prosecution of criminal or delinquency cases alleging a sexual offense as that term is defined in § 761 of Title 11, including all lawyers assigned to the Sex Crimes Unit, shall receive at least 4 hours every 3 years of specialized training in the prosecution of sexual assault. Such evidence-based training shall be victim-centered and trauma-informed, and shall include education on mandatory reporting requirements under state and federal law, and shall be provided by the National College of District Attorneys or any other appropriate organization approved by the Attorney General.

(29 Del. C. 1953, § 2505; 56 Del. Laws, c. 326, § 1; 58 Del. Laws, c. 99, § 1; 59 Del. Laws, c. 222, § 9; 59 Del. Laws, c. 289, §§ 2-5; 61 Del. Laws, c. 409, § 112; 61 Del. Laws, c. 519, § 33; 62 Del. Laws, c. 68, § 79; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 340, §§ 1-3; 75 Del. Laws, c. 370, § 1; 80 Del. Laws, c. 55, § 2; 84 Del. Laws, c. 26, § 1.)

§ 2506. Salaries.

(a) The salary of the Attorney General shall be $30,000 per annum. The Attorney General shall fix the salaries of all of the members of the Department of Justice within the limits set forth in this section.

(b) The salaries of all attorneys employed by the Attorney General in the Department of Justice shall be fixed by the Attorney General within the appropriations made to the Department of Justice pursuant to a salary plan established by the Attorney General.

(29 Del. C. 1953, § 2506; 56 Del. Laws, c. 326, § 1; 57 Del. Laws, c. 763, §§ 1, 2; 58 Del. Laws, c. 99, § 2; 59 Del. Laws, c. 289, §§ 2, 6; 61 Del. Laws, c. 409, §§ 71, 113; 61 Del. Laws, c. 519, § 34; 62 Del. Laws, c. 68, § 80.)

§ 2507. Prohibition on employment of attorneys by state officers, departments, boards, agencies, commissions or instrumentalities.

No officer, department, board, agency, commission or instrumentality of state government shall employ any person to act as attorney, counsel, solicitor, legal assistant or other legal advisor to such officer, department, board, agency, commission or instrumentality except

as otherwise set forth in this chapter. However, such special counsel may be employed by such officer, department, board, agency, commission or instrumentality with the approval of the Attorney General and the Governor upon such terms and conditions as the Attorney General and the Governor may prescribe. The special counsel so appointed shall have such powers, duties and responsibilities as designated by the Attorney General in addition to those powers prescribed in § 2504(3) of this title. Expenses of such employment shall be paid by the State Treasurer out of general funds not otherwise appropriated upon the approval of the Attorney General and the Governor.

(29 Del. C. 1953, § 2507; 56 Del. Laws, c. 326, § 1; 58 Del. Laws, c. 99, § 3.)

§ 2508. Power to administer oaths and affirmations; compelling attendance of persons and witnesses; delivery of witness lists.

(a) The Attorney General or any assistant may administer oaths and affirmations to any person, including witnesses, at any time or in any place and may issue process to compel the attendance of persons, witnesses and evidence at the office of the Attorney General or at such other place as designated.

(b) The Attorney General shall have the right of access at all times to the books, papers, records and other documents of any officer, department, board, agency, instrumentality or commission of the state government. The Attorney General shall not have this right of access for purposes of discovery in any civil actions brought by or on the relation of the Attorney General other than for the books, papers, records, and documents of the Department of Justice.

(c) The Attorney General shall transmit to the Prothonotaries of the counties of this State a certified list giving the names and addresses of persons or witnesses subpoenaed under this section, the time occupied in attendance and the distance traveled by them respectively. The list shall be legal proof, and the same costs shall accrue and be paid in the same manner as is provided by law to be paid to witnesses for attendance at the courts of this State.

(29 Del. C. 1953, § 2508; 56 Del. Laws, c. 326, § 1; 59 Del. Laws, c. 289, § 2; 67 Del. Laws, c. 260, § 1; 83 Del. Laws, c. 424, § 1.)

§ 2508A. Directing production of witnesses or evidence pursuant to process from without the State in criminal investigations and proceedings.

(a) For the purpose of enforcing any subpoena, warrant or other process issued by a court from without this State in a criminal proceeding or investigation occurring in said foreign state, the United States or any territory or district thereof, the Attorney General or any assistant may issue process to compel any person to produce books, papers, documents or other objects designated therein at the office of the Attorney General or at such other place as designated.

(b) A certified copy of the subpoena, warrant or other process issued by the court from without this State shall be attached to, and thereby incorporated in, any process issued by the Attorney General or any assistant pursuant to this section.

(c) Any process issued pursuant to this section by the Attorney General or any assistant shall include a certification by the Attorney General or any assistant that the process is issued pursuant to a subpoena, warrant or other process issued by a court from without the State.

(d) On an annual basis, the Attorney General shall transmit to the Prothonotaries of the counties of this State a certified list of and complete copies of all process which has been issued in the immediately preceding calendar year by the Attorney General or any assistant pursuant to this section. The date for filing such list shall be set by the Superior Court and may be enlarged by the Superior Court for good cause shown by the Attorney General.

(73 Del. Laws, c. 70, § 1.)

§ 2509. Conflict of interest.

No member of the Department of Justice shall act as attorney or counsel in any controversy in which the State, a county or a municipality has an interest except in the member's official capacity.

(29 Del. C. 1953, § 2509; 56 Del. Laws, c. 326, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2509A. Political activity of State Department of Justice employees.

(a) Employment by the State Department of Justice does not affect any right or obligation of a citizen under the Constitution and laws of the United States or under the Constitution and laws of this State.

(b) Except as otherwise provided in this section or by federal law, an individual employed by the State Department of Justice may freely participate in any political activity, may vote in an election, and may express opinions on political subjects and candidates.

(c) With the exception of the Attorney General, no attorney or other employee regularly employed by the State Department of Justice may:

(1) Use that attorney's or other employee's official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) Use that attorney's or other employee's official authority or influence for the purpose of directing or coercing another to contribute anything of value, including but not limited to money, services, or time, in support of a political party, political organization, or political candidate;

(3) Engage in political activity while on duty in the employment of the State Department of Justice;

(4) Directly or indirectly solicit, receive, collect, handle, disburse, or account for assessments, contributions, or other funds for a partisan political purpose during working hours;

(5) Organize or reorganize a political party organization or political organization during working hours;

(6) Organize, sell tickets to, or promote a fund-raising activity of a candidate in a partisan election or of a political party or political organization during working hours; or

(7) Be a candidate for or hold any elected state or local office provided however, any attorney or other employee regularly employed by the State Department of Justice shall request a leave of absence in accordance with State Department of Justice personnel policies to be a candidate for any elected state or local office and such leave request shall not be denied, except that any such attorney or employee shall resign if that attorney or employee is a candidate for the office of Attorney General.

(d) In addition to the provisions of subsection (c) of this section above, no individual employed as Chief Deputy Attorney General or division head shall directly or indirectly give, pay, lend, or contribute money or any other thing of value to or for the benefit of a candidate for any elected state or local office or to any political party or political organization in support of such candidate, or for any other political purpose intended to support such candidate.

(e) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

(1) "Division head" means the State Prosecutor, State Solicitor, Director of the Fraud Division, Director of the Appeals Division, any assistant division head, chief county prosecutor, or division director created by statute or policy of the Attorney General.

(2) "Local office" means local office as defined in § 101(13) of Title 15, school board elections, political party office, or other public elected office.

(3) "Political activity" means participating in any activity in support of or in opposition to a political party or partisan candidate for public or political party office, including but not limited to writing or distributing statements in support of or in opposition to a candidate, initiating or circulating a partisan nominating petition, contributing money or anything of value to or for the benefit of a candidate, and soliciting votes of support for a candidate. "Political activity" does not include registering or voting in an election, or expressing opinions on political subjects or candidates.

(f) In addition to any penalty contained in any other provision of law, any employee subject to the provisions of this section who knowingly violates a provision of this section may be subject to disciplinary proceedings by the State Department of Justice or as otherwise provided by law.

(75 Del. Laws, c. 396, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2510. Duty to appeal from an order of filiation.

On appeal from an order of filiation, the Attorney General shall answer the appeal and conduct the case for the State.

(29 Del. C. 1953, § 2510; 56 Del. Laws, c. 326, § 1.)

§ 2511. Tenure.

(a) Any attorney or other employee regularly employed by the Department of Justice to render services shall be appointed by the Attorney General to serve at the Attorney General's pleasure. After 3 years full-time service the employee shall have attained tenure and shall continue to be regularly employed during efficient and good behavior and shall not be removed because of religious or political opinions or affiliations or except for due cause, after a hearing before a court consisting of 3 judges of the Superior Court of the State.

(1) As a condition of attaining tenure, every Deputy Attorney General within the Criminal Division shall be required to attend and complete, within the first 3 years of service, seminars conducted by the National College of District Attorneys or any other appropriate organization approved by the Attorney General on the subjects of child sexual and physical abuse, exploitation and domestic violence.

(2) Any Deputy Attorney General in the Criminal Division who has received tenure prior to the effective date of this educational requirement shall be required to attend and complete said seminars within 3 years from the date hereof.

(3) As a condition of retaining the tenure rights conferred by this section, every Deputy Attorney General within the Criminal and Family Divisions shall be required to attend and complete at least 4 hours every 3 years of training on the subjects of child sexual and physical abuse, exploitation and domestic violence. Such training shall be conducted by the National College of District Attorneys, coordinated with the training available pursuant to §§ 911 and 931(b)(4) of Title 16, or otherwise performed by any other appropriate organization approved by the Attorney General. Such training shall also include the mandatory reporting obligations imposed by Delaware law, including reporting under the Medical Practice Act [Chapter 17 of Title 24] and § 903 of Title 16, and federal law in the reporting of child sexual and physical abuse. The failure to complete such training shall be a forfeiture of the rights conferred by this section.

(b) The term "full time," when used in reference to attorneys in this section, prohibits such attorneys from engaging in the private practice of law. The term "regularly employed," as used in this section, refers to those attorneys and other employees appointed or employed on a full-time basis by the Department of Justice. The Attorney General shall so designate such attorneys and other employees in writing at the time of their employment or at such other time at the Attorney General's pleasure.

(c) Nothing contained in this section shall limit the power of the Attorney General to assign attorneys or other employees to any of the various positions provided for in this chapter and to change said personnel in said positions from time to time at the Attorney General's pleasure; provided, however, that any attorney or other employee who shall have been regularly employed in a certain position may not be deprived of regular employment or tenure by virtue of such change of position.

(29 Del. C. 1953, § 2511; 56 Del. Laws, c. 326, § 1; 69 Del. Laws, c. 158, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 323, § 4; 80 Del. Laws, c. 187, § 8.)

§ 2512. Fees; collections and disposition.

(a) All fees which are by law taxable and payable to the Attorney General shall be paid to and received by the respective Prothonotaries in the county where the fees are taxed, and the Prothonotaries shall pay over the same to the State Treasurer.

(b) The Attorney General is authorized to collect and use revenues from the fees realized by subsection (a) of this section and Chapter 73 of Title 6 (Delaware Securities Act) to support the Department of Justice's Securities Division. Balances at the end of any fiscal year in excess of $100,000 collected from these fees shall be deposited into the General Fund.

(c) The Department of Justice is authorized to publish and sell the opinions of the Attorney General; to deposit the proceeds of any sales in a special fund to be established and designated the "Attorney General Opinion Fund;" and to expend all moneys deposited in such Fund for any expense connected with the publishing or sale of opinions of the Attorney General. Copies of the published opinions will be distributed at no cost to the General Assembly, the Governor and state agencies. If at the end of the fiscal year, the amount deposited in this Fund exceeds $15,000, the amount exceeding $15,000 shall be deposited into the General Fund.

(d) Notwithstanding any other laws to the contrary, including, but not limited to, Part VI of this title, the Attorney General is authorized to enter into a contract for the production, distribution and marketing of educational videos on such terms and conditions as the Attorney General deems appropriate. All revenues received by the Attorney General from such contract shall be deposited in a nonappropriated special fund. Revenues received and deposited into said account shall be used for the purpose of reproducing, marketing and distributing copies of these videos.

(29 Del. C. 1953, § 2512; 56 Del. Laws, c. 326, § 1; 73 Del. Laws, c. 310, § 11.)

§ 2512A. False Claims and Affirmative Litigation Fund.

(a) All money received by the State as a result of civil actions brought by the Attorney General (or in the name of the State) pursuant to Chapter 12 of Title 6, Chapter 71 of Title 10, and Chapter 15 of Title 11, or pursuant to a written agreement by the Attorney General in settlement of the State's claims under Chapter 12 of Title 6, Chapter 71 of Title 10, and Chapter 15 of Title 11, shall be credited by the State Treasurer to a fund to be known as the "False Claims and Affirmative Litigation Fund."

(b) Money in the False Claims and Affirmative Litigation Fund shall be used for the payment of expenses incurred by the Department of Justice in connection with activities under Chapter 12 of Title 6, Chapter 71 of Title 10, § 1505 of Title 11 or, if approved by the Director of the Office of Management and Budget and the Controller General, for other Department of Justice expenses resulting from General Fund deficits. At the end of any fiscal year, if the balance in the False Claims Fund exceeds $3,000,000, the excess shall be withdrawn from the False Claims and Affirmative Litigation Fund and deposited in the General Fund.

(c) The Attorney General is authorized to expend from the False Claims and Affirmative Litigation Fund such moneys as are necessary for the payment of salaries, costs, expenses, and charges incurred in the investigation, preparation, institution, and maintenance of false claims and other affirmative civil actions brought on behalf of the State, and the maintaining of electronic discovery resources for the Department of Justice or other state agencies. The State Solicitor shall have the authority, under the direction of the Attorney General, to maintain and supervise the deposits and expenditures into and out of the False Claims and Affirmative Litigation Fund.

(d) When the State or agencies thereof, public bodies or subdivisions of the State, or qui tam plaintiffs are due a portion of the funds in the False Claims and Affirmative Litigation Fund as a result of a right to restitution, a right to reimbursement, or the operation of § 1205 of Title 6, the Attorney General is authorized to approve release of such funds to the appropriate fund, entity, or recipient.

(83 Del. Laws, c. 54, § 99.)

§ 2513. Appointment of state detectives; terms; compensation.

(a) The Attorney General may appoint 5 qualified persons to be state detectives who shall hold office at the pleasure of the Attorney General. The Attorney General may designate 1 of the appointees to be Chief State Detective, and each of the others shall be known as state detective. All of the state detectives shall perform duties anywhere, both within and without the State, under the direction of the Attorney General.

(b) The salary of the Chief State Detective and the state detectives shall be fixed by the Attorney General within the appropriations made to the State Department of Justice.

(29 Del. C. 1953, § 2513; 56 Del. Laws, c. 326, § 1; 58 Del. Laws, c. 568; 59 Del. Laws, c. 289, § 7.)

§ 2514. Powers and duties of state detectives.

(a) State detectives may conduct such investigations as directed by the Attorney General.

(b) Any state detective or any police officer of the State or of any subdivision thereof shall, when so requested by the Governor or the Attorney General, serve requisitions made by the Governor and for this shall not receive any compensation, but shall receive actual expenses. Such expenses shall be paid by the State Treasurer out of general funds not otherwise appropriated upon the production of vouchers approved by the Attorney General.

(c) State detectives may make arrests and serve writs anywhere in this State.

(d) The state detective shall serve and return summonses, subpoenas, warrants and commitments issued by presidents of court-martials.

(29 Del. C. 1953, § 2514; 56 Del. Laws, c. 326, § 1.)

§ 2515. Exceptions.

(a) The provisions of this chapter relating to the supplying of legal advice, counsel, services and representation in proceedings and actions shall not apply to the University of Delaware, Delaware State University, Delaware Technical and Community College or to any school district or special school district of this State, and these organizations may each employ their own attorney or attorneys, notwithstanding § 2507 of this title, except that legal services in connection with all bond issues in which the faith and credit of this State is pledged and all legal services for any school district or special school district bond issue which is for the purpose of providing funds for any project to which moneys or bond issue funds of this State are to be contributed on a matching or percentage basis shall be provided solely by the State Department of Justice and the Attorney General.

(b) Notwithstanding § 2507 of this title, the provisions of this chapter relating to the supplying of legal advice, counsel, services, and representation in proceedings do not apply to any of the following:

(1) The State Public Integrity Commission, Chapter 58 of this title.

(2) The Office of Inspector General, Chapter 90E of this title.

(c) Notwithstanding any other provision of this title, a public school district or charter school that is a defendant in a legal action because of its adoption or use of the cyberbullying policy required under § 4164(d)(1) of Title 14 shall have the option of being represented by the Department of Justice if:

(1) The State of Delaware or 1 of its agencies is a party to the same action based upon the State's requirement that the district or school adopt the cyberbullying policy at issue;

(2) The Department's representation of both entities is permissible under the Rules of Professional Conduct; and

(3) The Department determines that enforcement of the cyberbullying policy by the school or district was done in good faith and in the public interest.

Communications and documents regarding the Department's obligation to represent a school or district under this subsection and/or a school or district's decision whether to accept representation by the Department are privileged and not subject to disclosure.

(d) Notwithstanding § 2507 of this title, the Division of Labor Relations and Employment Practices established pursuant to Chapter 90D of this title shall each be permitted to employ 1 counsel experienced in the field of labor and employment law to advise on matters of labor and employment law and assist in developing standards, policies, programs and training materials that satisfy Delaware and federal law.

(29 Del. C. 1953, § 2515; 56 Del. Laws, c. 326, § 1; 60 Del. Laws, c. 476, § 1; 69 Del. Laws, c. 67, § 2; 69 Del. Laws, c. 179, § 1; 69 Del. Laws, c. 467, § 29; 78 Del. Laws, c. 379, § 2; 81 Del. Laws, c. 66, § 2; 81 Del. Laws, c. 122, § 13; 85 Del. Laws, c. 138, § 3.)

§ 2516. Authorization for local and out-of-state police officers.

(a) The Attorney General may authorize such members of any county or municipal police departments as the Attorney General deems necessary to have full statewide police, arrest and enforcement powers equivalent to those powers held by members of the Delaware State Police. The Attorney General shall give such authorization by oath for such period of time as the Attorney General specifies. The Attorney General shall have the authority to withdraw such authorization whenever the Attorney General deems necessary.

(b) Such local police officers who have received such authorization shall remain for all other purposes as members of their respective police departments.

(c) The Attorney General may authorize such members of police forces of jurisdictions outside the State as the Attorney General deems necessary to have full statewide police, arrest and enforcement powers equivalent to those powers held by members of the Delaware State Police. Such authorization shall be given under the procedures and conditions prescribed in subsections (a) and (b) of this section.

(d) The Attorney General may, as the Attorney General deems necessary, authorize railroad police officers employed by (i) either a railroad company classified as a Class 1 rail carrier pursuant to 49 U.S.C. § 10102 and the Interstate Commerce Commission or (ii) Amtrak to have police, arrest and enforcement powers for the purpose of investigating or preventing crimes which have occurred, are occurring or may occur on property that is owned, leased, operated or controlled by the railroad, or which involve the railroad's employees, passengers or patrons while such persons are on such property, or which involve property that is consigned or entrusted to the railroad for transportation purposes. The Attorney General shall give such authorization by oath for such period of time and pursuant to such conditions as the Attorney General deems necessary. The Attorney General shall have the authority to withdraw such authorization whenever the

Attorney General deems necessary. Notwithstanding any provision of this section to the contrary, no person shall be authorized pursuant to this subsection unless such person is first certified as appropriately qualified by the Police Officer Standards and Training Commission and until memoranda of understanding are reached between the railroad and all appropriate law-enforcement agencies. Nothing in this section shall limit the authority of a railroad police office employed by a rail carrier owning property in this State, and certified or commissioned under the laws of another state, to enforce the law and exercise the authority conveyed under 49 U.S.C. § 28101 or 49 C.F.R. 207.

(29 Del. C. 1953, § 2516; 59 Del. Laws, c. 177, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 366, § 1; 84 Del. Laws, c. 149, § 10.)

Subchapter II

Consumer Protection

§ 2517. Division of Consumer Protection.

(a) There is established within the Department of Justice a Division of Consumer Protection.

(b) The Division of Consumer Protection shall protect the public against consumer fraud and deceptive trade practices through enforcement of statutes, consumer education, consumer advocacy, and coordinated governmental action.

(c) The Attorney General may appoint a Deputy Attorney General to be designated as the Director of Consumer Protection, who will be charged with the furtherance of the programs and functions thereof.

(d) The term "Director" as used in this subchapter refers to the Director of the Division of Consumer Protection and includes any designee.

(68 Del. Laws, c. 149, § 10; 68 Del. Laws, c. 314, § 1; 69 Del. Laws, c. 203, §§ 1-5; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 138, § 6; 74 Del. Laws, c. 151, § 2; 76 Del. Laws, c. 419, § 2; 77 Del. Laws, c. 282, § 1; 82 Del. Laws, c. 239, § 1.)

§ 2518. Office of Foreclosure Prevention and Financial Education.

(a) The Office of Foreclosure Prevention and Financial Education is hereby established within the Division of Consumer Protection under the direction and control of the Director.

(b) The Office of Foreclosure Prevention and Financial Education is established for the following purposes:

(1) To develop and implement programs to educate the public about foreclosure prevention and financial literacy;

(2) To identify mortgage foreclosure fraud or other deceptive practices;

(3) To provide for opportunities for borrowers to meet with lenders through outreach events or mediation programs;

(4) To establish a toll-free telephone number to receive complaints from homeowners at risk of default for appropriate referral or intervention;

(5) To serve as a liaison between borrowers and lenders when complex issues may be impeding loss mitigation efforts; and

(6) To promote coordination among government and private programs and lenders including, but not limited to, HUD approved housing counseling agencies, legal aid providers, and other nonprofit consumer advocates.

(c) The structure of the Office of Foreclosure Prevention and Financial Education will be determined by the Attorney General and include a Foreclosure Outreach Coordinator and 2 administrative specialists.

(d) [Repealed.]

(78 Del. Laws, c. 198, § 1; 79 Del. Laws, c. 27, § 12; 82 Del. Laws, c. 30, §§ 2, 7; 84 Del. Laws, c. 355, § 1.)

§ 2519. Consumer protection advisory councils [Repealed].

(29 Del. C. 1953, § 8614; 57 Del. Laws, c. 583, § 1; 64 Del. Laws, c. 2, § 4; 65 Del. Laws, c. 445, §§ 1-4; 68 Del. Laws, c. 149, § 9; 69 Del. Laws, c. 291, § 98(c); 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 138, § 25; 77 Del. Laws, c. 106, § 5; repealed by 80 Del. Laws, c. 53 § 2, eff. June 26, 2015.)

§ 2520. Enforcement authority.

(a) Among other powers, the Director shall have the authority to:

(1) Investigate matters that may reveal violations of Chapter 25 of Title 6 or other unlawful conduct;

(2) Issue cease and desist orders, either summarily or after a hearing;

(3) Seek administrative remedies for violations of the statutes the Division of Consumer Protection is charged to enforce;

(4) Initiate and prosecute civil or criminal actions related to the purposes of this chapter in any court of competent jurisdiction;

(5) Seek restitution, rescission, reformation of contract, recoupment, disgorgement of profits or any moneys improperly obtained, or otherwise prevent unjust enrichment against violators of this chapter and on behalf of consumers;

(6) Promulgate rules and regulations;

(7) Under the direction of the Attorney General, maintain and supervise the deposits and expenditures into and out of the Consumer Protection Fund;

(8) Hold fact-finding, rulemaking or adjudicative hearings and issue opinions, orders or reports based thereon; and

(9) Take any other lawful action to enforce the consumer protection statutes and to carry out their purposes.

(b) The scope of authority of the Director to initiate administrative proceedings or take civil enforcement action does not extend to matters within the jurisdiction of the Public Service Commission or of the Insurance Commissioner of the State, except for matters covered by § 1014 of Title 26, but only as they relate to community-owned energy generating facilities.

(77 Del. Laws, c. 282, § 2; 83 Del. Laws, c. 178, § 6.)

§ 2521. Rules and regulations.

(a) The Director shall have the authority to promulgate rules and regulations as deemed necessary or appropriate to implement or clarify the statutes that the Division of Consumer Protection is charged to enforce or otherwise to carry out the purposes of those statutes.

(b) The rules and regulations of the Division of Consumer Protection shall be entitled to substantial deference in connection with any judicial review or case determination.

(77 Del. Laws, c. 282, § 2.)

§ 2522. Proceedings; judicial remedies.

(a) The Attorney General and the Director shall have standing to seek, on behalf of the State, any remedy in this chapter whenever it appears that a person has violated or is about to violate any provision of Chapter 25 of Title 6, any provision of Chapter 35 of Title 6, Chapters 51 through 67 of Title 25, Chapter 70 of Title 25, §§ 841, 914, 915, and 915A of Title 11, or any other law or regulation that the Division of Consumer Protection is authorized to enforce. The Attorney General or the Director may initiate an investigation, administrative proceeding, or court proceeding to enjoin or sanction the unlawful conduct.

(b) If, in any court proceeding brought under subsection (a) of this section above, any person is found to have committed a wilful violation, the court shall order the violator to pay to the State a civil penalty of not more than $10,000 for each violation.

(c) If, in any court proceeding brought under subsection (a) of this section, any person is found to have committed a violation, the court may order the violator to cease and desist the unlawful conduct prospectively, return any moneys obtained unlawfully, and when appropriate freeze designated assets of the violator, order restitution, rescission, or recoupment, or grant other relief appropriate to prevent violators from being unjustly enriched.

(d) In any action brought by the Director under the provisions of this chapter in which any person is found to have violated any provision of Chapter 25 of Title 6, any provision of Chapter 35 of Title 6, Chapters 51 through 67 of Title 25, Chapter 70 of Title 25, §§ 841, 914, 915, and 915A of Title 11, or any other law or regulation that the Division of Consumer Protection is authorized to enforce, the Court may award attorneys' fees and investigative costs to the State.

(77 Del. Laws, c. 282, § 2; 84 Del. Laws, c. 444, § 2.)

§ 2523. Administrative process and appeals.

(a) The Director of Consumer Protection may initiate administrative charges against any person who appears to have violated or about to violate any provision of Chapter 25 of Title 6, any provision of Chapter 35 of Title 6, Chapters 51 through 67 of Title 25, Chapter 70 of Title 25, or any other law or regulation that the Division of Consumer Protection is authorized to enforce. Such charges shall provide notice as to the nature of the violation and state the remedies that are sought.

(b) The Attorney General shall appoint a Deputy Attorney General to act as the administrative hearing officer to adjudicate charges brought by the Director of Consumer Protection against any person. Such hearing officer shall be a Deputy Attorney General who is not assigned to the Fraud and Consumer Protection Division.

(c) Upon finding a violation, the hearing officer may order any of the administrative remedies authorized in § 2524 of this title below. Upon finding a violation or a threat of a violation, the hearing officer may issue or affirm the issuance of a cease and desist order authorized by § 2524(a) of this title below.

(d) Any party, including the Director, who is aggrieved by the hearing officer's final administrative order may appeal the order to Superior Court within 30 days after the date the final order is issued. The administrative record shall be filed with the Court in accordance with Superior Court Civil Rule 72. The final administrative order shall be affirmed by the Court if the findings in the order are supported by substantial evidence.

(e) Any moneys that are received by the State after an administrative hearing and order, other than for consumer victims, shall be credited to the General Fund. Any moneys received pursuant to a written agreement in settlement of administrative charges, at any stage of the proceeding, shall be credited to the Consumer Protection Fund.

(f) *Personal jurisdiction by acts of nonresident respondents.* — As to any administrative proceeding authorized by this section, personal jurisdiction may be exercised over any nonresident respondent who, in person or through an agent, commits any of the acts identified in § 3104(c) of Title 10 that would constitute legal presence in the State.

(g) *Service of process to obtain personal jurisdiction.* — Any of the following methods of service of process shall be sufficient to obtain personal jurisdiction over a respondent in an administrative proceeding authorized by this section:

(1) Personal hand delivery.

(2) Any method of service of process effective under Rule 4(f) of the Superior Court Rules of Civil Procedure.

(3) Any method of service of process that would be effective to obtain personal jurisdiction in the Superior Court under § 3104 of Title 10.

(h) *Administrative hearing evidence.* — Upon the request of any party to an administrative proceeding authorized by this section, the administrative hearing officer is empowered to issue subpoenas to nonparties to allow for witnesses or other evidence to be presented at an administrative hearing. If the nonparty fails to comply with the subpoena, the party which requested the subpoena may seek an order from the Superior Court compelling the nonparty to comply with the subpoena. An order issued by the Superior Court pursuant to this subsection may be punished by the Superior Court as a contempt of Court. With respect to nonparties who are not subject to subpoena, the administrative hearing officer is empowered to issue commissions to allow for testimony or other evidence to be obtained for presentation at an administrative hearing. The administrative hearing officer shall, prior to issuing a subpoena or commission, ensure that the subpoena or commission does not impose undue burden or expense on the person subject to the subpoena or commission.

(77 Del. Laws, c. 282, § 2; 81 Del. Laws, c. 175, § 1.)

§ 2524. Administrative remedies.

(a) After notice and an administrative hearing, any violation or apparent threat of violation of any provision of Chapter 25 of Title 6, or of any law or regulation the Division of Consumer Protection is charged to enforce, may be sanctioned by the issuance of a cease and desist order as provided in § 2525 of this title.

(b) If, in any administrative proceeding brought under § 2523 of this title, a person is found to have committed a wilful violation, the Director or hearing officer shall order the violator to pay to the State a civil penalty of not more than $5,000 for each violation.

(c) After the expiration of the 30-day appeal period in which no appeal has been filed, if the violator fails to pay all penalties and restitution or other amounts administratively determined, the Director may file a complaint in any court of competent jurisdiction and obtain a judgment for the amounts that have not been paid. The amounts shall be treated by the court as an unpaid debt, and the merits of the administrative findings may not be contested.

(77 Del. Laws, c. 282, § 2; 84 Del. Laws, c. 444, § 3.)

§ 2525. Cease and desist orders.

(a) *By agreement.* — At any time after it appears to the Director that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by Chapter 25 of Title 6, Chapter 35 of Title 6, Chapters 51 through 67 of Title 25, Chapter 70 of Title 25, or any other laws and regulations which the Division of Consumer Protection is authorized to enforce, the Director may issue a cease and desist order pursuant to an agreement with such person. Each such agreement may provide for:

(1) The immediate discontinuance of each practice set forth in the agreement;

(2) Any such relief, remedies, penalties, fines, or recoveries authorized by this chapter, including restitution, rescission, recoupment, or other relief appropriate to prevent violators from being unjustly enriched; and

(3) Any other action deemed by the Director to be necessary to remedy such practice or practices.

(b) *By administrative order.* — Upon the finding of a violation of any provision of Chapter 25 of Title 6, or of any law or regulation the Division of Consumer Protection is charged to enforce, after notice and a hearing, the designated hearing officer may issue a cease and desist order against the violator. Such cease and desist order may provide for any relief as indicated in subsection (a) of this section above.

(c) *By summary administrative order.* —

(1) Where the Director in the Director's discretion perceives an immediate threat to the public interest as a result of a violation of any provision of Chapter 25 of Title 6, or of any law or regulation the Division of Consumer Protection is charged to enforce, the Director may issue a summary cease and desist order ordering an immediate discontinuance of the unlawful practice identified in the order, which order must include findings of fact and conclusions of law sufficient to put the respondent on notice of the reasons for the issuance of the order. Before issuing the summary order, the Director or the Director's designee shall attempt to obtain voluntary compliance from the alleged violator by letter or telephone call.

(2) The summary cease and desist order shall be served upon the alleged violator by first class and certified mail to the alleged violator's last known address. Service shall be deemed effective upon mailing. Within 15 business days after the mailing of the summary order, the alleged violator may request, in writing, a hearing on the charges. A summary order that was not the subject of a hearing may not be appealed to the Superior Court.

(3) If the alleged violator makes a written request for a hearing, the Division of Consumer Protection shall provide a hearing on the charges within 15 business days after the receipt by the Director of Consumer Protection of the alleged violator's written request for a hearing. A written order, containing findings of fact and conclusions of law, shall issue within 15 business days after the close of the hearing.

(4) If the alleged violator makes a written request for a hearing but none is provided within 15 business days after the receipt by the Director of Consumer Protection of the written request for a hearing, the summary order shall expire at the end of the fifteenth business

day after the receipt by the Director of Consumer Protection of the written request for a hearing unless the alleged violator waives that alleged violator's right to a prompt hearing by agreeing to a hearing at a later date. If the alleged violator makes a written request for a hearing and one is provided within 15 business days of the receipt by the Director of Consumer Protection of the written request, but no order is issued within 15 business days after the close of the hearing, the summary order shall expire at the end of the fifteenth business day after the close of the hearing, unless the alleged violator agrees to be bound by the summary order until a later date. An order that has expired in accordance with the restrictions of this paragraph may not be reissued as a summary order.

(5) The order issued after the hearing may provide for any administrative remedy contained in § 2524 of this title. Any person aggrieved by the order issued after the hearing shall have 30 days to appeal the order to the Superior Court, as provided in § 2523(d) of this title.

(6) Any person who wilfully violates a cease and desist order may be sanctioned as provided in § 2524(b) or § 2526 of this title.

(77 Del. Laws, c. 282, § 2; 84 Del. Laws, c. 444, § 4.)

§ 2526. Violation of order or injunction; penalty.

(a) The Attorney General or the Director may petition any court of competent jurisdiction to obtain recovery of a civil penalty as provided pursuant to this section. Such petition may be made whenever it appears to the Attorney General or the Director that a person subject to any order or injunction, issued pursuant to any provision of this chapter or any other law or regulation which the Division of Consumer Protection is charged to enforce, has wilfully violated such order or injunction, or breached a material term of an agreement forming the basis for a cease and desist order.

(b) A person who wilfully violates any such order or any such agreement shall forfeit and pay to the State an enhanced civil penalty of not more than $25,000 per violation.

(c) Any court in which the petition is brought may order the offender, if a violation is found, to cease and desist the unlawful practice. Any subsequent violation of the court's order may be sanctioned for contempt in addition to an enhanced civil penalty.

(d) Nothing in this section shall prevent the Attorney General or the Director from initiating any additional or alternative enforcement action under their lawful powers.

(77 Del. Laws, c. 282, § 2.)

Subchapter III

Not-for-profit Healthcare Conversions

§ 2530. Short title.

This subchapter may be cited as "The Not-for-profit Healthcare Conversion Act."

(74 Del. Laws, c. 298, § 2; 77 Del. Laws, c. 282, § 2.)

§ 2531. Definitions.

As used in this subchapter:

(1) "Not-for-profit healthcare conversion transaction" includes:

a. The sale, transfer, lease, exchange, optioning, conveyance, affiliation, merger, joint venture, or other disposition of a material amount of the assets or operations of a not-for-profit healthcare entity, made other than in the normal course of business, to an entity or person other than a charity or not-for-profit entity;

b. The transfer of control or governance of a material amount of the assets or operations of a not-for-profit healthcare entity to an entity or person other than a charity or not-for-profit entity;

c. A substantial change or amendment to a certificate of incorporation which materially affects a not-for-profit healthcare entity's charitable or public benefit intent, or the disposition of reserves or control of a not-for-profit healthcare entity to an entity or a person other than a charity or not-for-profit entity;

d. A change in the composition of the Board of Directors such that, upon the effective date of such change, a majority of directors of the not-for-profit healthcare entity are affiliated with (or have been elected by directors a majority of whom were or are affiliated with) any single entity or person other than a charity or not-for-profit entity. For purposes of this paragraph, a director shall be deemed to be affiliated with such entity or person if such director:

1. Receives or has received, directly or indirectly, compensation, including income, in any form from such person or entity (or parent, subsidiary or affiliate of such entity);

2. Serves or has served as a director, officer, employee, partner, member or agent of such entity (or of a parent, subsidiary or affiliate of such entity);

3. Is a close family member of such person or is a close family member of any person who serves as an officer or director of such entity (or parent, subsidiary or affiliate of such entity); or

4. Is, directly or indirectly, controlled by such person or entity.

(2) “Not-for-profit healthcare entity” includes a not-for-profit hospital, including a corporation or a hospital created under a trust or will, a not for profit healthcare service provider, a not-for-profit nursing home or long term care facility, a not-for profit healthcare insurer, a mutual corporation holding assets in charitable trust for the public benefit, an entity maintaining plans to provide healthcare services or indemnity thereof, and an entity, other than a for-profit entity, affiliated with any of these through ownership, governance, or membership, such as a holding company or subsidiary.

(3) “Not-for-profit healthcare insurer” includes a not-for-profit provider of healthcare insurance, including service associations, health service corporations, and physician service organizations or their affiliates.

(4) “Person” means an individual, partnership, trust, estate, corporation, association, organization, joint venture, joint stock company, limited liability company, or other legal or commercial entity.

(5) “Public benefit asset” means, as to a not-for-profit healthcare entity that is seeking to engage in a not-for-profit healthcare conversion transaction, that part of the fair market value of the converting entity impressed with a public trust for the public benefit as initially determined by the Attorney General and subject to the approval of the Court of Chancery.

(74 Del. Laws, c. 298, § 2; 77 Del. Laws, c. 282, § 2; 78 Del. Laws, c. 109, § 1.)

§ 2532. Notice to the Attorney General.

A not-for-profit health-care entity seeking to engage in a not-for-profit healthcare conversion transaction is required to provide written notice of its intent to enter into the transaction to the Attorney General of the State at least 180 days prior to the closing date of the proposed transaction.

(74 Del. Laws, c. 298, § 2; 77 Del. Laws, c. 282, § 2; 81 Del. Laws, c. 412, § 1.)

§ 2533. Establishment of a foundation.

(a) For proceeds or reserves of not-for-profit healthcare conversion transactions that constitute public benefit assets, there shall be created a new tax-exempt public benefit or charitable organization or foundation pursuant to 26 U.S.C. § 501(c)(3) or (c)(4) of the Federal Internal Revenue Code [26 U.S.C. § 501(c)(3) or (c)(4)] into which the proceeds or reserves shall be ultimately deposited. Whether or not the public benefit or charitable organization is classified as a private foundation under § 509 of the Internal Revenue Code [26 U.S.C. § 509], it shall be subject to the restrictions and limitations that apply to private foundations found in § 4941 through 4945 of the Internal Revenue Code [26 U.S.C. §§ 4941 through 4945].

(b) The mission of the public benefit or charitable organization or foundation receiving the public benefit assets shall be serving the State’s unmet health needs, particularly with regard to medically uninsured and underserved populations.

(c) The board of directors of the foundation shall consist of 9 to 15 members who shall be broadly representative of the community’s diversity and shall include persons with knowledge, expertise and skills in investment and asset management, healthcare finance, not-for-profit administration, delivery of healthcare services, and of health care consumer issues. Each member of the board of directors shall be appointed by the Governor, by and with the consent of the Senate, from a list of qualified persons who have been nominated by the Community Advisory Committee established in subsection (d) of this section, below. The directors shall elect a chairperson. The directors shall have the authority to adopt bylaws for the foundation in consultation with the Community Advisory Committee. After the directors have finalized the formation of the foundation and the adoption of bylaws, the State shall transfer the public benefit assets to the foundation.

(d) A Community Advisory Committee shall be formed to nominate candidates for the foundation’s board of directors. The initial Community Advisory Committee shall be comprised of 9 members, 1 selected by each of the following organizations: the Delaware State Chamber of Commerce, the Medical Society of Delaware, the Delaware Community Foundation, the Delaware Nurses’ Association, the Delaware AFL-CIO, the Delaware Healthcare Association, the United Way of Delaware, the Delaware State Senate, whose member shall be selected by the President Pro Tem of the Senate, and the Delaware House of Representatives, whose member shall be selected by the Speaker of the House. The Advisory Committee shall elect a chairperson. Members of the Community Advisory Committee shall be appointed within 60 days after the State receives public benefits assets from any not-for-profit health care conversion transaction. The foundation may expand the Community Advisory Committee and provide for additional appointments through its bylaws. The Community Advisory Committee’s criteria for nominating board members shall ensure an open recruitment process for the directors. The Community Advisory committee shall nominate at least 30 residents of Delaware for the initial board of directors. At no time shall the Community Advisory Committee nominate 1 of its own members for appointment to the board of directors of the foundation. In addition to nominating persons for consideration of appointment, the Community Advisory Committee shall also work with the foundation’s board of directors to develop and improve the foundation’s mission, certificate of incorporation and by-laws, and shall provide ongoing guidance to the board concerning community needs and other issues relating to the activities of the foundation.

(e) The State Treasurer shall open and maintain an escrow account for the benefit of the foundation for the receipt of any public benefit assets. During the interim time period from when the State receives public benefit assets until they are transferred to the foundation, the State Treasurer shall invest any funds that are part of the public benefit amount in a manner that will protect the principal balance of the public benefit assets.

(f) The certificate of incorporation of the foundation shall provide that the directors shall be appointed to the board for a term of 3 years except as provided herein. The term for each board position shall be staggered by thirds so that the first term for a board position

may be 1, 2 or 3 years and shall be determined by lot. No individual may serve more than 2 terms consecutively, except for the initial members whose terms are 1 or 2 years who may serve 3 consecutive terms. Notwithstanding any other law to the contrary, directors of the foundation shall be prohibited from holding over their term once expired even if their successors have not been duly elected and qualified. The directors shall receive no compensation for their service on the board of the foundation other than reimbursement for reasonable expenses related to their service. No elected official may serve as a director of the foundation.

(g) The not-for-profit public benefit or charitable organization or foundation receiving the public benefit assets, its directors, officers, and management shall be and remain independent of the for-profit company or mutual corporation and its affiliates. No person who is an officer, director, or member of management of the not-for-profit corporation submitting the plan for the proposed healthcare conversion transaction, at the time the plan is submitted, or at the time of the agreement or transaction, or thereafter, shall be qualified to be an officer, director or member of management of the not-for-profit public benefit or charitable organization or foundation receiving the charitable assets.

(h) The not-for-profit public benefit or charitable organization or foundation receiving the public benefit assets shall establish formal mechanisms to avoid conflicts of interest and to prohibit grants benefiting the for-profit corporation, the board of directors and management of the for-profit corporation.

(i) The foundation shall have the power to enter into any contract, acquire, lease, sell, hold or dispose of any assets in accordance with the purposes of this subchapter; to employ, retain or enter into contracts with persons in connection with the management and operation of the foundation; to bring or defend, pay, collect, compromise or arbitrate any legal action by or against the foundation; to deposit withdraw, invest, pay, retain and distribute the foundation's funds in accordance with this subchapter; to purchase, hold, sell, lease, exchange, receive or otherwise acquire or dispose of securities in the name of the foundation; to open, maintain and close bank accounts, and draw checks or other orders for the payment of moneys; and to authorize any officer, director employee or other agent of the foundation to act for and on behalf of the foundation in all matters incidental to the forgoing.

(j) The charitable organization or foundation receiving the public benefit assets shall provide the Attorney General, the Governor, and the General Assembly with an annual report of its charitable activities related to its use of the public benefit assets received. The annual report shall be a public document.

(k) Nothing in this subchapter shall be construed to limit the common law authority of the Attorney General to protect the charitable trusts and assets held for the public benefit in this State. Nothing in this subchapter shall be construed as a replacement for any other civil or criminal actions, which the Attorney General may take either under the common law or statutory law, seeking injunctive relief, or other available remedies.

(l) Nothing in this subchapter shall be construed to supersede, restrict or otherwise limit the powers, duties, and authority of the Insurance Commissioner pursuant to Title 18, or any other provisions relating to the regulation of insurers, hospitals, or other health care corporations.

(74 Del. Laws, c. 298, § 2; 77 Del. Laws, c. 282, § 2.)

Subchapter IV

Common Interest Community Ombudsperson

§ 2540. Short title.

This subchapter shall be known as the "Common Interest Community Ombudsperson Act."

(79 Del. Laws, c. 408, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2541. Definitions.

For the purposes of this subchapter, the following definitions shall apply:

(1) "Bylaws" shall have the meaning as used in § 81-103 of Title 25.

(2) "Common interest community" shall have the meaning as used in § 81-103 of Title 25 and includes small preexisting cooperatives and planned communities as referenced in § 81-120 of Title 25.

(3) "Common interest community association" shall have the meaning ascribed to "association" or "unit owners' association" as used in § 81-103 of Title 25 and includes associations or unit owners' associations for small preexisting cooperatives and planned communities as referenced in § 81-120 of Title 25.

(4) "Declarant" shall have the meaning as used in § 81-103 of Title 25.

(5) "Declaration" shall have the meaning as used in § 81-103 of Title 25.

(6) "Department" means the Department of Justice.

(7) "Executive board" shall have the meaning as used in § 81-103 of Title 25.

(8) "Office" means the Office of the Common Interest Community Ombudsperson.

(9) "Ombudsperson" means the Common Interest Community Ombudsperson.

(10) "Rule" or "rules" shall have the meaning as used in § 81-103 of Title 25.

(11) “Unit” shall have the meaning as used in § 81-103 of Title 25.

(12) “Unit owners” shall have the meaning as used in § 81-103 of Title 25.

(79 Del. Laws, c. 408, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2542. Common Interest Community Ombudsperson; creation, appointment, role, term of office, and vacancy.

(a) There is established within the Department an Office of the Common Interest Community Ombudsperson.

(b) The Attorney General shall appoint the Ombudsperson, consistent with the qualifications for the Ombudsperson set forth in § 2543 of this title.

(c) The Ombudsperson shall be the head of the Office and is charged with managing the Office consistent with the powers and duties vested in the Ombudsperson by § 2544 of this title, within the limitations of the funds appropriated by the General Assembly.

(d) The Ombudsperson shall serve at the pleasure of the Attorney General.

(e) A vacancy in the Ombudsperson position shall be filled in the same manner as the original appointment.

(79 Del. Laws, c. 408, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2543. Common Interest Community Ombudsperson; qualifications.

The Ombudsperson must:

(1) Be a member in good standing of the Bar of this State.

(2) Have at least 5 years of experience in the practice of law in this State.

(3) Have experience in real estate law, including common interest community law.

(4) Have experience in conflict and alternative dispute resolution.

(5) Not engage in any other business or profession that conflicts with the powers and duties of the position or the Office.

(6) Comply with all restrictions on political activity applicable to Department employees pursuant to § 2509A of this title.

(79 Del. Laws, c. 408, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2544. Common Interest Community Ombudsperson; powers and duties.

The Ombudsperson shall have the following powers and duties:

(1) To contact declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, and other interested parties to inform them of the services available through the Office. In addition to any other method used to publicize the Office’s services, the Ombudsperson shall maintain a website containing information about the Office, contact information, the services available through the Office, any information required to be placed on the website by other provisions of this chapter, and any other information deemed appropriate by the Ombudsperson.

(2) To assist declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, and other interested parties in understanding their rights and responsibilities and the processes available to them according to the law, regulations, and documents governing their respective common interest community. The Ombudsperson is not the attorney for declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, or other interested parties; no attorney-client relationship shall be implied or established by the Ombudsperson’s communication with such persons, and the Ombudsperson may not act as or appear to act as an attorney in a legal action brought by such persons.

(3) To organize and conduct meetings to educate declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, and other interested parties about their rights and responsibilities and the processes available to them according to the law, regulations, and documents governing their respective common interest community.

(4) To prepare and publish educational and reference materials about common interest communities and to make these resources available in print and on the Office’s website. The materials about common interest communities shall include general information about the roles, rights, and responsibilities of the various parties, suggestions for the orderly operation of the common interest community association, mechanisms for internal dispute resolution, or any other information deemed appropriate by the Ombudsperson.

(5) To develop and publicize procedures intended to result in fair elections for members and officers of a common interest community association.

(6) To provide monitors and vote counting services to common interest community associations, intended to result in fair elections for members and officers of a common interest community association, when 15% of the total voting interests of a common interest community association, or 6 unit owners, whichever is greater, petition the Ombudsperson to do so.

(7) To provide meetings, mediation, or other forms of alternative dispute resolution as may from time to time be requested by declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, or other interested parties. Nothing in this paragraph shall affect the right of a declarant, common

interest community association, the executive board of a common interest community association, unit owners in common interest community, or other interested parties from proceeding pursuant to the procedure established by § 348 of Title 10.

(8) To establish a template of reasonable written procedures for the executive board of a common interest community association to adopt to internally handle complaints from unit owners and other interested parties. Each common interest community association shall adhere to the established written procedures when resolving complaints from unit owners and other interested parties. The procedures established by the Ombudsperson and adhered to by the common interest community association may include the following, in addition to procedures outlined in the common interest community association's declaration, bylaws, or other governing documents:

a. That the complaint to the common interest community association must be in writing.

b. That a sample complaint form, if any, on which the complaint must be filed shall be provided upon request.

c. That the common interest community association's complaint written procedure shall include the process by which the complaint shall be delivered to the common interest community association.

d. That the common interest community association shall provide written acknowledgment of the receipt of the complaint to the complainant within 14 days of receipt. Such acknowledgment shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established procedure of the common interest community association, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery.

e. That any specific documentation that must be provided with the complaint shall be described in the common interest community association's complaint procedure. In addition, to the extent the complainant has knowledge of the law or regulation applicable to the complaint, the complainant shall provide that reference, as well as the requested action or resolution.

f. That the common interest community association shall have a reasonable, efficient, and timely method for identifying and requesting additional information that is necessary for the complainant to provide in order to continue processing the complaint. The common interest community association shall establish a reasonable timeframe for responding to and disposing of the complaint if the request for information is not received within the required timeframe.

g. That, within a reasonable time prior to the consideration of the complaint, the complainant shall be notified of the date, time, and location that the complaint will be considered. For purposes of this paragraph, "reasonable time" shall mean such time as established by the common interest community association's complaint procedure, but shall not be less than 7 days prior to the date for consideration of the complaint. Notice of the date, time, and location for consideration of the complaint shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established procedure of the common interest community association, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery.

h. That after the final determination is made, the written notice of the final determination shall within 14 days be hand-delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established procedure of the common interest community association, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery.

i. That the notice of final determination shall be dated as of the date of issuance and include specific citations to the common interest community association's declaration, bylaws, or other governing documents, or to an applicable law or regulation that led to the final determination, as well as the registration number for the common interest community association. If applicable, the name and license number of the common interest community manager shall also be provided.

(9) To receive complaints from declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, or other interested parties regarding potential violations of the law, regulations, or documents governing their respective common interest community. Prior to submitting a complaint to the Ombudsperson, complainants must complete the process established by the Ombudsperson and adopted by the executive board of a common interest community association pursuant to paragraph (8) of this section and must include a copy of the final determination with the complaint filed to the Ombudsperson.

(10) To investigate any complaint received and, if meritorious and appropriate, to provide meetings, mediation, or other forms of alternative dispute resolution to those parties involved in order to assist in the resolution of the complaint.

(11) To refer meritorious violations of existing Delaware law to the Attorney General or other appropriate law-enforcement agency for prosecution.

(12) To subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the exercise of the powers or the performance of the duties vested in the Ombudsperson by this section. The power contained in this paragraph may also be exercised by any other employee of the Office who is a member in good standing of the Bar of this State.

(13) To establish and publish, in print and on the Office's website, procedural rules for meetings, mediation, or other forms of alternative dispute resolution organized pursuant to this section.

(14) To establish and publish, in print and on the Office's website, procedures and forms for accepting complaints from declarants, common interest community associations, the executive board of a common interest community association, unit owners in common

interest communities, or other interested parties regarding potential violations of the law, regulations, or documents governing their respective common interest community.

(15) To establish: fees for meetings, mediation, or other forms of alternative dispute resolution; election monitoring; vote counting; or other services as provided by the Ombudsperson pursuant to this section. The amount to be charged for each fee imposed under this paragraph shall approximate and reasonably reflect all costs necessary to defray the expenses related to providing these services.

(16) To make an annual report of the Office's activities to the Governor, the Attorney General, the General Assembly, and the Chief Justice of the Supreme Court on or before December 1 of each year. A copy of the report shall be provided to the Director and the Librarian of the Division of Legislative Services. Each such report shall contain:

a. Statistics on the number of inquiries and complaints handled by the Office;

b. Information on education and outreach efforts by the Office;

c. Concerns expressed to the Office by declarants, common interest community associations, the executive board of a common interest community association, unit owners in common interest communities, or other interested parties;

d. Legal developments impacting common interest communities;

e. Recommendations for changes to Delaware law or rules of court procedure designed to improve the regulation and operation of common interest communities made by the Ombudsperson and the Common Interest Community Advisory Council;

f. Any other information deemed appropriate by the Ombudsperson.

(17) To organize and hold public meetings as necessary to gain a comprehensive sense of the issues facing common interest communities in this State. When such meetings are held, at least 1 meeting shall be held in each county at a convenient place within each county. When such meetings are held, the information obtained from these meetings shall be made part of the report issued pursuant to paragraph (15) of this section.

(18) To perform any other function necessary to fulfill the powers and duties outlined in this section.

(19) To direct the work of the Office consistent with the powers and duties established by this section.

(20) To employ and supervise staff necessary to assist in carrying out the powers and duties established by this section, within the limitations of funds appropriated by the General Assembly.

(79 Del. Laws, c. 408, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 255, § 45.)

§ 2545. Required information.

(a) When a declarant, a common interest community association, the executive board of a common interest community association, a unit owner in a common interest community contacts the Office to make an inquiry, request services, or file a complaint, the declarant, a common interest community association, the executive board of a common interest community association, a unit owner in a common interest community shall provide the Office with at least the following information regarding the common interest community at issue:

(1) The name, address, telephone number, and any other contact information for the common interest community association.

(2) The name of the person engaged in property management for the common interest community association or the name of the person who manages the property at the site of the common interest community.

(3) The name, mailing address, telephone number, and any other contact information for those on the executive board of the common interest community association.

(4) The name, mailing address, telephone number, and any other contact information for the declarant.

(5) The declaration, bylaws, and any rules for the common interest community association.

(6) The annual budget adopted by the common interest community association.

(7) The number of units in the common interest community.

(8) The total annual assessment made by the common interest community association.

(b) The Ombudsperson may waive the requirement created in subsection (a) of this section when it is deemed appropriate.

(79 Del. Laws, c. 408, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2546. Common Interest Community Advisory Council.

(a) The Common Interest Community Advisory Council, referred to as "the Council" throughout this section, consists of 18 members. A member who is on the Council by virtue position may appoint a designee to serve in their stead and at their pleasure. Membership is comprised as follows:

(1) The Governor shall appoint 3 members of the public who are unit owners, as defined under § 81-103 of Title 25, of common interest communities in this State, 1 from each county.

(2) The Mayor of the City of Wilmington.

(3) The County Executive of New Castle County.

(4) The President of the Kent County Levy Court.

(5) The President of the Sussex County Council.

(6) The Speaker of the House shall appoint 3 members.

(7) The President Pro Tempore of the Senate shall appoint 3 members.

(8) The Secretary of State.

(9) The President of the Delaware Bar Association shall appoint 2 members from the Real Property Section of the Delaware State Bar Association whose practice involves the creation of, or the handling of disputes arising from, common interest communities.

(10) The President of the Home Builders Association of Delaware.

(11) The Chief Executive Officer of Community Associations Institute.

(b) A member serves until a replacement is appointed under the same process as the member's appointment.

(c) Members serve without compensation, but may be reimbursed for reasonable necessary expenses incident to the member's duties and in accordance with state law.

(d) The Attorney General shall appoint the Council's Chair from among the members of the Council.

(e) 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.

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

(1) Advise the Ombudsperson regarding issues related to common interest communities, including any of the following:

a. Mechanisms to increase the collection rate for common interest community assessments.

b. The development of conflict resolution procedures within common interest communities.

c. The feasibility of mandatory mediation, arbitration, or another form of alternative dispute resolution for disputes not able to be resolved within common interest communities and, if deemed feasible, how to implement such a process.

d. The development of mechanisms for the registration of common interest communities with the State or other political subdivision.

e. Any other topic the Council deems necessary to advise the Ombudsperson on related to common interest communities.

(2) Advise the Ombudsperson in the operation of the Office.

(3) Study and recommend to the Ombudsperson the adoption, amendment, or rescission of Delaware law or rule of court procedure designed to improve the regulation and operation of common interest communities.

(4) Assist the Ombudsperson in the preparation of the annual report required of the Ombudsperson under § 2544(16) of this title.

(g) The Ombudsperson shall provide support that the Council requests. At a minimum, the Ombudsperson shall prepare the agenda for and minutes of Council meetings and shall post the agenda and minutes as required by the Freedom of Information Act, Chapter 100 of this title.

(h) The Council shall meet at least 4 times each year. The Chairperson, the Ombudsperson, or a majority of the members may call a special meeting of the Council.

(79 Del. Laws, c. 408, § 1; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 219, § 1.)

Subchapter V

Civil Rights and Public Trust

(82 Del. Laws, c. 239, § 2.)

§ 2551. Definitions.

For purposes of this subchapter, "Director" means the Director of the Division of Civil Rights and Public Trust and includes any designee.

(82 Del. Laws, c. 239, § 2.)

§ 2552. Division of Civil Rights and Public Trust; establishment.

(a) There is established within the Department of Justice a Division of Civil Rights and Public Trust which shall investigate and enforce laws protecting the public trust and ensuring the protection of civil rights.

(b) The Attorney General may appoint, from the practicing members of the Bar of this State, a lawyer who shall serve on a full-time basis under the direct control of the Chief Deputy Attorney General as the Director of Division of Civil Rights and Public Trust.

(c) The Director shall direct and supervise the work of Division of Civil Rights and Public Trust under § 2553 of this title.

(82 Del. Laws, c. 239, § 2.)

§ 2553. Division of Civil Rights and Public Trust; powers and duties.

(a) The Division of Civil Rights and Public Trust shall do all of the following:

(1) Investigate and prosecute hate crimes under § 1304 of Title 11.

(2) Investigate and prosecute civil or criminal misconduct committed under color of Delaware law or in the course of a public official's or state employee's duties.

(3) a. Investigate all use of deadly force incidents by law enforcement and use of force incidents by law enforcement that result in serious physical injury, as defined in § 222 of Title 11, for the purpose of determining whether such use of force was justified as a matter of law.

b. For informational purposes and to facilitate data-tracking, if a public report is issued by the Division on law enforcement's use of deadly force or use of force which results in serious physical injury, as defined in § 222 of Title 11, the public report must include all of the following:

1. The race of the law-enforcement officer who used force.

2. The race of the individual on whom force was used.

3. Whether race was found to be a relevant or motivating factor in the use of force.

(4) Enforce pattern and practice violations under Chapters 45 and 46 of Title 6.

(b) The Division of Civil Rights and Public Trust may investigate, prosecute, and remediate a pattern or practice which violates any of the civil rights secured by the U.S. Constitution or Constitution of the State or Delaware law regarding any of the following:

(1) Public accommodations.

(2) Housing discrimination.

(3) Employment discrimination.

(4) Educational rights.

(5) Rights of individuals with disabilities.

(82 Del. Laws, c. 239, § 2; 83 Del. Laws, c. 264, § 1.)

Part III
State Offices Created by Constitution

Chapter 27
State Treasurer

§ 2701. Bond [Repealed].

Repealed by 70 Del. Laws, c. 197, § 1, effective July 10, 1995.

§ 2702. Office and records.

The State Treasurer shall occupy the office and space provided by the State and shall keep therein all books of all account records, vouchers, papers, magnetic data and things pertaining to the conduct of the office and shall take proper means to safeguard and preserve the same.

(22 Del. Laws, c. 293, § 2; Code 1915, § 455; Code 1935, § 398; 29 Del. C. 1953, § 2703; 59 Del. Laws, c. 378, § 1; 70 Del. Laws, c. 197, § 2.)

§ 2703. Salary.

The annual salary of the State Treasurer shall be set through the recommendation of the Delaware Compensation Commission (Chapter 33 of this title) and the line item appropriations of the General Assembly.

(61 Del. Laws, c. 539, § 2; 70 Del. Laws, c. 197, § 3.)

§ 2704. Trustee of School Fund.

The State Treasurer shall, by virtue of the office, be the Trustee of the School Fund.

(Code 1852, § 510; Code 1915, § 457; Code 1935, § 400; 29 Del. C. 1953, § 2705; 57 Del. Laws, c. 741, § 34B; 59 Del. Laws, c. 378, § 1; 61 Del. Laws, c. 539, § 2; 70 Del. Laws, c. 186, § 1.)

§ 2705. Custody and investment of state funds.

(a) The State Treasurer shall have custody of money belonging to the State, including, but not limited to, money in the School Fund. All money belonging to the State, except money deposited in any pension fund of the State, and received by the State Treasurer, shall be invested daily.

(b) Money belonging to the State shall continue to be invested until required by the State Treasurer to make disbursements authorized by law.

(Code 1852, § 511; 14 Del. Laws, c. 377, § 1; Code 1915, § 458; Code 1935, § 401; 29 Del. C. 1953, § 2706; 51 Del. Laws, c. 112; 57 Del. Laws, c. 741, § 34B; 59 Del. Laws, c. 378, § 1; 60 Del. Laws, c. 375, § 1; 61 Del. Laws, c. 539, § 2; 63 Del. Laws, c. 142, § 1.)

§ 2706. Checks and drafts; signatures; time limitation on honoring.

(a) The signing of checks or drafts by the State Treasurer may either be by hand with a pen and ink signature or by a facsimile signature of a process approved by the State Treasurer.

(b) No check or order issued by the State Treasurer shall be honored or paid by the depository upon which such check or order is drawn after the expiration of 180 days from the date of such check or order.

(c) The State Treasurer shall establish and maintain a special fund appropriation to be credited with stale check write-off amounts. Use of this account is limited to the processing of stale-check reissues by the State Treasurer. On June 30 of each fiscal year, the unexpended stale check write-off balance in excess of $100,000 shall be credited to the General Fund. If during a fiscal year, there is an insufficient amount to process reissues, a revenue refund shall be made from the General Fund to the special appropriation.

(Code 1852, § 511; Code 1915, § 458; 38 Del. Laws, c. 42; 40 Del. Laws, c. 85; Code 1935, § 401; 29 Del. C. 1953, § 2707; 57 Del. Laws, c. 741, §§ 34B, 34C; 59 Del. Laws, c. 378, § 1; 61 Del. Laws, c. 539, § 2; 70 Del. Laws, c. 197, § 4; 70 Del. Laws, c. 509, § 1; 73 Del. Laws, c. 310, § 9.)

§ 2707. Payment of vouchers upon approval; method of payment.

(a) All vouchers for the payment of money issued by any department, commission or board of the State, including those requiring the approval of the Governor, shall be paid by the State Treasurer upon the certification by the proper officers of the department, commission or board and the approval thereof by the Secretary of Finance. Methods of payments may include checks, drafts and electronic funds transfers.

(b) Notwithstanding subsection (a) of this section, the Office of the State Treasurer shall make payments to vendors for goods or services provided to any department, commission, or board of the State via direct deposit (ACH payment), single use account (SUA payment), or the State's procurement card (PCARD payment) only, unless an exception is approved by the Office of the State Treasurer and the

Division of Accounting. This section does not apply to single payment vouchers, 1-time suppliers, forced payouts conducted at year end by the Division of Accounting, or legal settlements.

(37 Del. Laws, c. 45, § 1; Code 1935, § 403; 29 Del. C. 1953, § 2708; 54 Del. Laws, c. 39, § 5; 57 Del. Laws, c. 741, § 34B; 59 Del. Laws, c. 378, § 1; 61 Del. Laws, c. 468, § 6; 61 Del. Laws, c. 539, § 2; 63 Del. Laws, c. 142, § 43; 85 Del. Laws, c. 77, § 1.)

§ 2708. Destruction of bonds and coupons.

The State Treasurer may cause any registration, recording or cancellation agent of the State to destroy any paid, redeemed, called or cancelled bonds and coupons of the State. Such agent shall give the State Treasurer a certificate of destruction or cremation of such bonds and coupons which shall be retained by the State Treasurer.

(37 Del. Laws, c. 46, § 1; Code 1935, § 404; 29 Del. C. 1953, § 2709; 57 Del. Laws, c. 741, § 34B; 58 Del. Laws, c. 315, § 5; 59 Del. Laws, c. 378, § 1; 61 Del. Laws, c. 539, § 2; 63 Del. Laws, c. 142, § 44.)

§ 2709. Receipt and accounting for stock dividends and interest; power to vote as stockholder.

The State Treasurer may receive the dividends or interests on any stock, shares, loan or investment of money belonging to the State or the School Fund and shall apply and account for the same according to law. The State Treasurer may, in respect to any such stock or shares, except stock in the Farmers' Bank, vote the same in person or by proxy, as other stockholders do.

(Code 1852, § 528; Code 1915, § 471; Code 1935, § 408; 29 Del. C. 1953, § 2710; 57 Del. Laws, c. 741, § 34B; 59 Del. Laws, c. 378, § 1; 61 Del. Laws, c. 539, § 2; 70 Del. Laws, c. 186, § 1.)

§ 2710. Bond servicing procedure.

The State Treasurer shall cause any agent so designated by the issuing officers to maintain reconciliation statements on all state bonds and coupons. Said reconciliation statements shall balance with bank statements on bond and coupon accounts. Any paid-off, matured, redeemed, called or cancelled bonds and coupons shall be held by any agent so designated by the issuing officers on behalf of the State Treasurer until a sufficient quantity has been collected by the office to be cancelled and destroyed according to this chapter.

(Code 1935, § 403A; 48 Del. Laws, c. 252, § 1; 29 Del. C. 1953, § 2711; 50 Del. Laws, c. 321, § 1; 57 Del. Laws, c. 741, § 34B; 58 Del. Laws, c. 315, § 6; 59 Del. Laws, c. 378, § 1; 61 Del. Laws, c. 539, § 2; 63 Del. Laws, c. 142, § 45.)

§ 2711. Administration of moneys received from federal grants.

(a) All federal financial assistance program money received by the State, whether directly or indirectly, in the form of cash, check or via an electronic funds transfer method, shall be reported to the Office of the State Treasurer by the receiving agency through the processing of the proper cash receipt transaction in the State's financial management system. The amount received shall be credited to a special fund federal fund grant appropriation line. Such money is appropriated to the grant designated agency for the specific purposes for which the money was granted and shall be paid out of the special fund by the State Treasurer upon payment voucher executed by the designated agency.

(b) Nothing contained in this section shall affect federal grants or federal aid to the University of Delaware, the Agricultural Experimental Station and the Division of Agricultural Extension of the University of Delaware.

(c) Moneys received pursuant to 33 U.S.C § 701c-3 will be deposited into a special account and distributed annually by the State Treasurer to soil and water conservation districts within this state for the purpose of drainage and flood control. Distributions will be made to county soil and water conservation districts in which the subject leased lands are situated in proportional shares as required by 33 U.S.C § 701c-3.

(41 Del. Laws, c. 77; 29 Del. C. 1953, § 2712; 57 Del. Laws, c. 741, § 34B; 59 Del. Laws, c. 378, § 1; 61 Del. Laws, c. 539, § 2; 70 Del. Laws, c. 197, § 5; 72 Del. Laws, c. 258, § 60.)

§ 2712. Method of payment of State officials and employees.

(a) (1) Effective upon the implementation of the new payroll system, the salaries of all State officials and employees, including the Governor, shall be paid bi-weekly. The bi-weekly rate shall be determined by dividing the annual salary by 26. All state officials and employees who leave state service shall receive full payment for all days worked in their final lagged paycheck. Public and higher education employees, whether they elect payment over 10 or 12 months, shall receive their full contract amount. Public and higher education, 10-month contractual employees who elect payment over the contract period shall receive the exact annual salary stated in the contract, divided by 22.

(2) The bi-weekly payment shall represent earnings for the period ending 14 days prior to the checkdate for all state officials and employees except the Governor. Effective upon the inauguration of the Governor in January 2001, the salary of the Governor shall also be lagged 1 pay cycle.

(3) If any of the dates of payment specified herein should occur on a holiday, payment shall be made on the last working day prior to such holiday. The payment of wages, as outlined herein, shall be made from funds authorized for the period in which the payment is made.

(b) Methods of payment may include checks, drafts, direct deposits and electronic funds transfers.

(c) The Chief Justice and Justices of the Supreme Court, Chancellor and Vice Chancellors of the Court of Chancery, President Judge and Judges of the Superior Court, Chief Judge and Judges of the Court of Common Pleas and Chief Judge and Judges of the Family Court shall be paid a salary in accordance with the lag payroll set forth in paragraphs (a)(1) and (a)(2) of this section.

(d) Those judicial officers, as set forth in subsection (c) of this section, who were employed in such positions on December 31, 1994, shall receive a lag pay adjustment on August 15, 1995, equal to $^{1}/_{24}$ one twenty-fourth of the base pay in effect on July 15, 1995. This is a 1-time adjustment to enable implementation of the lag payroll system effective August 1, 1995, with respect to those judicial officers in office as of December 31, 1994, on the same basis afforded to the other state officials and employees except the Governor, employed by the State on that same date in positions set forth in 69 Del. Laws, c. 291, § 10(a). This lag pay adjustment is not a salary increase and is not available to judicial officers who were not employed in such positions on December 31, 1994.

(e) Judicial officers, as set forth in subsection (c) of this section, whose service commenced after December 31, 1994, shall participate in the lag payroll on the same terms and conditions as other participating employees of the State hired after that same date.

(f) (1) Notwithstanding any other provision of law, all state wage and salary payments shall be paid to employees who begin to receive such payments on or after January 1, 1996, and recipients of state retirement payments who begin to receive such retirement payments on or after January 1, 1996, by electronic funds transfer, unless another method has been determined by the Secretary of Finance to be appropriate.

(2) Each recipient of state wage, salary or retirement payments shall designate 1 financial institution and associated account and provide the payment authorizing information necessary for the recipient to receive electronic funds transfer payments through each institution so designated.

(3) The Secretary of Finance may waive the requirements of paragraph (f)(1) of this section for any state employee upon request by the head of an agency or school district under standards prescribed by the Secretary of Finance.

(4) The Director of the Office of Management and Budget may waive the requirements of paragraph (f)(1) of this section for any state pensioner upon request by the pension administrator under standards prescribed by the Director of the Office of Management and Budget.

(Code 1852, § 471; 21 Del. Laws, c. 47; Code 1915, § 398; 40 Del. Laws, c. 80; Code 1935, § 372; 29 Del. C. 1953, § 2713; 50 Del. Laws, c. 461, § 1; 59 Del. Laws, c. 119, § 1; 60 Del. Laws, c. 341, § 1; 61 Del. Laws, c. 539, § 2; 64 Del. Laws, c. 316, § 1; 69 Del. Laws, c. 291, § 40; 70 Del. Laws, c. 197, § 6; 70 Del. Laws, c. 425, §§ 27, 32; 71 Del. Laws, c. 132, §§ 26, 29; 71 Del. Laws, c. 354, § 33; 72 Del. Laws, c. 94, § 127; 72 Del. Laws, c. 258, § 31; 75 Del. Laws, c. 88, § 20(6); 76 Del. Laws, c. 213, §§ 41, 42.)

§ 2713. Refunding of improperly collected fees.

In the event any agency of this State having the power to collect fees or other receipts that become revenue to the General Fund of the State shall improperly collect and deposit such fees or other receipts with the State Treasurer, the State Treasurer shall have the authority, except as otherwise provided specifically by law, upon certification by the collecting agency that a fee or other receipt was improperly collected and deposited, to make a refund from the General Fund of the State in the amount improperly collected and deposited to the person from whom the fee or receipt was improperly collected.

(29 Del. C. 1953, § 2714; 56 Del. Laws, c. 144; 57 Del. Laws, c. 741, § 34B; 59 Del. Laws, c. 378, § 1; 61 Del. Laws, c. 539, § 2.)

§ 2714. Functions prior to January 7, 1975.

The State Treasurer shall have the power to perform and shall be responsible for the powers, duties and functions vested by Chapter 62 [repealed] and Chapter 74 of this title in the Secretary of Finance immediately prior to January 7, 1975, and which are not otherwise hereinbefore specifically transferred to the State Treasurer.

(59 Del. Laws, c. 378, § 8; 61 Del. Laws, c. 539, § 2.)

§ 2715. Certain powers and duties of the State Treasurer.

The State Treasurer shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the Division of the Treasury pursuant to § 8307(1)a. [repealed] and c. [repealed] and § 8307(2) [repealed] of this title.

(59 Del. Laws, c. 378, § 12; 61 Del. Laws, c. 539, § 2.)

§ 2716. Cash Management Policy Board.

(a) *Establishment; purposes.* — There is hereby established the Cash Management Policy Board (the "Board"). The Board's purposes shall be to establish policies for the investment of all money belonging to the State or on deposit from its political subdivisions, except money deposited in any state pension fund or the State Deferred Compensation Program, and to determine the terms, conditions and other matters relating to those investments including the designation of permissible investments. In carrying out its purpose to designate permissible investments, the Board shall exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs with due regard to the probable income and level

of risk from investments of money belonging to the State or its political subdivisions in accordance with the policies established by the Board. In carrying out its purpose to determine the terms, conditions and other matters relating to the investment of money belonging to the State or its political subdivisions, unless the Board shall find it not in the State's best interest, the Board shall:

(1) Require as a condition to any deposit of such funds in any state or national bank or savings and loan institution that such deposits be continuously and fully secured by direct general obligations of or obligations the payment of the principal and interest on which are unconditionally guaranteed by the United States of America or other suitable obligations as determined by the Board;

(2) Require that the selection of financial institutions to provide banking and investment services pursuant to this section be conducted on an open and competitive basis as defined by the Board. It shall be the responsibility of the Board to approve the selection of each of the said financial institutions by a majority vote of the members of the Board. The Board, by a majority vote of its members, shall be responsible for setting the policy as to the allocation between short and long term investments and the allocation of funds to the respective financial institutions selected through the open and competitive process; and

(3) Require that temporary clearing accounts as well as major disbursement accounts be established in a bank or banks whose principal office is located within the State.

(b) *Composition.* — The Board shall be composed of 9 members. Each member of the Board shall have 1 vote. The State Treasurer, the Secretary of Finance, the Secretary of State and the Controller General shall be members of the Board and shall serve on the Board ex officio. Five members shall be appointed by the Governor and confirmed by the Senate. Of the 5 appointed members, at least 1 member shall be a resident of Sussex County, at least 1 member shall be a resident of Kent County, and at least 1 member shall be a resident of New Castle County; and at least 2, but no more than 3, appointed members of the Board shall be affiliated with 1 of the major political parties and at least 1, but no more than 2, of the appointed members shall be affiliated with the other major political party; provided, however, that there shall be no more than a bare majority representation of 1 major political party over the other major political party. Any person who declines to announce a political affiliation shall also be eligible for appointment as a member of the Board. In considering the qualifications of persons who may be appointed to the Board, the Governor shall consider among other things the knowledge of such person in the fields of investment management and banking services. The Governor shall fill vacancies on the Board created by appointed members for their unexpired term and the appointments shall be confirmed by the Senate.

(c) *Term of appointed members; conduct of meetings.* — (1) Each appointed member shall be appointed for a 3-year term beginning on the date of appointment; provided, however, that of the initial members, 1 shall be appointed for a 1-year term, 2 for 2-year terms and 2 for 3-year terms. Appointed members shall be eligible for reappointment.

(2) Each member of the Board shall have 1 vote and the powers of the Board shall be exercised by a majority vote of all members present; provided that a quorum of 5 members shall be necessary to hold a meeting of the Board.

(3) The Chairperson of the Board shall be designated by the Governor from among the appointed members.

(4) The Board shall meet as often as shall be necessary to properly discharge its duties; provided, however, that the Board shall meet at least 4 times annually; and provided further, that the State Treasurer or the Chairperson of the Board shall be authorized to call special meetings of the Board and to set the agenda for these meetings.

(5) Meetings and/or documents relating to investment strategy or negotiations concerning investment of money belonging to the State shall be exempt from Chapter 100 of this title.

(d) *Powers and duties of Board.* — (1) The Board is authorized and empowered to adopt rules and regulations for the general administration of its duties.

(2) The Board shall establish a policy with respect to the creation of all checking accounts by the State or any agency or department by the State or any agency or department of the State, and the State Treasurer shall enforce that policy.

(3) The Board, by a majority vote of its members, shall be authorized to enter into agreements to employ or contract for the services of private and public consultants, for research, technical or other services and for facilities, whenever the same shall be deemed by the Board necessary or desirable in the performance of the functions of the Board. No such agreement shall be binding or enforceable unless the State shall have appropriated money to pay the obligations incurred by the Board hereunder.

(4) The Board shall prepare and publish an annual report to the General Assembly concerning its activities.

(5) The use of teleconferencing or videoconferencing is authorized for use in conducting meetings of the Cash Management Policy Board.

(e) *Powers and duties of State Treasurer.* — (1) The investment of money belonging to the State shall be made by the State Treasurer in accordance with policies established by the Board and subject to the terms, conditions and other matters, including the designation of permissible investments relating to the investment of the money belonging to the State, except for money deposited in any state pension fund or funds of the State Deferred Compensation Program.

(2) State agencies and departments, and school districts shall provide the State Treasurer with such reports and projections of receipts and expenditures as well as other data the State Treasurer may request to enable the Treasurer to provide the Board with accurate cash flow forecasts.

(f) *Compensation; indemnification.* — (1) Members shall not receive compensation for serving on the Board, but shall be entitled to reimbursement by the State for travel and other expenses incurred in attending meetings of the Board.

(2) The State shall indemnify an appointed Board member who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that the Board member is or was an appointed Board member, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Board member in connection with such action, suit or proceeding, if the Board member acted in good faith and in a manner the Board member reasonably believed to be in the best interests of the State and with respect to any criminal action or proceeding had no reasonable cause to believe the Board member's conduct was unlawful. Expenses incurred in defending a civil, administrative or investigative action, suit or proceeding shall be paid by the State in advance of final disposition of such action, suit or proceeding if:

a. Initially authorized by a majority vote of the Board exclusive of the member or members to be indemnified unless more than a majority of the Board shall also be parties to the same action, suit or proceeding, in which instance, such authorization shall be by the Governor of the State; and

b. Such Board member agrees to repay such amount if it is ultimately determined by the Board or the Governor, as the case may be, pursuant to paragraph (f)(2)a. of this section that such member is not entitled to be indemnified under this section.

(g) *Administrative support and budget.* — The Board is an independent public instrumentality. For administrative and budgetary purposes only, the Board shall be placed within the Office of the State Treasurer. Staff support shall be provided by the Office of the State Treasurer as determined by the State Treasurer.

(63 Del. Laws, c. 142, § 2; 65 Del. Laws, c. 373; 68 Del. Laws, c. 278, §§ 1-3; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 290, § 101; 79 Del. Laws, c. 196, § 1; 79 Del. Laws, c. 356, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 137, § 1.)

§ 2717. Proceeds of sale of Farmers' Bank stock [Repealed].

Repealed by 70 Del. Laws, c. 197, § 7, effective July 10, 1995.

§ 2718. Local Government Investment Pool.

(a) The governing body or investing authority of a local government, meaning any city, town or county in Delaware, may pay moneys of the local government or organization into the Local Government Investment Pool which shall be in the custody of the State Treasurer. The State Treasurer shall invest the funds in the same manner and the same types of investments and subject to the same limitations provided for the deposit and investment of state funds. Funds of the local governments may be combined with funds of the State while invested in the Pool.

(b) The State Treasurer shall adopt such rules as are necessary for the administration of this Investment Pool including specification of minimum amounts which may be paid into the Pool and minimum periods of time for which such payments shall be retained in the Pool. Administrative expenses shall be handled by the Office of the State Treasurer. Earnings shall be equitably prorated among the local governments in the Pool based upon the amount and length of time the moneys are on deposit in the Pool.

(c) Local government accounts shall remain confidential while in the custody of the State Treasurer. Public records available through the local government will be sufficient public record of the funds on deposit with the Local Government Investment Pool.

(68 Del. Laws, c. 278, § 4; 70 Del. Laws, c. 29, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 378, § 45; 76 Del. Laws, c. 280, § 129.)

§ 2719. Expense of issuing bonds.

The annual operating budget shall authorize an appropriation for the Expense of Issuing Bonds in State Treasurer, Debt Management for payment of expenses relating to the issuance of state long-term debt. Disbursement from the Expense of Issuing Bonds appropriation shall not be made without the prior approval of the State Treasurer and the Secretary of Finance.

(73 Del. Laws, c. 310, § 10.)

§ 2720. Delaware Council on Volunteer Fire Service.

(a) There is hereby created a Delaware Council on Volunteer Fire Service, hereinafter referred to as the Council, to advise the Secretary of Finance on all matters relating to the administration, implementation and financing of the Volunteer Fire Service Revolving Loan Fund Program. The Council shall review and recommend to the Secretary of Finance for adoption, after a public hearing, criteria for administering and awarding loans from the Volunteer Fire Service Revolving Loan Fund, including but not limited to criteria for assessing recipient need.

(b) The Council shall consist of:

(1) The President of the Delaware Volunteer Firefighter's Association or designee;

(2) The Chairperson of the State Fire Prevention Commission or designee; and

(3) Three members; 1 each appointed by the Presidents of the New Castle, Kent, and Sussex County Firemen's Associations no later than September 1 for the initial appointment and January 15 of each calendar year thereafter.

a. Initial appointments shall be for staggered terms. The member from Sussex County's initial term shall be for 3 years, the member from Kent County's initial term shall be for 2 years, and the member from New Castle County's initial term shall be for 1 year.

b. Upon expiration of the preceding terms, subsequent appointments shall be for a 3-year term.

c. At the end of a member's term, such member shall continue to serve until the member's successor is duly appointed;

(4) The State Treasurer or designee; and

(5) The Secretary of Finance or designee.

(c) The Secretary of Finance shall serve as the chair of the Council.

(d) Members of the Council shall receive no compensation. The Council shall hold at least 1 regular meeting each calendar year and shall keep a record of its proceedings. All proceedings of the Council shall be conducted in accordance with Chapter 100 of this title.

(e) For purposes of conducting business of the Council, 4 voting members shall constitute a quorum. A majority vote of Council members shall be required on any action or matter before the Council.

(f) The Council shall adopt procedural rules and regulations to carry out the provisions of this chapter.

(73 Del. Laws, c. 434, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 378, § 1.)

§ 2721. Delaware Volunteer Fire Service Revolving Loan Fund.

(a) A special fund appropriation account is hereby created in the Department of Finance, to be known as the Delaware Volunteer Fire Service Revolving Loan Fund, hereinafter referred to as the Fund. Sums appropriated by the General Assembly, received from any county of this State, or donated by any person, corporation, or charitable organization to the Fund shall be used to create a loan program to be administered according to guidelines and procedures developed by the Delaware Council on Volunteer Fire Service to upgrade equipment and improve facilities that are essential to providing adequate fire, rescue, emergency medical, and technical emergency response related service to Delaware communities. Loan funds received from a county must be used on upgrading equipment and facilities located within that county. Loan funds must not be made available for equipment that has already been ordered or the expansion of facilities or parking that has already begun, except where such expansion is deemed necessary to provide adequate fire, rescue and emergency medical and technical emergency response services to the surrounding community by the Delaware Council on Volunteer Fire Service. The Fund shall serve as a revolving loan account and shall be eligible to receive loan repayments. The Fund shall be deemed a special fund and shall be approved by the Governor for the following purposes:

(1) To accept and retain the funds and revenues appropriated by the General Assembly, received from any county of this State, or donated by any person, corporation, or charitable organization.

(2) To make loans to eligible volunteer fire, rescue, and emergency medical service companies meeting the criteria established under this section.

(3) To buy or refinance debt obligations of eligible volunteer fire, rescue, and emergency medical service companies.

(4) To facilitate the pledging by an eligible fire, rescue, and emergency medical service company of its state grant-in-aid and health insurance rebate funds as collateral for securing a loan from the Fund.

(5) To earn interest on amounts on deposit in such Fund.

(6) To establish all necessary interest bearing accounts for deposit of loan repayments.

(7) To finance the reasonable costs incurred by the State in the administration of the Fund.

(b) The Council shall develop a competitive process to approve loan applications for improving fire, rescue, emergency medical and technical emergency response services throughout the State and, in connection therewith, shall develop criteria to assess the relative needs for fire service and loan assistance throughout the State. Such criteria shall include and shall give highest priority to, but shall not be limited to, consideration of the financial need of the fire, rescue, and emergency medical service companies and the surrounding community. In addition, the Council shall consider:

(1) The financial assets of the volunteer fire, rescue, and emergency medical service company making the application, as well as its ability to obtain revenue, income and financial support and loans from outside sources;

(2) The age and existing conditions of the volunteer fire, rescue and emergency medical service company's apparatus, equipment, or facilities, including, but not limited to, whether such apparatus, equipment and facility are in compliance with National Fire Protection Association standards; and

(3) The demographic, geographic and financial conditions of the community served by the volunteer fire, rescue and emergency medical service company making the application.

(c) The Council shall be required to submit a strategic plan for accomplishing the goals to be met by the Fund and a procedure for the application process by January 31, 2003. Such plan shall contain the guidelines and procedures for the administration of the program and shall be presented to the cochairs of the Joint Legislative Committee on Capital Improvement Programs. No funds shall be loaned from the Delaware Volunteer Fire Service Revolving Loan Fund until the cochairs of the Joint Legislative Committee on Capital Improvement Programs have reviewed and approved the plan.

(d) Upon the request of the Council, subsequent to approval of an application in accordance with this subsection, the State Treasurer is authorized to release funds appropriated to the Volunteer Fire Service Revolving Loan Fund sufficient to make such loans.

(e) The Council shall submit an annual report to the Governor and cochairs of the Joint Legislative Committee on Capital Improvement programs by October 15 of each succeeding year.

(73 Del. Laws, c. 434, § 2; 85 Del. Laws, c. 213, § 1.)

§ 2722. Plans Management Board.

(a) *Establishment; purposes. #*

The Plans Management Board is established. The Board's purpose is to administer the Delaware DE529 Education Savings Plan established pursuant to subchapter XII, Chapter 34 of Title 14, the Delaware Achieving a Better Life Experience Program established pursuant to Chapter 96A of Title 16, the Deferred Compensation Program established pursuant to Chapter 60A of this title, and the Expanding Access for Retirement and Necessary Saving Program (EARNS) established pursuant to Chapter 38 of Title 19 (collectively, "the Plans"), in each case, in accordance with the individual purposes of each of the Plans.

(b) *Composition.* — The Board shall be composed of 11 members as follows:

(1) The following persons shall serve by virtue of their position and may appoint a person to serve in their stead and at their pleasure:

a. The State Treasurer.

b. The Secretary of Finance.

c. The Director of the Office of Management and Budget.

d. The Insurance Commissioner.

e. The Secretary of Education.

(2) Two state employees shall be appointed by the Governor, 1 of whom shall be eligible to participate in the deferred compensation program established in accordance with § 403(b) of the Internal Revenue Code [26 U.S.C. § 403(b)].

(3) Four public members, who by reason of education or experience are qualified to serve, shall be appointed by the Governor.

(c) *Term of appointed members; conduct of meetings.* — (1) Each appointed member shall be appointed to serve a term of up to 3 years. Members shall be appointed for staggered terms, so that no more than 2 appointed members' terms shall expire in any 1 calendar year. Appointed members shall be eligible for reappointment.

(2) Each member of the Board shall have 1 vote and the powers of the Board shall be exercised by a majority vote of all members present; provided that a majority of current members shall constitute a quorum necessary to hold a meeting of the Board.

(3) There shall be a Chairperson of the Board who shall be appointed by the Governor from among the public members appointed by the Governor, to serve at the pleasure of the Governor.

(4) The Board shall meet as often as shall be necessary to properly discharge its duties; provided, however, that the Board shall meet at least 4 times annually; and provided further, that the State Treasurer or the Chairperson of the Board shall be authorized to call special meetings of the Board and to set the agenda for these meetings.

(5) Meetings and/or documents relating to investment strategy or negotiations concerning investment of money belonging to the Plans shall be exempt from Chapter 100 of this title.

(d) *Standard of care.* — (1) With respect to the Deferred Compensation Program, and the EARNS Program, (Programs) the Board, its subcommittees, and each of their members shall discharge their duties with respect to the Programs solely in the interest of the participants and beneficiaries of the Programs and for the exclusive purpose of providing Programs' benefits to the participants and their beneficiaries, including defraying reasonable expenses of administering the Programs, with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the Programs.

(2) With respect to the DE529 Education Savings Plan ("Plan") and Delaware Achieving a Better Life Experience Program ("Program"), the Board, its subcommittees, and each of their members shall discharge their duties with respect to the Plan and Program in accordance with the implementing Plan and Program trust documents and applicable law. When investing, managing, or using trust assets, the Board, its subcommittees, and each of their members shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the Plan and Program. The Board may authorize the use of administrative fees from the Plan and Program to defray reasonable expenses of administering each Plan and Program, including marketing expenses, and to fund scholarship, match, or promotional programs as the Board, in its discretion, may establish.

(e) *Powers and duties of Board.* — (1) The Board is authorized and empowered to adopt rules and regulations for the general administration of its duties.

(2) The Board is authorized and empowered to establish subcommittees. Subcommittees may include persons who are not members of the Board.

(3) The Board is authorized and empowered to make and enter into any and all contracts, agreements, or arrangements for goods and services necessary or desirable for carrying out the purposes of any of the Plans.

(4) The Board shall have the power and duty to maintain, invest, and reinvest the funds contributed into the Plans consistent with the standard of care set forth in subsection (d) of this section.

(5) The Board shall approve the annual budget for each of the Plans and the collection of application, account, and administrative fees from the assets of each Plan in order to defray all costs of the Plans, to the extent permitted by law.

(6) The Board in the exercise of its sole discretion and without liability is specifically authorized to remove any of the Plans' funds from any financial institution and to reinvest the funds in a similar or different investment alternative at another financial institution at any time.

(7) The Board shall arrange for an annual financial audit of each of the Plans, which shall be provided annually to the General Assembly. The Board shall enter into a memorandum of understanding with the Auditor of Accounts regarding each such audit, and payment for each such audit shall be approved by the Board.

(8) The use of teleconferencing or videoconferencing is authorized for use in conducting meetings of the Board and its subcommittees, including in order to obtain a quorum and for voting purposes.

(9) Assume the powers and duties of the Delaware EARNS Program Board established under Chapter 38 of Title 19.

(f) *Compensation; indemnification.* — (1) Members may not receive compensation for serving on the Board or its subcommittees. Except for ex officio members, all members are entitled to reimbursement by the State for travel and other expenses incurred in attending meetings of the Board or a subcommittee. A state employee appointed to the Board under paragraph (b)(2) of this section is permitted to count the time spent attending or traveling to and from Board meetings (as well as participation on subcommittees, selection committees, and their like) as part of the employee's regular work day and may not be required to expend leave time.

(2) The Board, its subcommittees, and each of their members is entitled to the immunities under Chapter 40 of Title 10, and in addition, a member of the Board or a subcommittee is not liable for any act or omission made during the member's tenure on the Board or a subcommittee, or for any loss incurred by any person as a result of participation in any of the Plans. Further, the State shall indemnify each Board or subcommittee member who is a party to or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, arising by reason of such member's participation on the Board or a subcommittee, against any expenses (including attorneys' fees if the Attorney General determines that such Board or subcommittee member is not entitled to representation by the State), judgments, fines, and amounts paid in settlement actually and reasonably incurred by that member in connection with such action, suit, or proceeding, if that member acted in good faith and in a manner that member reasonably believed to be in the best interest of the State, and with respect to any criminal action or proceeding, so long as that member had no reasonable cause to believe that the member's conduct was unlawful. Any expenses incurred by such Board or subcommittee member in defending a civil, administrative, or investigative action, suit, or proceeding may be paid by the State in advance of the final disposition of such action, suit, or proceeding on authorization by a majority of the members of the Board and by the Governor.

(g) *Administrative support.* — The Board shall receive administrative support from the Office of the State Treasurer.

(80 Del. Laws, c. 295, § 4; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 174, § 1; 83 Del. Laws, c. 405, § 2; 83 Del. Laws, c. 413, § 9.)

Part III
State Offices Created by Constitution

Chapter 29
Auditor of Accounts

§ 2901. Definitions.

As used in this chapter:

(1) “Audit” includes a performance audit.

(2) “Auditor” means the Auditor of Accounts.

(3) “State agency” means every department, bureau, division, officer, board or commission of the State.

(29 Del. C. 1953, § 2901; 84 Del. Laws, c. 443, § 1.)

§ 2902. Salary.

The annual salary of the Auditor shall be $24,000.

(Code 1852, § 470; 24 Del. Laws, c. 92, § 1; Code 1915, § 393; 37 Del. Laws, c. 51, § 2; Code 1935, § 367; 45 Del. Laws, c. 76, § 3; 47 Del. Laws, c. 246, § 2; 29 Del. C. 1953, § 2902; 54 Del. Laws, c. 57, § 4; 55 Del. Laws, c. 404, § 4; 57 Del. Laws, c. 329, § 3; 61 Del. Laws, c. 539, § 3.)

§ 2903. Bond.

(a) The Auditor, before entering upon office, shall with sufficient sureties become bound to the State by a joint and several obligation, to be with the sureties approved by the Governor in the penal sum of $2,000 with condition “that if the above named ..... who has been (duly appointed or duly elected) to be ..... shall do well and diligently execute the office of ..... and duly and faithfully fulfill and perform all the trusts and duties to the office appertaining and truly and without delay deliver to the successor in office the seal and all the books, records and papers belonging to the office, safe and undefaced, then this obligation shall be void and of no effect or else shall remain in full force and virtue.”

(b) The obligation shall be filed and recorded in the Recorder’s office of Kent County.

(c) If any person elected or appointed Auditor shall not, within 7 days next after the day of taking office, become bound as required under this section, the appointment or election shall be void, and another person shall be appointed.

(Code 1852, §§ 457-459; 11 Del. Laws, c. 17; 24 Del. Laws, c. 90; Code 1915, § 385; 32 Del. Laws, c. 25; Code 1935, § 359; 29 Del. C. 1953, § 2903; 70 Del. Laws, c. 186, § 1.)

§ 2904. Deputy; appointment, compensation and powers.

The Auditor may appoint a Deputy at an annual salary of $11,000. The Deputy shall take the oath of office and shall act in the absence or disability of the Auditor when so designated by that official and may at all times countersign checks and drafts in the name of the Auditor if so authorized by the Auditor. The Deputy shall at all times be removable by the Auditor.

(Code 1915, § 538A; 30 Del. Laws, c. 47; Code 1935, §§ 373A, 422; 41 Del. Laws, c. 78; 45 Del. Laws, c. 75, § 1; 48 Del. Laws, c. 150, § 1; 29 Del. C. 1953, § 2904; 49 Del. Laws, c. 216; 54 Del. Laws, c. 57, § 5; 55 Del. Laws, c. 404, § 5; 70 Del. Laws, c. 186, § 1.)

§ 2905. Certification of amounts due from justices of peace [Repealed].

Repealed by 65 Del. Laws, c. 259, § 1, effective Apr. 28, 1986.

§ 2906. Duties of the Auditor of Accounts.

(a) The Auditor shall conduct audits of all the financial transactions of all state agencies. To the extent possible, the Auditor shall conduct the audits at least once every 2 years.

(b) At least quarterly during each fiscal year, the Auditor shall conduct an audit to determine if the books and records maintained by the Office of the Secretary of Finance are kept in accordance with generally accepted accounting principles and are reconciled with the bank accounts. At the same time, the Auditor shall reconcile the records maintained by the Office of the Secretary of Finance with the fund balances maintained and reported by the Director of the Office of Management and Budget.

(c) The Auditor has sole responsibility for the arrangements under which a state agency audit is conducted and for selecting a certified public accountant who makes the audit. Another state agency or state agency member, official or employee may not have any part in, or responsibility for, selecting a certified public accountant, or making any arrangements, agreements or contracts for the employment of a certified public accountant to make a state agency audit.

(d) As the Auditor authorizes, expenses incurred during an audit of a state agency are charged as follows:

(1) To general fund appropriations of the General Assembly to the Office of Auditor of Accounts for audits of general fund activity.

(2) To capital appropriations of the General Assembly to the several agencies for audits of capital fund activity.

(3) To general fund appropriations and special fund accounts for audits of special fund activity. If there is a question about which account to charge, then the account selected by agreement between the Auditor and the Director of the Office of Management and Budget is charged.

(e) This section does not affect § 5109 of Title 14. Any other provision which stands in conflict with this section is void.

(f) The Auditor shall conduct an annual audit of local school district tax funds budget and expenditures. The results of an audit must be submitted to the local board, the State Board of Education, the Office of the Controller General, and the local libraries within the local school district. A local school district shall pay the expenses incurred during the annual audit of the local school district's tax funds budget and expenditures.

(g) The Auditor shall conduct an audit of all agencies, associations, and funds created directly or indirectly by the provisions of Title 18 or by the Insurance Commissioner.

(h) The Auditor shall conduct an audit of the State-funded portion of the finances of the University of Delaware as authorized by § 5109 of Title 14. The contractor conducting the audit must be selected jointly by the University of Delaware and the Auditor of Accounts.

(29 Del. C. 1953, § 2906; 54 Del. Laws, c. 39, § 9; 56 Del. Laws, c. 322, § 1; 57 Del. Laws, c. 45, § 1; 65 Del. Laws, c. 263, § 1; 68 Del. Laws, c. 317, § 1; 68 Del. Laws, c. 428, § 1; 69 Del. Laws, c. 64, § 79; 73 Del. Laws, c. 310, § 8; 75 Del. Laws, c. 88, § 21(13); 84 Del. Laws, c. 443, § 2.)

§ 2907. Scope of audits.

(a) An audit must provide reasonable assurance of all of the following:

(1) That efforts have been made to collect all moneys due the State.

(2) That all moneys collected or received by any employee or official have been deposited to the credit of the State.

(3) That all expenditures have been legal and proper and made only for the purposes contemplated in the funding acts or other pertinent regulations.

(b) An audit must be made in accordance with generally-accepted government auditing standards issued by the United States Government Accountability Office.

(29 Del. C. 1953, § 2907; 54 Del. Laws, c. 39, § 9; 57 Del. Laws, c. 45, § 2; 84 Del. Laws, c. 443, § 3.)

§ 2908. Clerical and professional assistance.

(a) Subject to appropriation limitations, the Auditor may:

(1) Employ such qualified office personnel and trained and experienced field personnel as are required to carry out such duties; and

(2) Engage the services of public accountants to make audits of selected agencies.

(b) If public accountants are hired, the individual or firm hired must be licensed to practice as a certified public accountant within the State.

(29 Del. C. 1953, § 2908; 54 Del. Laws, c. 39, § 9; 70 Del. Laws, c. 186, § 1.)

§ 2909. Audit reports.

(a) The Auditor shall file a written report covering the Auditor's audit with the state agency concerned, the Governor, the General Assembly, the Attorney General and the Director of the Office of Management and Budget. The Auditor may present special reports to the General Assembly for consideration and action.

(b) An audit report must include at least all of the following:

(1) Whether all expenditures have been for the purpose authorized in the relevant appropriation.

(2) Whether all receipts have been accounted for and paid into the State Treasury as required by law.

(3) All illegal or unbusinesslike practices.

(4) Recommendations for greater simplicity, accuracy, efficiency and economy.

(5) Data, information, and recommendations the Auditor considers necessary.

(29 Del. C. 1953, § 2909; 54 Del. Laws, c. 39, § 9; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(13); 84 Del. Laws, c. 443, § 4; 85 Del. Laws, c. 68, § 42.)

§ 2910. Subpoena power.

(a) In connection with other powers of the Auditor of Accounts, the Auditor shall have the power to subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of books, papers, records, or other evidence needed for the performance of the Auditor's duties or exercise of the Auditor's powers.

(b) A subpoena issued under this section is effective throughout this State.

(c) Service of such a subpoena may be made by the Auditor, the Auditor's deputy, or other staff designated by the Auditor for purpose of serving a subpoena as follows:

(1) Where the person served is an individual person, by 1 of the following:

a. Serving the person to whom it is addressed personally.

b. Leaving it at the person's usual place of abode with an individual of suitable age and discretion residing therein.

c. Sending it by certified mail to the last known address of the person to whom the subpoena is addressed.

(2) Where the person served is a corporate or other entity, by 1 of the following:

a. Serving the registered agent personally or by certified mail.

b. Serving any individual authorized to accept service on behalf of the entity personally at that individual's usual place of business, the place of business of the entity, or by certified mail.

(d) If a properly served recipient of a subpoena fails or refuses to respond, the Superior Court may, upon application by the Auditor, issue an order requiring the recipient of the subpoena to appear before the Auditor in response to the subpoena. Failure to obey such an order may be punished by the court as a contempt thereof.

(64 Del. Laws, c. 205, § 1; 70 Del. Laws, c. 186, § 1; 85 Del. Laws, c. 55, § 1.)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 31
Sustainable Delaware Commission

§ 3101. Creation and membership.

(a) Recognizing that promoting global sustainability, which focuses on the long-term impacts of actions and policies on the environment, people, and communities, the General Assembly hereby establishes the Sustainable Delaware Commission. The Commission shall adopt a mission and goals to make the State sustainable in at least 2 respects: as an employer and entity, and in creating the infrastructure in Delaware to support voluntary sustainability among Delaware entities. The General Assembly further recognizes the role that sustainability initiatives can play in improving communities throughout Delaware in addition to serving as a tool for economic development. The Commission shall research opportunities for sustainable policies and practices that improve community services, including those that cross service areas (such as transportations, land use, education, health, labor force development, and environmental quality) and require coordination and collaboration across levels of government and across public, private and nonprofit institutions.

(b) The Commission shall consist of the following members or their designees:

(1) The Secretary of Transportation;

(2) The Secretary of the Department of Natural Resources and Environmental Control;

(3) The Secretary of Human Resources;

(4) The Director of the Office of Management and Budget;

(5) The Secretary of State;

(6) The Controller General;

(7) Two members of the Senate, 1 from each caucus, appointed by the President Pro Tempore;

(8) Two members of the House, 1 from each caucus, appointed by the Speaker of the House;

(9) The President of the University of Delaware;

(10) The President of Delaware State University;

(11) The President of Delaware Technical and Community College;

(12) The Mayor of the City of Wilmington; and

(13) Six business and community leaders appointed by the Governor.

(c) The Commission shall have a Chair and Vice Chair appointed by the Governor from among the members of the Commission. The Commission may appoint subcommittees and work groups to address areas of focus that include experts and stakeholders who may not be members of the Commission.

(81 Del. Laws, c. 280, § 82.)

§ 3102. Powers and duties.

The powers and responsibilities of the Commission shall include:

(1) Research, study, advise and recommend to the Governor and/or General Assembly on matters it deems appropriate relating to both sustainability and community engagement.

(2) Recommend programs and policies to attract and retain the creative labor force needed for Delaware’s long-term development as a model of sustainable prosperity.

(3) Recommend programs and policies to support sustainable practices in government at all levels, specifically those that enhance the use of data, analytics and technology to improve services.

(4) Coordinate and advise all departments and agencies of the State on matters pertaining to sustainability and community engagement.

(5) Provide government, business and community institutions with information and analysis on options for sustainable practices in all sectors.

(6) Recommend changes in state law, regulations, policies and procedures that are desirable to achieve improvements in sustainable practices in all sectors.

(7) Develop partnerships to further develop Delaware’s leadership role in sustainability and community engagement, within the State, nationally and internationally.

(8) Advise Delaware local governments on the use of data, analytics and technology to improve community services and provide analysis on options for sustainable development.

(9) Evaluate the local impacts of state policies and practices on sustainability practices.

(10) Carry out demonstration projects that may be scaled to benefit other Delaware localities.

(11) Initiate, review and/or sponsor legislation pertaining to or impacting sustainability and community engagement in Delaware.

(12) Recommend changes in state regulations, policies, and procedures that are desirable to achieve community-based sustainability practices.

(13) Seek funding and investment from all sectors to further its mission and goals.

(14) Develop and administer a grant program to further its mission and goals.

(15) Take all other actions the Commission deems in support of global sustainability and community efforts in Delaware.

(81 Del. Laws, c. 280, § 82.)

§ 3103. The Sustainable Delaware Research Consortium.

The Commission's programs shall be carried out by a Sustainable Delaware Research Consortium which shall be established at the University of Delaware's School of Public Policy and Administration. Funding shall support operations including research, policy analysis, and demonstration projects that promote the Commission's Sustainable Delaware initiatives. Grants for demonstration projects shall be allocated to eligible partnerships that will include a Delaware public higher education institution.

(81 Del. Laws, c. 280, § 82.)

§ 3104. Annual report.

The Commission shall submit an annual report on its activities and recommendations to the Governor and the General Assembly.

(81 Del. Laws, c. 280, § 82.)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 32
Delaware Heritage Commission

§ 3201. Creation and membership; termination.

(a) The Delaware Heritage Commission is established and shall be composed of 17 members, 15 of whom shall be citizens of the State appointed by the Governor and 2 of whom shall be ex officio. Appointed members shall serve terms of up to 3 years, excepting the Chairperson, who shall serve at the pleasure of the Governor. Members shall be appointed for staggered terms, so that no more than 5 members' terms shall expire in any 1 calendar year.

(b) Members of the Commission shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Commission.

(c) The Director of the Division of Historical and Cultural Affairs and the Director of the Delaware Public Archives shall serve as ex officio voting members of the Commission.

(1) The Director of the Delaware Public Archives shall be a voting member by virtue of his or her administrative duties overseeing the Delaware Heritage Office, as set forth in § 3202(b) of this title, and the responsibilities of his or her office under regulations established by the National Historical Publications and Records Commission of the National Archives and Records Administration.

(2) The Commission may appoint such other representatives of government agencies and nonprofit organizations as it may deem appropriate to appoint and they shall be ex officio, nonvoting members. The Commission may create subcommittees, which may consist of nonmembers, to facilitate its work.

(d) Members of the Commission shall be eligible for reappointment.

(29 Del. C. 1953, § 9901; 58 Del. Laws, c. 179; 61 Del. Laws, c. 319, §§ 1, 2; 65 Del. Laws, c. 25, § 1; 67 Del. Laws, c. 323, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 364, §§ 1, 2; 73 Del. Laws, c. 65, § 31; 76 Del. Laws, c. 318, § 1; 78 Del. Laws, c. 328, § 2; 79 Del. Laws, c. 222, § 1.)

§ 3202. Delaware Heritage Office; personnel thereof.

(a) There is hereby established the Delaware Heritage Office of the Delaware Public Archives.

(b) The Delaware Heritage Office may employ such personnel as the Secretary of State, in consultation with the Director of the Public Archives and the Commission, shall determine to be necessary to perform the work of the said Office. Such personnel shall be State Merit System employees and shall be hired through the Merit System employment process. The Office shall be under the administrative authority of the Director of the Public Archives and shall assist the Commission in carrying out its duties and functions as set forth in § 3203 of this title.

(29 Del. C. 1953, § 9902; 58 Del. Laws, c. 179; 61 Del. Laws, c. 319, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 318, § 2; 78 Del. Laws, c. 328, § 3.)

§ 3203. Powers and duties.

(a) The Commission shall plan, encourage, develop, coordinate and implement observances and activities pertaining to the achievement in Delaware of liberty and independence through a constitutional government, and the significant historical events that occurred in Delaware or involved Delaware citizens during the years preceding and following the ratification and adoption of the Constitution of the United States.

(b) In carrying out its duties, the Commission shall consider any related plans and programs developed by national organizations, the organizations of other states, local and private groups, and the Commission may designate representatives to serve on special committees, organizations, nonprofit organizations or other entities with representatives from such bodies to plan, develop and coordinate specific activities.

(c) [Repealed.]

(d) The Commission shall have the authority to organize a nonprofit corporation to assist the Commission in the formulation and execution of its plans; to solicit and receive subscriptions, donations and other funds from public and private sources for organizing and carrying on the undertaking; to negotiate with public or private organizations or persons on terms for approval or endorsement of Commission-related programs or projects; to acquire and hold by gift or otherwise real and other property with full right to convey or dispose of the same in such manner and upon such terms as the corporation may determine, either absolutely or upon condition; to contract with and employ consultants or other agents; to adopt or enforce such bylaws, rules and regulations as the corporation may, from time to time, deem advisable.

(e) The Commission shall, no later than December 31 of each year, submit to the Governor and to the General Assembly an annual report of the Commission's activities and recommendations. Such activities and recommendations may include but are not limited to:

(1) The production, publication and distribution of books, pamphlets, films and other educational materials on the history, culture and political thought of this nation and State;

(2) Bibliographical and documentary projects and publications;

(3) Conferences, convocations, lectures, seminars and other programs;

(4) The development of permanent memorials and exhibits, including mobile exhibits;

(5) Ceremonies and celebrations commemorating specific events;

(6) Programs and activities on the local, national and international significance of the American Democracy and its implications for present and future generations;

(7) The issuance of commemorative medals, seals, automotive license plates and certificates of recognition;

(8) The issuance of grants for projects related to Delaware heritage.

(f) The report of the Commission shall include recommendations for the allocation of financial and administrative responsibility among the public and private authorities and organizations recommended for participation by the Commission. The report shall also include proposals for legislation and administrative action the Commission considers necessary to carry out its recommendations.

(g) The Commission shall consider matters relating to archives and archival standards throughout the State, and such other matters as may be referred to it by the Governor, the Secretary of State or the General Assembly. The Commission may study, research, plan and make advisory recommendations to the Governor, the Secretary of State or the General Assembly on matters it deems appropriate to provide the best possible archive service in Delaware and to ensure the proper management, preservation, stewardship and use of public and private records of historical value.

(h) The Commission shall serve as the state historical records advisory board for the purposes of satisfying regulations established by the National Historical Publications and Records Commission of the National Archives and Records Administration. The Commission will complete all activities required by the National Historical Publications and Records Commission for the State Historical Records Advisory Board.

(29 Del. C. 1953, § 9903; 58 Del. Laws, c. 179; 61 Del. Laws, c. 319, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 318, § 3; 78 Del. Laws, c. 328, § 4.)

§ 3204. Cooperation.

(a) In fulfilling its responsibilities, the Commission shall consult, cooperate with and seek advice from appropriate state departments and agencies, local public bodies, learned societies and historical, patriotic, philanthropic, civic, professional and related organizations. Heads of state departments and agencies shall cooperate with the Commission in planning, encouraging, developing and coordinating appropriate commemorative activities.

(b) The Commission may identify sites within the State that are appropriate for preservation or restoration in order to assure that fitting observances and exhibits may be held.

(c) The officials of each state-supported school, college or university shall cooperate with the Commission, especially in the encouragement and coordination of scholarly works and presentations on the history, culture and political thought of this Nation and State.

(29 Del. C. 1953, § 9904; 58 Del. Laws, c. 179; 61 Del. Laws, c. 319, §§ 1, 2; 78 Del. Laws, c. 328, § 5.)

§ 3205. Donations; preservation of acquisitions; expenditures.

(a) The Commission may accept donations of money, property or personal services.

(b) Property, including money, acquired by the Commission or by its nonprofit corporation as provided for under the provisions of § 3203 of this title shall be deposited with the Secretary of State, for the sole and exclusive use of the Commission, for preservation and financial management.

(c) [Repealed.]

(29 Del. C. 1953, § 9905; 58 Del. Laws, c. 179; 61 Del. Laws, c. 319, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 318, § 4; 78 Del. Laws, c. 328, § 6.)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 33
Delaware Compensation Commission

§ 3301. Established; composition; qualifications; terms of office.

There is established a commission known as the "Delaware Compensation Commission," hereinafter referred to as the "Commission," consisting of 6 members, 2 of whom shall be appointed by the Governor, 1 by the President Pro Tempore of the Senate and 1 by the Speaker of the House of Representatives. The fifth member shall be the President of the Delaware Round Table. The Secretary of the Department of Human Resources of the State shall serve as an ex officio and nonvoting member of the Commission. The appointees shall be persons not holding any public office nor employed substantially full-time with compensation by this State while serving on this Commission. Those appointed shall serve for a 6-year term. Any member is eligible for reappointment.

(64 Del. Laws, c. 449, § 1; 75 Del. Laws, c. 88, § 20(6); 81 Del. Laws, c. 66, § 22.)

§ 3302. Chairperson; expenses.

The Commission shall elect 1 of its members chairperson. Members of the Commission shall be reimbursed for actual and necessary expenses, including mileage, incurred while performing the duties imposed by this chapter. The costs and expenses of the Commission shall be paid out of funds appropriated to the Governor's office.

(64 Del. Laws, c. 449, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3303. Remuneration study; report.

(a) The Commission shall make a study of the salaries, emoluments, mileage, per diem, travel and other expense allowances and reimbursements (hereinafter collectively referred to as "remuneration") of the members of the General Assembly, the Governor, members of the Governor's cabinet, the Lieutenant Governor, the State Auditor, the State Treasurer, the Attorney General, the Insurance Commissioner, the Justices of the Supreme Court, the Chancellor and Vice-Chancellors of the Court of Chancery and all judges and court commissioners of the Superior Court, the Court of Common Pleas and the Family Court, the Chief Magistrate, the justices of the peace and the Chief Defender.

(b) On January 1, 1985, the Commission shall submit to the Governor, the Chief Justice, the President Pro Tempore of the Senate and the Speaker of the House of Representatives its first report establishing such remuneration. Thereafter, the Commission shall cause a report to be prepared every 4 years and submitted on the first day of the session of the General Assembly. The rate of remuneration established in the report for offices which salaries are more than $25,000, except for the Governor shall not exceed 120% of the remuneration received in the fiscal year in which the report is submitted. All departments and divisions of the State shall cooperate in furnishing to the Commission such information as the Commission may deem to be necessary to discharge its duties. With each report, the Commission shall include its recommendations to the Governor and General Assembly concerning pension benefits for members of the General Assembly, subject to the approval of the Board of Pension Trustees that such recommendations are based on reasonable actuarial assumptions and that such recommendations shall not require any additional state appropriation.

(64 Del. Laws, c. 449, § 1; 66 Del. Laws, c. 185, § 17; 67 Del. Laws, c. 281, § 10(c)(iii); 72 Del. Laws, c. 395, §§ 40, 44; 76 Del. Laws, c. 213, § 43; 80 Del. Laws, c. 26, § 1.)

§ 3304. Effect of Commission report.

The remuneration for all offices specified in § 3303 of this title established by the report shall take effect and have the force and effect of law as of the first day of the first full pay period of the fiscal year following submission, unless the General Assembly shall by joint resolution reject the report in its entirety within 30 days following the commencement of its session.

(64 Del. Laws, c. 449, § 1; 66 Del. Laws, c. 303, § 33; 68 Del. Laws, c. 290, § 10(e); 76 Del. Laws, c. 280, § 35; 85 Del. Laws, c. 62, § 10(b)(vii).)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 34
Commission on Natural Areas and Open Spaces Acquisition [Repealed].

§§ 3401, 3402. Establishment and composition; powers and duties [Repealed].

Repealed by 67 Del. Laws, c. 352, § 2, effective July 13, 1990.

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 35
Delaware Commission on Italian Heritage and Culture

§ 3501. Delaware Commission on Italian Heritage and Culture.

(a) There is hereby established a Delaware Commission on Italian Heritage and Culture hereinafter referred to as the Commission. The Commission shall consist of 9 members, all of whom shall be American citizens descended from Italian ancestry and residents of the State as follows:

(1) Three members appointed by the Speaker of the House of Representatives, 1 each for a term of 1, 2 and 3 years;

(2) Three members appointed by the President Pro Tempore of the Senate, 1 each for a term of 1, 2 and 3 years; and

(3) Three members appointed by the Governor, 1 each for a term of 1, 2 and 3 years, 1 of whom shall be designated as Chair.

After the initial appointments, all terms shall be for 3 years.

(b) Members of the Commission shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incidental to their duties.

(c) The Commission shall: establish, maintain and develop cultural ties between Italians and Italian-Americans; foster a special interest in the historical and cultural backgrounds of both groups, as well as in the economic, political, social, and artistic life of the countries involved; and help establish or promote Italian language programs in the schools of this State.

(d) This Commission shall fall under the authority of the Secretary of State and shall have such powers, duties and functions as hereinabove set forth and as may subsequently be assigned by the Secretary, and such other matters as may be referred to it by the Governor, the Secretary of State or the General Assembly.

(e) The Commission shall be given office space as established by the Secretary of State.

(f) A vacancy prior to the expiration of the term of a member of the Commission shall be filled for the remainder of the term.

(74 Del. Laws, c. 426, § 1; 78 Del. Laws, c. 43, §§ 1, 2.)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 36
Abraham Lincoln Bicentennial Act

§§ 3601-3605. Short title; legislative findings; establishment; duties; membership; number and appointment [Repealed].

Repealed by 75 Del. Laws, c. 422, § 6, effective Jan. 1. 2010.

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 37
Delaware Commission on Indian Heritage and Culture

§ 3701. Delaware Commission on Indian Heritage and Culture; creation and purpose.

The Delaware Commission on Indian Heritage and Culture ("Commission") is created to establish, maintain, and develop cultural ties between Indians and Indian-Americans; foster a special interest in the historical and cultural backgrounds of both groups, as well as in the economic, political, social, and artistic life of the countries involved; and help study, establish, or promote programs or events that will provide appropriate awareness of the culture, history, heritage, and language of Indians and Indian-Americans.

(80 Del. Laws, c. 407, § 1.)

§ 3702. Membership; qualifications; terms.

(a) The Commission shall consist of 9 members who are appointed as follows:

(1) Two members, appointed by the Speaker of the House of Representatives.

(2) Two members, appointed by the President Pro Tempore of the Senate.

(3) One member, appointed by the Delaware Asian American Business Association.

(4) One member, appointed by the Delaware Association of Physicians of Indian Origin.

(5) One member, appointed by Gujarati Samaj of Delaware.

(6) One member, appointed by the Indo-American Association of Delaware.

(7) One member, appointed by the India U.S. Society of Delaware.

(b) A member of the Commission must be a citizen of the United States descended from Indian ancestry and must hold a professional license in this State, own a business in this State, or reside in this State.

(c) The members of the Commission serve at the pleasure of the appointing authority.

(80 Del. Laws, c. 407, § 1.)

§ 3703. Organization; quorum.

(a) The Commission shall elect a Chair at its first meeting in a calendar year and the Chair shall serve until a replacement is elected. If the Chair becomes vacant, the Commission shall elect a new Chair at its next meeting.

(b) The Chair of the Commission has all of the following duties:

(1) Setting a date, time, and place for the meetings of the Commission.

(2) Supervising the preparation and distribution of meeting notices, agendas, minutes, and other documents prepared by or on behalf of the Commission.

(c) If the Chair becomes vacant, the Secretary of State, or the Secretary's designee, shall fulfill the duties of the Chair contained in subsection (b) of this section until a replacement is elected by the Commission.

(d) A majority of the membership of the Commission constitutes a quorum to conduct official business.

(80 Del. Laws, c. 407, § 1.)

§ 3704. Authority.

The Commission shall fall under the authority of the Secretary of State and shall have such powers, duties, and functions described in § 3701 of this title and such other duties and functions as may be referred to it by the Governor, the Secretary of State, or the General Assembly.

(80 Del. Laws, c. 407, § 1.)

§ 3705. Compensation.

The members of the Commission shall serve without compensation.

(80 Del. Laws, c. 407, § 1.)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 38
Delaware African and Caribbean Affairs Commission

§ 3801. The Delaware African and Caribbean Affairs Commission; creation and purpose.

The Delaware African and Caribbean Affairs Commission is created for the following purpose and functions:

(1) Provide the Governor, members of the General Assembly, and policy makers with recommendations required to promote the welfare and interests of all people of African descent who reside in the State.

(2) To work with various governmental agencies, business communities, and nonprofit organizations to meet the needs of people of African and Caribbean descent, including seeking funding from foundations and other sources to promote workforce and economic development of the community.

(3) To provide a platform for the promotion of cultural and historical heritage of any people of African descent.

(4) To facilitate the socioeconomic relationship between the African and Caribbean countries, citizens, and residents, and this State.

(81 Del. Laws, c. 21, § 1.)

§ 3802. Membership; qualifications; terms.

(a) The Commission shall consist of 7 members who are appointed as follows:

(1) Two members, appointed by the Speaker of the House of Representatives.

(2) Two members, appointed by the President Pro Tempore of the Senate.

(3) Two members, appointed by the Governor.

(4) One member, appointed by the President of the Delaware Africa Caribbean Coalition, from Delaware Africa Caribbean Coalition (DACC) members.

(b) The members of the Commission serve 3-year terms.

(81 Del. Laws, c. 21, § 1.)

§ 3803. Organization; quorum.

(a) The Commission shall elect a Chairperson at its first meeting in a calendar year and the Chair shall serve until a replacement is elected. If the Chair becomes vacant, the Commission shall elect a new Chairperson at its next meeting.

(b) The Chair of the Commission has all of the following duties:

(1) Setting a date, time, and place for the meetings of the Commission.

(2) Supervising the preparation and distribution of meeting notices, agendas, minutes, and other documents prepared by or on behalf of the Commission.

(c) If the Chair becomes vacant, the Secretary of State, or the Secretary’s designee, shall fulfill the duties of the Chair until a replacement is elected by the Commission.

(d) A majority of the membership of the Commission constitutes a quorum to conduct official business.

(81 Del. Laws, c. 21, § 1.)

§ 3804. Authority.

The Commission shall fall under the authority of the Secretary of State and shall have such powers, duties, and functions described in § 3801 of this title and such other duties and functions as may be referred to it by the Governor, the Secretary of State, or the General Assembly.

(81 Del. Laws, c. 21, § 1.)

§ 3805. Subcommittees; creation and purpose.

(a) The Commission may establish subcommittees to engage with other organizations in the State that share a similar mission to exchange ideas and information and provide those organizations the opportunity to serve the Commission.

(b) Any member of the Commission can make nominations of prospective subcommittee members and the Commission shall consider the nominations and make appointments to any subcommittee by majority vote of the Commission.

(81 Del. Laws, c. 21, § 1.)

§ 3806. Compensation.

All members of the Commission and any subcommittees established under the Commission shall serve without compensation.

(81 Del. Laws, c. 21, § 1.)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 39
Delaware Commission on Interstate Cooperation

§ 3901. Committees of the Senate, the House and the Governor.

(a) There shall be a standing committee of the Senate of the General Assembly to be known as the Senate Committee on Interstate Cooperation and to consist of 3 Senators. The members and the chairperson of this Committee shall be designated by the President Pro Tempore of the Senate.

(b) There shall be a similar standing committee of the House of Representatives of the General Assembly to be known as the House Committee on Interstate Cooperation and to consist of 3 members of the House of Representatives. The members and the chairperson of this committee shall be appointed by the Speaker of the House of Representatives.

(c) There shall be a committee of administrative officials and private citizens of Delaware to be known as the Governor's Committee on Interstate Cooperation and to consist of 3 members. The Governor shall appoint 1 of the 3 members of this Committee as its Chairperson. In addition to the regular members, the Governor shall be ex officio an honorary nonvoting member of this Committee.

(42 Del. Laws, c. 202, §§ 1-3; 29 Del. C. 1953, § 3901; 70 Del. Laws, c. 186, § 1.)

§ 3902. Function and term of legislative committees.

The Committee of the Senate and the Committee of the House of Representatives shall function during the regular sessions of the General Assembly and also during the interim periods between such sessions. Their members shall serve until their successors are designated. The Senate and House Committees shall respectively constitute for this State the Senate Council and the House Council of the American Legislators' Association. The term of each administrative member of this Commission shall extend until the 1st day of February of each year of the regular biennial session of the General Assembly and until such member's successor is appointed.

(42 Del. Laws, c. 202, § 5; 29 Del. C. 1953, § 3902; 70 Del. Laws, c. 186, § 1.)

§ 3903. Composition of Commission.

There shall be a Delaware Commission on Interstate Cooperation. This Commission shall be composed of 9 regular members, namely:

(1) The 3 members of the Senate Committee on Interstate Cooperation;

(2) The 3 members of the House Committee on Interstate Cooperation; and

(3) The 3 members of the Governor's Committee on Interstate Cooperation.

(42 Del. Laws, c. 202, § 4; 29 Del. C. 1953, § 3903.)

§ 3904. Functions of the Commission.

It shall be the function of the Commission to:

(1) Carry forward the participation of this State as a member of the Council of State Governments;

(2) Encourage and assist the legislative, executive, administrative and judicial officials and employees of this State to develop and maintain friendly contact by correspondence, by conference and otherwise with officials and employees of the other states, of the federal government and of local units of government;

(3) Endeavor to advance cooperation between this State and other units of government whenever it seems advisable to do so by formulating proposals for and by facilitating:

a. The adoption of compacts;

b. The enactment of uniform or reciprocal statutes;

c. The adoption of uniform or reciprocal administrative rules and regulations;

d. The informal cooperation of governmental offices with one another;

e. The personal cooperation of governmental officials and employees with one another individually;

f. The interchange and clearance of research and information; and

g. Any other suitable process;

(4) Do all such acts as will, in the opinion of this Commission, enable this State to do its part, or more than its part, in forming a more perfect union among the various governments in the United States and in developing the Council of State Governments for that purpose.

(42 Del. Laws, c. 202, § 6; 29 Del. C. 1953, § 3904.)

§ 3905. Powers of the Commission.

The Commission shall establish such delegations and committees as it deems advisable in order that they may confer and formulate proposals concerning effective means to secure intergovernmental harmony and may perform other functions for the Commission in

obedience to its decisions. Subject to the approval of the Commission, the member or members of each such delegation or committee shall be appointed by the Chairperson of the Commission. The Commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such delegation or committee. The Commission may provide for advisory boards for itself and for its various delegations and committees.

(42 Del. Laws, c. 202, § 7; 29 Del. C. 1953, § 3905; 70 Del. Laws, c. 186, § 1.)

§ 3906. Reports of Commission to the Governor.

The Commission shall report to the Governor and to the General Assembly within 15 days after the convening of each regular legislative session and at such other times as it deems appropriate.

(42 Del. Laws, c. 202, § 8; 29 Del. C. 1953, § 3906.)

§ 3907. Compensation of members; expenses; use of contributions.

(a) The members of the Commission and the members of all delegations and committees which it establishes shall serve without compensation for such service but shall be paid their necessary expenses in carrying out their obligations under this chapter.

(b) The Commission may:

(1) Appoint 1 of its members its Secretary;

(2) Employ a stenographer;

(3) Incur such other expenses as may be necessary for the proper performance of its duties; and

(4) By contributions to the Council of State Governments, participate with other states in maintaining the Council's district and central secretariats and its other governmental services.

(42 Del. Laws, c. 202, § 8; 29 Del. C. 1953, § 3907.)

§ 3908. Informal titles of Committees and Commission.

The Committees and the Commission established by this chapter shall be informally known, respectively, as the Senate Cooperation Committee, the House Cooperation Committee, the Governor's Cooperation Committee and the Delaware Cooperation Commission.

(42 Del. Laws, c. 202, § 9; 29 Del. C. 1953, § 3908.)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 40
Delaware Commission on Irish Heritage and Culture

§ 4001. Delaware Commission on Irish Heritage and Culture; creation and purpose.

The Delaware Commission on Irish Heritage and Culture ("Commission") is created to establish, maintain, and develop cultural ties between the Irish people and Irish-Americans; foster a special interest in the historical and cultural backgrounds of both groups, as well as in the economic, political, social, and artistic life of the countries involved; and help study, establish, or promote programs or events that will provide appropriate awareness of the culture, history, heritage, and language of the Irish people and Irish-Americans.

(81 Del. Laws, c. 255, § 1.)

§ 4002. Membership; qualifications; terms.

(a) The Commission shall consist of members who are appointed as follows:

(1) Two members, appointed by the Speaker of the House of Representatives.

(2) Two members, appointed by the President Pro Tempore of the Senate.

(3) One member, appointed by the Irish American Chamber of Commerce and Trade Council of Delaware.

(4) One member, appointed by the New Castle County Irish Society.

(5) One member, appointed by the St. Patrick's Day Society.

(6) Two members, appointed by the Irish Culture Club of Delaware, 1 of whom shall be from Kent County and 1 of whom shall be from Sussex County.

(7) One member, appointed by Governor.

(8) One member, appointed by the Lieutenant Governor.

(b) A member of the Commission may be a citizen of the United States or a person holding dual citizenship between the United States and the Nation of Ireland, the United Kingdom or any nation not hostile to the United States or the Nation of Ireland.

(c) The members of the Commission serve at the pleasure of the appointing authority.

(81 Del. Laws, c. 255, § 1.)

§ 4003. Organization; quorum.

(a) The Commission shall elect a Chair at its first meeting, to serve a 2-year term and the Chair shall serve until a replacement is elected. If the Chair becomes vacant, the Commission shall elect a new Chair at its next meeting.

(b) The Chair of the Commission has all of the following duties:

(1) Setting a date, time, and place for the meetings of the Commission.

(2) Supervising the preparation and distribution of meeting notices, agendas, minutes, and other documents prepared by or on behalf of the Commission.

(c) If the Chair becomes vacant, the Secretary of State, or the Secretary's designee, shall fulfill the duties of the Chair contained in subsection (b) of this section until a replacement is elected by the Commission.

(d) A majority of the membership of the Commission constitutes a quorum to conduct official business.

(81 Del. Laws, c. 255, § 1.)

§ 4004. Authority.

The Commission shall fall under the authority of the Secretary of State and shall have such powers, duties, and functions described in § 4001 of this title and such other duties and functions as may be referred to it by the Governor, the Secretary of State, or the General Assembly.

(81 Del. Laws, c. 255, § 1.)

§ 4005. Compensation.

The members of the Commission shall serve without compensation.

(81 Del. Laws, c. 255, § 1.)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 41
Racial Equity Consortium [Expires August 30, 2027, pursuant to 83 Del. Laws, c. 419, § 2]

(83 Del. Laws, c. 419, § 1.)

§ 4101. Racial Equity Consortium; establishment and purpose [Expires August 30, 2027, pursuant to 83 Del. Laws, c. 419, § 2].

The Racial Equity Consortium ("Consortium") is created. The Consortium shall coordinate efforts to identify and remove systemic inequities that impact people of color in this State.

(83 Del. Laws, c. 419, § 1.)

§ 4102. Consortium's duties [Expires August 30, 2027, pursuant to 83 Del. Laws, c. 419, § 2].

The Consortium shall do all of the following:

(1) Consider and work to implement the recommendations contained in the final report of the African American Task Force, which was created by 82 Del. Laws, c. 243, § 39.

(2) Provide advice and support to state agencies regarding the state agencies' role in identifying and eliminating disparities and inequities experienced by persons of color in this State.

(3) Facilitate collaborative partnerships between government agencies, nonprofit agencies, private sector agencies, and all other interested parties and organizations to eliminate racial inequities and disparities in this State.

(4) Recommend legislation and regulations to address inequities and disparities experienced by persons of color in this State.

(83 Del. Laws, c. 419, § 1.)

§ 4103. Consortium membership; term of office [Expires August 30, 2027, pursuant to 83 Del. Laws, c. 419, § 2].

(a) The Consortium is composed of the following members, or a designee selected by a member serving by virtue of position:

(1) The following members, who are voting members of the Consortium:

a. Two members, appointed by the Speaker of the House of Representatives.

b. Two members, appointed by the President Pro Tempore of the Senate.

c. The President of Delaware State University.

d. The President of the NAACP of Delaware.

e. The President of the Delaware chapter of the National Coalition of 100 Black Women.

f. The President of the Metropolitan Wilmington Urban League.

g. Five members of the public with relevant knowledge and experience in racial equity issues, appointed by the Governor.

(2) The following ex-officio members, who are nonvoting members of the Consortium:

a. The Director of Statewide Equity Initiatives.

b. One representative of the Office of Supplier Diversity, appointed by the Secretary of the Department of State.

c. One representative of the Bureau of Health Equity, appointed by the Secretary of the Department of Health and Social Services.

d. The Secretary of the Department of Labor.

e. The Commissioner of the Department of Correction.

f. The Secretary of the Department of Education.

g. The Secretary of the Department of Services for Children, Youth and Their Families.

h. The Director of the Delaware State Housing Authority.

i. The Attorney General.

j. The Chief Diversity Officer of the Division of Human Resources.

(b) A member appointed to the Consortium serves at the pleasure of the individual or entity that appointed the member.

(c) A member of the Consortium with the ability to designate another individual to attend a Consortium meeting shall provide the designation in writing to the chair and vice chair. An individual attending a meeting for a member as a designee has the same duties and rights as the member.

(83 Del. Laws, c. 419, § 1.)

§ 4104. Consortium chair and vice chair; appointment and duties [Expires August 30, 2027, pursuant to 83 Del. Laws, c. 419, § 2].

(a) The Governor shall appoint from among the voting members of the Consortium a chair and vice chair, to serve at the pleasure of the Governor.

(b) The chair and vice chair of the Consortium shall guide the administration of the Consortium by doing, at a minimum, all of the following:

(1) Set the date, time, and place for meetings of the Consortium.

(2) Supervise the preparation and distribution of meeting notices, agendas, minutes, correspondence, and reports of the Consortium.

(3) Preside over meetings of the Consortium.

(4) Maintain order during a meeting of the Consortium and decide all questions of order.

(83 Del. Laws, c. 419, § 1.)

§ 4105. Quorum; vote required for action; rulemaking authority [Expires August 30, 2027, pursuant to 83 Del. Laws, c. 419, § 2].

(a) A quorum of the Consortium is a majority of the voting members of the Consortium.

(b) The Consortium acts by a vote of the majority of the voting members of the Consortium.

(c) The Consortium may adopt rules to carry out the purpose and duties of the Consortium, including to do all of the following:

(1) Establish committees for the Consortium.

(2) Provide for the election of officers of the Consortium, other than the chair and vice chair appointed under § 4104 of this title.

(83 Del. Laws, c. 419, § 1.)

§ 4106. Consortium staffing and funding [Expires August 30, 2027, pursuant to 83 Del. Laws, c. 419, § 2].

(a) Delaware State University shall provide staff support for the Consortium. The staff is to be managed by the Director of the Racial Equity Consortium from Delaware State University's Global Institute for Equity, Inclusion, and Civil Rights, who must be approved by the chair and vice chair of the Consortium.

(b) The General Assembly shall include in the annual appropriations act a line item allocation of funding to the Consortium to support the operational services, research, and analysis carried out by Delaware State University.

(83 Del. Laws, c. 419, § 1.)

§ 4107. Consortium report [Expires August 30, 2027, pursuant to 83 Del. Laws, c. 419, § 2].

(a) The Consortium shall, at least biennially, issue a report to the Governor and the General Assembly on the status of persons of color in this State and progress in eliminating inequities and disparities experienced by persons of color.

(b) The Consortium shall deliver a copy of the report required under subsection (a) of this section to all of the following:

(1) The Governor.

(2) The President Pro Tempore of the Senate, for distribution to all members of the Senate.

(3) The Speaker of the House of Representatives, for distribution to all members of the House of Representatives.

(4) The Director and the Librarian of the Division of Legislative Services.

(5) The Director of the Public Archives.

(83 Del. Laws, c. 419, § 1; 84 Del. Laws, c. 255, § 46.)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 42
Delaware Commission on Asian and Pacific Islander Heritage and Culture

(84 Del. Laws, c. 430, § 1.)

§ 4201. Delaware Commission on Asian and Pacific Islander Heritage and Culture; creation and purpose.

The Delaware Commission on Asian and Pacific Islander Heritage and Culture (Commission) is hereby established to do all of the following:

(1) Provide the Governor, members of the General Assembly, and policymakers with recommendations to promote the welfare and interests of all people of Asian and Pacific Islander descent who reside in this State.

(2) Establish, maintain, and develop cultural ties between Asian and Pacific Islanders and Asian-Americans and Pacific Islander-Americans.

(3) Foster a special and compelling interest in the historical and cultural backgrounds of people of Asian and Pacific Islander descent, as well as in the economic, political, social, and artistic life of the nations and territories involved.

(4) Help study, establish, or promote programs or events that will provide appropriate awareness of the culture, history, heritage, and language of people of Asian and Pacific Islander descent.

(5) Provide a platform for the promotion of the cultural and historical heritage of any people of Asian and Pacific Islander descent.

(84 Del. Laws, c. 430, § 1.)

§ 4202. Membership; qualifications; terms.

(a) The Commission consists of 9 members who are appointed as follows:

(1) Three members, appointed by the Governor.

(2) Three members, appointed by the Speaker of the House of Representatives.

(3) Three members, appointed by the President Pro Tempore of the Senate.

(b) Each member of this Commission must be a citizen of the United States descended from Asian or Pacific Islander ancestry and must hold a professional license in this State, own a business in this State, or reside in this State.

(c) The members of this Commission serve at the pleasure of the appointing authority.

(84 Del. Laws, c. 430, § 1.)

§ 4203. Organization; quorum.

(a) The Commission shall elect a Chair at its first meeting in a calendar year and the Chair shall serve until a replacement is elected. If the Chair becomes vacant, the Commission shall elect a new Chair at its next meeting.

(b) The Chair of the Commission has all of the following duties:

(1) Setting a date, time, and place for the meetings of the Commission.

(2) Supervising the preparation and distribution of meeting notices, agendas, minutes, and other documents prepared by or on behalf of the Commission.

(c) If the Chair becomes vacant, the Secretary of State, or the Secretary's designee, shall fulfill the duties of the Chair contained in subsection (b) of this section until a replacement is elected by the Commission.

(d) A majority of the membership of the Commission constitutes a quorum to conduct official business.

(84 Del. Laws, c. 430, § 1.)

§ 4204. Authority.

The Commission shall fall under the authority of the Secretary of State and shall have such powers, duties, and functions described in § 4201 of this title and such other duties and functions as may be referred to it by the Governor, the Secretary of State, or the General Assembly.

(84 Del. Laws, c. 430, § 1.)

§ 4205. Subcommittees; creation and purpose.

(a) The Commission may establish subcommittees to engage with other organizations in the State that share a similar mission to exchange ideas and information and provide those organizations the opportunity to serve the Commission.

(b) Any member of the Commission may nominate prospective subcommittee members and the Commission shall consider the nominations and make appointments to any subcommittee by majority vote of the Commission.

(84 Del. Laws, c. 430, § 1.)

§ 4206. Compensation.

The members of the Commission shall serve without compensation.

(84 Del. Laws, c. 430, § 1.)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 43
Notaries Public

Subchapter I

Office and Duties

§ 4301. Commission as a notary public; qualifications; oath; denial of, refusal to renew, revocation of, suspension of, or condition on commission; no immunity or benefit.

(a) In addition to an individual authorized to be appointed under §§ 4303 through 4306 of this title, an individual qualified under subsection (b) of this section may apply to the Governor for a commission as a notary public. The individual applying for the commission shall comply with and provide the information required by regulations adopted by the Governor and pay the fee required under § 4307(a) of this title. The Governor may delegate the Governor's duties under this chapter to the Secretary of State.

(b) An individual applying for a commission as a notary public must meet all of the following:

(1) Be at least 18 years of age.

(2) Be a citizen or permanent legal resident of the United States.

(3) Be a resident of or have a place of employment or practice in this State.

(4) Be able to read and write English.

(5) Not be disqualified to receive a commission under § 4334 of this title.

(6) Comply with other requirements established by the Secretary of State by regulation as necessary to ensure the competence, integrity, and qualifications of a notary public and the proper performance of notarial acts.

(c) (1) A nonresident individual who seeks a commission as a notary public shall include in the individual's application a residential address and the address of the individual's place of employment or practice in this State.

(2) Service of process, subpoenas, and other documents on a nonresident individual who is a notary public may be made personally or by leaving them with any person of suitable age and discretion at the individual's place of employment or practice in this State. Substituted service is effectual if served on the Secretary of State, under § 376(b) of Title 8 if the place of employment or practice has been closed or the individual ceases to be regularly employed or regularly practice at the filed place of employment or practice address. The Secretary of State shall forward documents received under this paragraph (c)(2) to the individual at the filed residential address.

(3) An individual appointed under this section shall notify the Secretary of State of a change of address within 30 days of the change. An address required under this subsection must include a street address.

(d) (1) Before issuance of a commission as a notary public, an individual applying for a commission shall execute an oath of office and submit it to the Secretary of State as required under § 4308 of this title.

(2) On compliance with this section, the Governor shall issue a commission as a notary public to an individual for the term under § 4307(a) of this title.

(3) A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by law of this State on public officials or employees.

(4) The Governor may deny, refuse to renew, revoke, suspend, or impose a condition on a commission as notary public for cause, including under § 4334 of this title.

(e) The Secretary of State may promulgate regulations or establish additional standards and guidelines governing applications, registrations, appointments, and the conduct of notaries public.

(Code 1852, § 661; 23 Del. Laws, c. 69, § 3; Code 1915, § 1006; 36 Del. Laws, c. 107; Code 1935, § 1136; 41 Del. Laws, c. 100; 43 Del. Laws, c. 97; 48 Del. Laws, c. 138; 29 Del. C. 1953, § 4301; 50 Del. Laws, c. 43, § 1; 53 Del. Laws, c. 29; 53 Del. Laws, c. 350; 58 Del. Laws, c. 511, § 63; 69 Del. Laws, c. 123, §§ 1-3; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 253, § 1; 77 Del. Laws, c. 165, §§ 1, 2; 83 Del. Laws, c. 425, § 1.)

§ 4302. Appointment of electronic notaries; term [Repealed].

(76 Del. Laws, c. 253, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 165, § 3; repealed by 83 Del. Laws, c. 425, § 2, effective Aug. 1, 2023.)

§ 4303. Appointment of certain officers as notaries; term.

The Governor shall appoint every person who is appointed to the office of justice of the peace and as Secretary of Finance also as a notary public. The Secretary of Finance shall only act as a notary public in connection with work performed in carrying out the duties

of the office. The notary commission of any person appointed a notary public under this section shall terminate at the same time such person's term of office terminates.

(Code 1852, § 661; 23 Del. Laws, c. 69, §§ 1-3; Code 1915, § 1006; 32 Del. Laws, c. 61; 33 Del. Laws, c. 64, §§ 1-2; 36 Del. Laws, c. 107; Code 1935, § 1136; 29 Del. C. 1953, § 4302; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 91, § 14; 76 Del. Laws, c. 253, § 1.)

§ 4304. Appointment of notary for each bank or branch.

The Governor shall appoint 1 notary public for each trust company, bank, banking association or branch or branches thereof in this State, whether state or national, chartered or organized under the laws of this State or of the United States.

(Code 1852, § 661; 23 Del. Laws, c. 69, §§ 1-3; Code 1915, § 1006; 36 Del. Laws, c. 107; Code 1935, § 1136; 48 Del. Laws, c. 176; 29 Del. C. 1953, § 4303; 76 Del. Laws, c. 253, § 1.)

§ 4305. Appointment of court reporters as notaries public.

The Governor may, upon the request of the Chief Justice of the Supreme Court, appoint any of the official court reporters as a notary public.

(29 Del. C. 1953, § 4303A; 55 Del. Laws, c. 383; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 253, § 1.)

§ 4306. Appointment of notaries for certain service organizations; limited governmental notaries; limitations.

(a) The Governor may, upon the request of the department commander of a State-recognized veterans' organization, appoint 1 notary public for each requesting organization for a term of 4 years, without charge to any appointee, commander or organization. Any such notary, so appointed, shall have no authority to perform any duties with respect to such office or to take affidavits or acknowledgements, except on documents and papers in connection with and for the benefit of any veteran, their families or dependents. The notaries public, so appointed, shall make no charge for any service rendered.

(b) The Governor may, upon the request of any administrative head of any volunteer fire company or volunteer ambulance and rescue company, appoint 1 notary public for each requesting organization for a term of 4 years, without charge to any appointee, chief or organization. Any such notary, so appointed, shall have no authority to perform any duties with respect to such office or to take affidavits or acknowledgements, except on documents and papers in connection with and for the benefit of any members of the organizations listed herein to include their families or dependents. The notaries public, so appointed, shall make no charge for any service rendered.

(c) On the request of the administrative head of a qualified police agency, the Governor shall appoint a sufficient number of limited governmental notaries public as may be requested by the administrative head to facilitate the law-enforcement responsibilities of the qualified police agency. The appointment is to be for a term of 2 years, without charge to the appointee, administrative head, or police agency. For purposes of this section, a "qualified police agency" means a state, county, municipal, or local governmental agency or unit of this State whose personnel includes full-time police officers who are statutorily responsible for the prevention or investigation of crime involving injury to persons or property and who are authorized to execute search warrants and to make arrests.

(d) (1) The Governor may appoint as a limited governmental notary public an individual who otherwise meets the requirements of § 4301(b) of this title if all of the following apply:

a. The individual is an employee of a state governmental agency or unit or an employee of a qualified police agency.

b. The individual submits all of the following forms to be established by the Secretary:

1. An application form completed by the individual.

2. An employer request and approval form.

(2) a. An appointment under paragraph (d)(1) of this section expires on the end of the individual's employment with a state governmental agency or unit or qualified police agency and is to be made without charge to the appointee or the agency or unit or qualified police agency.

b. An individual appointed under paragraph (d)(1) of this section may not do any of the following:

1. Perform a notarial act other than a notarial act authorized by the individual's state governmental agency or unit or qualified police agency.

2. Charge for a service rendered.

c. Except for the expiration date statement, which must state "My Commission expires upon office" , the individual's official stamp must comply with § 4330 of this title.

d. If the individual transfers employment to another state governmental agency or unit or qualified police agency, the individual shall notify the Secretary of State of the transfer within 30 days. The individual may retain the appointment only if the individual provides to the Secretary of State an employer request and approval form from the agency or unit or qualified police agency to which the individual transferred.

(Code 1935, § 1136; 41 Del. Laws, c. 99; 29 Del. C. 1953, § 4304; 50 Del. Laws, c. 37, § 1; 51 Del. Laws, c. 361; 56 Del. Laws, c. 174; 58 Del. Laws, c. 10; 66 Del. Laws, c. 139, § 2; 67 Del. Laws, c. 349, § 1; 70 Del. Laws, c. 3, § 1; 76 Del. Laws, c. 253, § 1; 77 Del. Laws, c. 165, § 4; 83 Del. Laws, c. 425, § 3.)

§ 4307. Term of office; fees; resignation.

(a) An individual is to be initially commissioned as a notary public for a term of 2 years. A notary public who wishes to renew the notary public's commission may request a 2-year reappointment or a 4-year reappointment. An individual must pay a nonrefundable application fee of $60 for a 2-year term or $90 for a 4-year term.

(b), (c) [Repealed.]

(d) A notary public who wishes to resign from office or who no longer meets the qualifications for a commission during the notary's term of office shall immediately mail or deliver the official commission to the Secretary of State, who shall cancel the same.

(e) [Repealed.]

(f) If any person shall knowingly or wilfully make any false or fraudulent statement or misrepresentation in or with reference to any application for a notary commission or any other document required by this chapter, the person is guilty of perjury.

(Code 1852, § 663; 21 Del. Laws, c. 59, § 1; 23 Del. Laws, c. 69, § 3; Code 1915, § 1008; 28 Del. Laws, c. 70; Code 1935, § 1139; 29 Del. C. 1953, § 4305; 59 Del. Laws, c. 440, § 1; 66 Del. Laws, c. 186, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 65, § 1; 76 Del. Laws, c. 253, § 1; 77 Del. Laws, c. 165, §§ 5, 6; 83 Del. Laws, c. 425, § 4.)

§ 4308. Oath of office.

A notary public shall take and subscribe the oath or affirmation prescribed by Article XIV of the Constitution of this State. A notary public is exempt from the recordation of the oath of office prescribed by § 9605(a) of Title 9. A notary public may not perform notarial acts until a copy of the fully executed oath is received by the Secretary of State in an electronic or paper document format deemed acceptable by the Secretary of State.

(Code 1852, §§ 666, 667; 21 Del. Laws, c. 59, § 2; Code 1915, § 1011; 28 Del. Laws, c. 70; Code 1935, § 1142; 29 Del. C. 1953, § 4306; 50 Del. Laws, c. 43, § 2; 59 Del. Laws, c. 440, § 2; 66 Del. Laws, c. 186, § 3; 76 Del. Laws, c. 253, § 1; 77 Del. Laws, c. 165, § 7; 83 Del. Laws, c. 425, § 5.)

§ 4309. Seal and powers [Repealed].

(Code 1852, § 662; Code 1915, § 1007; Code 1935, § 1138; 29 Del. C. 1953, § 4307; 63 Del. Laws, c. 85; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 253, § 1; repealed by 83 Del. Laws, c. 425, § 6, effective Aug. 1, 2023.)

§ 4310. Engraving of seal; effect of use of nonconforming seal; electronic notarial seal; notary's official signature; electronic signature [Repealed].

(16 Del. Laws, c. 17; Code 1915, § 1012; Code 1935, § 1143; 29 Del. C. 1953, § 4308; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 65, § 2; 76 Del. Laws, c. 253, § 1; repealed by 83 Del. Laws, c. 425, § 7, effective Aug. 1, 2023.)

§ 4311. Fees for services.

(a) The maximum fee a notary public may charge for a notarial act performed with respect to a tangible record is $5.00.

(b) The maximum fee a notary public may charge for a notarial act performed with respect to an electronic record is $25.

(c) The fees prescribed in this section are the maximum fees to be charged by a notary public and, on violation of this section, the Secretary of State may revoke the commission of the notary public and the notary public may not be reappointed within a period of 2 years.

(d) A notary public may choose to waive any fee for any notarial act.

(Code 1852, §§ 666, 667, 2830, 2833, 2834, 2836; Code 1915, §§ 1011, 4883, 4886, 4887, 4889; 28 Del. Laws, c. 70; 33 Del. Laws, c. 65; 34 Del. Laws, c. 91, § 4; Code 1935, §§ 1142, 1146, 5371, 5374, 5375, 5377; 29 Del. C. 1953, § 4309; 72 Del. Laws, c. 65, §§ 3-6; 76 Del. Laws, c. 253, § 1; 83 Del. Laws, c. 425, § 8.)

§ 4312. Special fee provisions for certain services to members of the armed forces and to veterans; penalties; jurisdiction of justices of peace.

(a) No notary public or other person who is authorized by law to take the acknowledgment of instruments or to administer oaths or affirmations shall charge any person serving in the armed forces of the United States, or a veteran of any war, or the widow or children of a soldier, or soldier's parents, or widower or other relative of any person in the armed services the fee provided by law when an acknowledgment, oath or affirmation is taken in connection with any paper or papers required to be executed by the Veterans Administration or in support of any claim or other papers connected with or referring to the service of any male or female now serving or who hereafter may serve or who, in the past, has served in the armed forces of the United States.

(b) Whoever violates subsection (a) of this section shall be fined not less than $10 nor more than $25 and, in default of the payment of such fine, shall be imprisoned for not more than 5 days.

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

(Code 1935, § 1138A; 45 Del. Laws, c. 259; 29 Del. C. 1953, § 4311; 76 Del. Laws, c. 253, § 1.)

§ 4313. Commission; signature of Governor; seal.

(a) The commission appointing a notary public must be in a form as the Secretary of State designates and must be executed by the Governor and the Secretary of State. The signatures required by this subsection may be satisfied by an electronic or a facsimile signature which may be engraved, printed, or stamped on the commission.

(b) The impression of the Great Seal of the State, or a facsimile of the Great Seal, must be engraved or printed on the commission.

(29 Del. C. 1953, § 4312; 55 Del. Laws, c. 66; 76 Del. Laws, c. 253, § 1; 77 Del. Laws, c. 165, § 8; 83 Del. Laws, c. 425, § 9.)

§ 4314. Official electronic journal of notarial acts [Repealed].

(76 Del. Laws, c. 253, § 1; repealed by 83 Del. Laws, c. 425, § 10, effective Aug. 1, 2023.)

Subchapter II

Revised Uniform Law on Notarial Acts

(83 Del. Laws, c. 425, § 11.)

§ 4315. Short title.

This subchapter may be cited as the "Revised Uniform Law on Notarial Acts."

(83 Del. Laws, c. 425, § 11.)

§ 4316. Definitions.

For purposes of this chapter:

(1) "Acknowledgment" means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic signature" means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

(4) "In a representative capacity" means acting as 1 of the following:

a. An authorized officer, agent, partner, trustee, or other representative for a person other than an individual.

b. A public officer, personal representative, guardian, or other representative, in the capacity stated in a record.

c. An agent or attorney-in-fact for a principal.

d. An authorized representative of another in any other capacity.

(5) a. "Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this State.

b. "Notarial act" includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(6) "Notarial officer" means a notary public or other individual authorized to perform a notarial act.

(7) "Notary public" means an individual commissioned to perform a notarial act under subchapter I of Chapter 43 of this title.

(8) "Official stamp" means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.

(9) "Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) "Sign" means, with present intent to authenticate or adopt a record, to do any of the following:

a. Execute or adopt a tangible symbol.

b. Attach to or logically associate with the record an electronic symbol, sound, or process.

(12) "Signature" means a tangible symbol or an electronic signature that evidences the signing of a record.

(13) "Stamping device" means any of the following:

a. A physical device capable of affixing to or embossing on a tangible record an official stamp.

b. An electronic device or process capable of attaching to or logically associating with an electronic record an official stamp.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(15) "Verification on oath or affirmation" means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

(63 Del. Laws, c. 61, § 4; 64 Del. Laws, c. 275, § 1; 72 Del. Laws, c. 65, § 8; 76 Del. Laws, c. 253, § 1; 83 Del. Laws, c. 425, § 11.)

§ 4317. Authority to perform notarial act.

(a) A notarial officer may perform a notarial act authorized by this subchapter or by law of this State other than this subchapter.

(b) A notarial officer may not perform a notarial act with respect to a record to which the officer or the officer's spouse is a party or in which either of them has a direct beneficial interest. A notarial act performed in violation of this subsection is voidable.

(c) A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

(83 Del. Laws, c. 425, § 11.)

§ 4318. Requirements for certain notarial acts.

(a) A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

(b) A notarial officer who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.

(c) A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and signing the record has the identity claimed.

(d) A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true, and accurate transcription or reproduction of the record or item. A notarial officer may not attest to a copy of an official or public record that must be certified by a public official.

(e) A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in § 3-505 of Title 6.

(63 Del. Laws, c. 61, § 4; 64 Del. Laws, c. 275, § 1; 72 Del. Laws, c. 65, § 9; 76 Del. Laws, c. 253, § 1; 83 Del. Laws, c. 425, § 11.)

§ 4319. Personal appearance required.

Except as provided under § 4320 of this title, if a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer.

(83 Del. Laws, c. 425, § 11.)

§ 4320. Notarial act performed for remotely located individual.

(a) For purposes of this section:

(1) "Communication technology" means an electronic device or process that does both of the following:

a. Allows a notarial officer and a remotely located individual to communicate with each other simultaneously by sight and sound.

b. When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

(2) "Foreign state" means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.

(3) "Identity proofing" means a process or service by which a third person provides a notarial officer with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

(4) "Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.

(5) "Remotely located individual" means an individual who is not in the physical presence of the notarial officer who performs a notarial act under subsection (c) of this section.

(b) A remotely located individual may comply with § 4319 of this title by using communication technology to appear before a notarial officer.

(c) A notarial officer located in this State may use communication technology to perform a notarial act for a remotely located individual if all of the following apply:

(1) The notarial officer has 1 or more of the following:

a. Personal knowledge under § 4321(a) of this title of the identity of the remotely located individual.

b. Satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notarial officer under § 4321(b) of this title or this section.

c. Obtained satisfactory evidence of the identity of the remotely located individual by using at least 2 different types of identity proofing.

(2) The notarial officer is able reasonably to confirm that a record before the notarial officer is the same record in which the remotely located individual made a statement or on which the individual executed a signature.

(3) The notarial officer, or a person acting on behalf of the notarial officer, creates an audio-visual recording of the performance of the notarial act.

(4) For a remotely located individual located outside the United States, all of the following apply:

a. Any of the following apply:

1. The record is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States.

2. The record involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States.

b. The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

(d) A notarial officer located in this State may use communication technology under subsection (c) of this section to take an acknowledgment of a signature on a tangible record physically present before the notarial officer if the record is displayed to and identified by the remotely located individual during the audio-visual recording under paragraph (c)(3) of this section.

(e) The requirement under paragraph (c)(2) of this section for the performance of a notarial act with respect to a tangible record not physically present before the notarial officer is satisfied if all of the following apply:

(1) The remotely located individual does all of the following:

a. During the audio-visual recording under paragraph (c)(3) of this section, signs all of the following:

1. The record.

2. A declaration, in substantially the following form, that is part of or securely attached to the record:

I declare under penalty of perjury that the record of which this declaration is a part or to which it is attached is the same record on which (name of notarial officer), a notarial officer, performed a notarial act and before whom I appeared by means of communication technology on (date).

Signature of remotely located individual

Printed name of remotely located individual

b. Sends the record and declaration to the notarial officer not later than 3 days after the notarial act was performed.

(2) The notarial officer does all of the following:

a. In the audio-visual recording under paragraph (c)(3) of this section, records the individual signing the record and declaration.

b. After receipt of the record and declaration from the individual, executes a certificate of notarial act under § 4328 of this title, which must include a statement in substantially the following form:

I (name of notarial officer) witnessed, by means of communication technology, (name of remotely located individual) sign the attached record and declaration on (date).

(f) A notarial act performed in compliance with subsection (e) of this section complies with § 4328(a)(1) of this title and is effective on the date the remotely located individual signed the declaration under paragraph (e)(1)a.2. of this section.

(g) Subsection (e) of this section does not preclude use of another procedure to satisfy paragraph (c)(2) of this section for a notarial act performed with respect to a tangible record.

(h) A notarial officer located in this State may use communication technology under subsection (c) of this section to administer an oath to a remotely located individual if, except as otherwise provided by other law of this State, the notarial officer does all of the following:

(1) Identifies the individual under paragraph (c)(1) of this section.

(2) Creates or causes the creation under paragraph (c)(3) of this section of an audio-visual recording of the individual taking the oath.

(3) Retains or causes the retention under subsection (k) of this section of the recording.

(i) If a notarial act is performed under this section, the certificate of notarial act under § 4328 of this title and the short-form certificate under § 4329 of this title must indicate that the notarial act was performed using communication technology.

(j) A short-form certificate under § 4329 of this title for a notarial act subject to this section is sufficient if it does any of the following:

(1) Complies with regulations adopted under paragraph (m)(1) of this section.

(2) Is in the form under § 4329 of this title and contains a statement in substantially the following form:

This notarial act involved the use of communication technology.

(k) A notarial officer, a guardian, conservator, or agent of a notarial officer, or a personal representative of a deceased notarial officer shall retain the audio-visual recording created under paragraph (c)(3) of this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted under paragraph (m)(4) of this section, the recording must be retained for a period of at least 10 years.

(*l*) (1) Before a notarial officer performs the notarial officer's initial notarial act under this section, the notarial officer shall do all of the following:

a. Notify the Secretary of State that the notarial officer will be performing notarial acts with respect to remotely located individuals.

b. Identify for the Secretary of State the technologies the notarial officer intends to use.

(2) If the Secretary of State has established standards under subsection (m) of this section and § 4338 of this title for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.

(m) In addition to adopting regulations under § 4338 of this title, the Secretary of State may adopt regulations under this section regarding performance of a notarial act. The regulations may do any of the following:

(1) Prescribe the means of performing a notarial act involving a remotely located individual using communication technology.

(2) Establish standards for communication technology and identity proofing.

(3) Establish requirements or procedures to approve providers of communication technology and the process of identity proofing.

(4) Establish standards and a period for the retention of an audio-visual recording created under paragraph (c)(3) of this section.

(5) Prescribe methods for a notarial officer to confirm under subsections (d) and (e) of this section the identity of a tangible record.

(n) Before adopting, amending, or repealing a regulation governing performance of a notarial act with respect to a remotely located individual, the Secretary of State must consider all of the following:

(1) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the National Association of Secretaries of State.

(2) Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section.

(3) The views of governmental officials and entities and other interested persons.

(o) By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audio-visual recording under paragraph (c)(3) of this section, the provider of the communication technology, identity proofing, or storage appoints the Secretary of State as the provider's agent for service of process in any civil action in this State related to the notarial act.

(76 Del. Laws, c. 253, § 1; 83 Del. Laws, c. 425, § 11.)

§ 4321. Identification of individual.

(a) A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(b) A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual by any of the following:

(1) By means of any of the following:

a. A passport, driver's license, or government issued nondriver identification card, which is current and not expired before performance of the notarial act.

b. Another form of government identification issued to an individual, which is current and not expired before performance of the notarial act, contains the signature or a photograph of the individual, and is satisfactory to the officer.

(2) By a verification on oath or affirmation of a credible witness personally appearing before the officer and known to the officer or whom the officer can identify on the basis of a passport, driver's license, or government issued nondriver identification card, which is current and not expired before performance of the notarial act.

(c) A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the officer of the identity of the individual.

(83 Del. Laws, c. 425, § 11.)

§ 4322. Authority to refuse to perform notarial act.

(a) A notarial officer may refuse to perform a notarial act if the officer is not satisfied that all of the following apply:

(1) The individual executing the record is competent or has the capacity to execute the record.

(2) The individual's signature is knowingly and voluntarily made.

(b) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by law other than this subchapter.

(83 Del. Laws, c. 425, § 11.)

§ 4322A. Signature if individual unable to sign.

If an individual is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name on the record. The notarial officer shall insert "Signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar import.

(83 Del. Laws, c. 425, § 11.)

§ 4323. Notarial act in this State.

(a) A notarial act may be performed in this State by any of the following:

(1) A notary public of this State.

(2) A judge, clerk, or deputy clerk of a court of this State.

(3) An individual licensed to practice law in this State.

(4) An individual authorized by law of this State to administer oaths.

(5) Any other individual authorized to perform the specific act by the law of this State.

(b) The signature and title of an individual performing a notarial act in this State are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in paragraph (a)(1), (a)(2), or (a)(3) of this section conclusively establish the authority of the officer to perform the notarial act.

(64 Del. Laws, c. 275, § 1; 76 Del. Laws, c. 253, § 1; 83 Del. Laws, c. 425, § 11.)

§ 4324. Notarial act in another state.

(a) A notarial act performed in another state has the same effect under the law of this State as if performed by a notarial officer of this State, if the act performed in that state is performed by any of the following:

(1) A notary public of that state.

(2) A judge, clerk, or deputy clerk of a court of that state.

(3) Any other individual authorized by the law of that state to perform the notarial act.

(b) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in paragraph (a)(1) or (a)(2) of this section conclusively establish the authority of the officer to perform the notarial act.

(64 Del. Laws, c. 275, § 1; 76 Del. Laws, c. 253, § 1; 83 Del. Laws, c. 425, § 11.)

§ 4325. Notarial act under authority of federally recognized Indian tribe.

(a) A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed by a notarial officer of this State, if the act performed in the jurisdiction of the tribe is performed by any of the following:

(1) A notary public of the tribe.

(2) A judge, clerk, or deputy clerk of a court of the tribe.

(3) Any other individual authorized by the law of the tribe to perform the notarial act.

(b) The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in paragraph (a)(1) or (a)(2) of this section conclusively establish the authority of the officer to perform the notarial act.

(83 Del. Laws, c. 425, § 11.)

§ 4326. Notarial act under federal authority.

(a) A notarial act performed under federal law has the same effect under the law of this State as if performed by a notarial officer of this State, if the act performed under federal law is performed by any of the following:

(1) A judge, clerk, or deputy clerk of a federal court.

(2) An individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law.

(3) An individual designated a notarizing officer by the United States Department of State for performing notarial acts overseas.

(4) Any other individual authorized by federal law to perform the notarial act.

(b) The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of an officer described in paragraph (a)(1), (a)(2), or (a)(3) of this section conclusively establish the authority of the officer to perform the notarial act.

(63 Del. Laws, c. 61, § 4; 64 Del. Laws, c. 275, § 1; 76 Del. Laws, c. 253, § 1; 83 Del. Laws, c. 425, § 11.)

§ 4327. Foreign notarial act.

(a) In this section, “foreign state” means a government other than the United States, a state, or a federally recognized Indian tribe.

(b) If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this State as if performed by a notarial officer of this State.

(c) If the title of office and indication of authority to perform notarial acts in a foreign state appears in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

(d) The signature and official stamp of an individual holding an office described in subsection (c) of this section are prima facie evidence that the signature is genuine and the individual holds the designated title.

(e) An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the Convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(f) A consular authentication issued by an individual designated by the United States Department of State as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(63 Del. Laws, c. 61, § 4; 64 Del. Laws, c. 275, § 1; 76 Del. Laws, c. 253, § 1; 83 Del. Laws, c. 425, § 11.)

§ 4328. Certificate of notarial act.

(a) A notarial act must be evidenced by a certificate. The certificate must meet all of the following:

(1) Be executed contemporaneously with the performance of the notarial act.

(2) Be signed and dated by the notarial officer and, if the notarial officer is a notary public, be signed in the same manner as on file with the Secretary of State.

(3) Identify the jurisdiction in which the notarial act is performed.

(4) Contain the title of office of the notarial officer.

(5) If the notarial officer is a notary public, indicate the date of expiration, if any, of the officer's commission.

(b) If a notarial act regarding a tangible record is performed by a notary public, an official stamp must be affixed to or embossed on the certificate. If a notarial act is performed regarding a tangible record by a notarial officer other than a notary public and the certificate contains the information specified in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an official stamp may be affixed to or embossed on the certificate. If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an official stamp may be attached to or logically associated with the certificate.

(c) A certificate of a notarial act is sufficient if it meets the requirements of subsections (a) and (b) of this section and any of the following:

(1) Is in a short form set forth in § 4329 of this title.

(2) Is in a form otherwise permitted by the law of this State.

(3) Is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed.

(4) Sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in §§ 4318, 4319, and 4321 of this title or law of this State other than this subchapter.

(d) By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in §§ 4317, 4318, and 4319 of this title.

(e) A notarial officer may not affix the officer's signature to, or logically associate it with, a certificate until the notarial act has been performed.

(f) If a notarial act is performed regarding a tangible record, a certificate must be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate must be affixed to, or logically associated with, the electronic record. If the Secretary of State has established standards under § 4338 of this title for attaching, affixing, or logically associating the certificate, the process must conform to the standards.

(63 Del. Laws, c. 61, § 4; 64 Del. Laws, c. 275, § 1; 76 Del. Laws, c. 253, § 1; 83 Del. Laws, c. 425, § 11.)

§ 4329. Short form certificates.

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by § 4328(a) and (b) of this title:

(1) For an acknowledgment in an individual capacity:

State of _____ County of _____ This record was acknowledged before me on ___Date by _____Name(s) of individual(s) _____ Signature of notarial officer Stamp [_____Title of office] [My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

State of _____ County of _____ This record was acknowledged before me on __Date by _____Name(s) of individual(s) as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed). _____ Signature of notarial officer Stamp [_____Title of office] [My commission expires: _____]

(3) For a verification on oath or affirmation:

State of _____ County of _____ Signed and sworn to (or affirmed) before me on __Date by __Name(s) of individual(s) making statement _____ Signature of notarial officer Stamp [_____Title of office] [My commission expires: _____]

(4) For witnessing or attesting a signature:

State of _____ County of _____ Signed (or attested) before me on __Date by _____Name(s) of individual(s) _____ Signature of notarial officer Stamp [_____Title of office] [My commission expires: _____]

(5) For certifying a copy of a record:

State of _____ County of _____ I certify that this is a true and correct copy of a record in the possession of _____. Dated _____ _____ Signature of notarial officer Stamp [_____Title of office] [My commission expires: _____]

(63 Del. Laws, c. 61, § 4; 64 Del. Laws, c. 275, § 1; 76 Del. Laws, c. 253, § 1; 83 Del. Laws, c. 425, § 11.)

§ 4330. Official stamp of a notary public.

The official stamp of a notary public must meet all of the following:

(1) Include all of the following:

a. The notary public's name as it appears on file with the Secretary of State.

b. "State of Delaware".

c. "My Commission expires on" and the commission expiration date.

d. Other information required by the Secretary of State.

(2) Be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

(83 Del. Laws, c. 425, § 11.)

§ 4331. Stamping device of a notary public.

(a) A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act.

(b) On resignation from, or the revocation or expiration of, the notary public's commission, or on the expiration of the date set forth in the stamping device the notary public shall disable the stamping device by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable.

(c) On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the stamping device shall render it unusable by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable.

(d) If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall promptly notify the Secretary of State on discovering that the device is lost or stolen.

(83 Del. Laws, c. 425, § 11.)

§ 4332. Journal of a notary public.

(a) A notary public shall maintain a journal in which the notary public chronicles all notarial acts that the notary public performs. The notary public shall retain the journal for 10 years after the performance of the last notarial act chronicled in the journal.

(b) A journal may be created on a tangible medium or in an electronic format. A notary public shall maintain only 1 journal at a time to chronicle all notarial acts, whether those notarial acts are performed regarding tangible or electronic records. If the journal is maintained on a tangible medium, it must be a permanent, bound register with numbered pages. If the journal is maintained in an electronic format, it must be in a permanent, tamper-evident electronic format complying with regulations adopted by the Secretary of State.

(c) An entry in a journal must be made contemporaneously with performance of the notarial act and contain all of the following information:

(1) The date and time of the notarial act.

(2) A description of the record, if any, and type of notarial act.

(3) The full name and address of each individual for whom the notarial act is performed.

(4) If identity of the individual is based on personal knowledge, a statement to that effect.

(5) If identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance and expiration of any identification credential.

(6) The fee, if any, charged by the notary public.

(d) If a notary public's journal is lost or stolen, the notary public shall promptly notify the Secretary of State on discovering that the journal is lost or stolen.

(e) On resignation from, or the revocation or suspension of, a notary public's commission, the notary public shall retain the notary public's journal in accordance with subsection (a) of this section and inform the Secretary of State where the journal is located.

(f) Instead of retaining a journal as provided in subsections (a) and (e) of this section, a current or former notary public may transmit the journal to the Secretary of State or a repository approved by the Secretary of State.

(g) On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the journal shall transmit it to the Secretary of State or a repository approved by the Secretary of State.

(83 Del. Laws, c. 425, § 11.)

§ 4333. Notification regarding performance of notarial act on electronic record; selection of technology; acceptance of tangible copy of electronic record.

(a) A notarial officer may select 1 or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notarial officer to perform a notarial act with respect to an electronic record with a technology that the notarial officer has not selected.

(b) (1) Before a notarial officer performs the notarial officer's initial notarial act with respect to an electronic record, a notarial officer shall do all of the following:

a. Notify the Secretary of State that the notarial officer will be performing notarial acts with respect to electronic records.

b. Identify for the Secretary of State the technology the notarial officer intends to use.

(2) If the Secretary of State has established standards for approval of technology under § 4338 of this title, the technology must conform to the standards.

(3) If the technology conforms to the standards, the Secretary of State shall approve the use of the technology.

(c) A Recorder of Deeds may accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

(83 Del. Laws, c. 425, § 11.)

§ 4334. Grounds to deny, refuse to renew, revoke, suspend, or impose a condition on a commission of notary public.

(a) The Governor may deny, refuse to renew, revoke, suspend, or impose a condition on a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including any of the following:

(1) Failure to comply with this chapter.

(2) A fraudulent, dishonest, or deceitful misstatement or omission in the application for a commission as a notary public submitted to the Secretary of State.

(3) A conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty, or deceit.

(4) A finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty, or deceit.

(5) Failure by the notary public to discharge any duty required of a notary public, whether by this chapter, regulations adopted by the Secretary of State, or any federal or state law.

(6) Use of false or misleading advertising or representation by the notary public representing that the notary public has a duty, right, or privilege that the notary public does not have.

(7) Violation by the notary public of a regulation adopted by the Secretary of State regarding a notary public.

(8) Denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in another state.

(9) A violation under § 4311(c) of this title.

(b) If the Governor denies, refuses to renew, revokes, suspends, or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with Chapter 101 of this title.

(c) The authority of the Governor to deny, refuse to renew, suspend, revoke, or impose conditions on a commission as a notary public does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law.

(83 Del. Laws, c. 425, § 11.)

§ 4335. Database of notaries public.

The Secretary of State shall maintain an electronic database of notaries public that does all of the following:

(1) Permits a person to verify the authority of a notary public to perform notarial acts.

(2) Indicates whether a notary public has notified the Secretary of State that the notary public will be performing notarial acts on electronic records or notarial acts for remotely located individuals under § 4320 of this title.

(83 Del. Laws, c. 425, § 11.)

§ 4336. Prohibited acts of a notary public.

(a) A commission as a notary public does not authorize an individual to do any of the following:

(1) Assist persons in drafting legal records, give legal advice, or otherwise practice law.

(2) Act as an immigration consultant or an expert on immigration matters.

(3) Represent a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship, or related matters.

(4) Receive compensation for performing any of the activities listed in this subsection.

(b) A notary public may not engage in false or deceptive advertising.

(c) A notary public, other than an attorney licensed to practice law in this State, may not use the term “notario” or “notario publico” .

(d) (1) A notary public, other than an attorney licensed to practice law in this State, may not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice, or otherwise practice law.

(2) If a notary public who is not an attorney licensed to practice law in this State in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media, and the Internet, the notary public shall include the following statement, or an alternate statement authorized or required by the Secretary of State, in the advertisement or representation, prominently and in each language used in the advertisement or representation:

“I am not an attorney licensed to practice law in this State. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities.”

(3) If the form of advertisement or representation is not broadcast media, print media, or the Internet and does not permit inclusion of the statement required by paragraph (d)(2) of this section because of size, it must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(e) Except as otherwise allowed by law, a notary public may not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notary public.

(83 Del. Laws, c. 425, § 11.)

§ 4337. Validity of notarial acts.

Except as otherwise provided in § 4317(b) of this title, the failure of a notarial officer to perform a duty or meet a requirement specified in this chapter does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this chapter does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on law of this State other than this chapter or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

(83 Del. Laws, c. 425, § 11.)

§ 4338. Regulatory authority.

(a) The Secretary of State may adopt rules to implement this chapter. Regulations adopted regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. Regulations may do all of the following:

(1) Prescribe the manner of performing notarial acts regarding tangible and electronic records.

(2) Include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident.

(3) Include provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures.

(4) Prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public.

(5) Include provisions to prevent fraud or mistake in the performance of notarial acts.

(b) In adopting, amending, or repealing rules about notarial acts with respect to electronic records, the Secretary of State shall consider, so far as is consistent with this subchapter, all of the following:

(1) The most recent standards regarding electronic records promulgated by national bodies, such as the National Association of Secretaries of State.

(2) Standards, practices, and customs of other jurisdictions that substantially enact this subchapter.

(3) The views of governmental officials and entities and other interested persons.

(83 Del. Laws, c. 425, § 11.)

§ 4339. Notary public commission in effect.

A commission as a notary public in effect on August 1, 2023, continues until its date of expiration. A notary public who applies to renew a commission as a notary public on or after August 1, 2023, is subject to and shall comply with this chapter. A notary public, in performing notarial acts after August 1, 2023, shall comply with this chapter.

(83 Del. Laws, c. 425, § 11.)

§ 4340. Applicability; savings clause.

(a) This subchapter applies to a notarial act performed on or after August 1, 2023.

(b) This subchapter does not affect the validity or effect of a notarial act performed before August 1, 2023.

(83 Del. Laws, c. 425, § 11.)

§ 4341. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(83 Del. Laws, c. 425, § 11.)

§ 4342. Relation to Electronic Signatures in Global and National Commerce Act.

This subchapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. § 7003(b).

(83 Del. Laws, c. 425, § 11.)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 44
Honorary Offices

§ 4401. Poet Laureate.

The Governor may appoint a Poet Laureate for Delaware to serve at the pleasure of the Governor. The Poet Laureate shall perform such duties as may be requested by the Governor or the Secretary of State or their designees.

(29 Del. C. 1953, § 4401; 54 Del. Laws, c. 267; 57 Del. Laws, c. 608, § 6; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 352, § 1.)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 45
Delaware Hispanic Commission

(84 Del. Laws, c. 426, § 1.)

§ 4501. Delaware Hispanic Commission; creation and purpose.

The Delaware Hispanic Commission ("Commission") is created to do all of the following:

(1) Advise the Governor, members of the Governor's Cabinet, members of the General Assembly, and other policymakers on ways to improve the delivery of services to the people of Hispanic descent in Delaware.

(2) Review, study, and prioritize matters that affect the people of Hispanic descent in Delaware, including all of the following matters:

a. Education.

b. Social services.

c. Housing.

d. Health care.

e. Culture.

f. History.

g. The arts.

h. Human and civil rights.

i. Legal and legislative.

j. Employment.

k. Finance.

l. Business.

m. Economic development.

(3) Work with government agencies, business groups, and nonprofit organizations to support people of Hispanic descent in Delaware.

(4) Work with education and business groups in Delaware to provide access to education and employment opportunities to people of Hispanic descent in Delaware.

(5) Get funding from foundation and government sources to support people of Hispanic descent in Delaware.

(6) Give recommendations to the Governor and the General Assembly on pending legislation that affects people of Hispanic descent in Delaware.

(7) Create and maintain cultural ties between people of Hispanic descent in Delaware and people of Hispanic descent in European, Latin American, and the Caribbean countries and in territories.

(8) Establish and promote programs and events that create awareness of people of Hispanic descents' culture, history, and language.

(84 Del. Laws, c. 426, § 1.)

§ 4502. Membership; qualifications; terms [Effective until July 1, 2028].

(a) (1) Except as otherwise provided in subsection (e) of this section, the Commission consists of no more than 18 members who are appointed by the Governor.

(2) The members appointed under paragraph (a)(1) of this section serve at the pleasure of the Governor.

(b) (1) A member appointed under paragraph (a)(1) of this section or a member serving in accordance with subsection (e) of this section may be removed by the Governor for gross inefficiency, misfeasance, nonfeasance, malfeasance, or neglect of duty in office. The Governor may consider a member who is in neglect of duty in office to have resigned and may accept the member's resignation.

(2) A member is deemed in neglect of duty if the member is absent from 3 consecutive, regular Commission meetings or attends less than 50% of Commission meetings in a calendar year, unless a majority of the Commission excuses the member for good cause.

(c) All members of the Commission must identify as a person of Hispanic descent, be a person of Hispanic origin, or have a proven track record of working with people of Hispanic descent in Delaware.

(d) All members of the Commission must be part of at least 1 of the following:

(1) The business community.

(2) The education community.

(3) The health-care community.

(4) A Delaware state government agency.

(5) The nonprofit community.

(6) The legal community.

(7) The finance community.

(8) The arts or cultural community.

(e) (1) The chair and members of the Delaware Hispanic Commission created by the Governor's executive order are the chair and members of the Commission created by this chapter and serve at the pleasure of the Governor.

(2) If the chair becomes vacant, then the Governor shall appoint a replacement chair.

(f) Except as otherwise provided in subsection (e) of this section, the officers of the Delaware Hispanic Commission created by the Governor's executive order are, subject to the Commission's bylaws, the officers of the Commission created by this chapter.

(84 Del. Laws, c. 426, § 2.)

§ 4502. Membership; qualifications; terms [Effective July 1, 2028].

(a) The Commission consists of 17 members. Membership is composed as follows:

(1) Nine members appointed by the Governor, 3 from each county in the State.

(2) Three members appointed by the Speaker of the House of Representatives.

(3) Three members appointed by the President Pro Tempore of the Senate.

(4) Notwithstanding § 4503(b) of this title, after the other appointing authorities have appointed 15 members in accordance with paragraphs (a)(1) through (a)(3) of this section, the Commission shall appoint 2 members by an affirmative vote of a majority of all appointed members.

(b) (1) Members appointed under paragraphs (a)(1) through (a)(4) of this section serve at the pleasure of the appointing authority and may be removed by the member's appointing authority for gross inefficiency, misfeasance, nonfeasance, malfeasance, or neglect of duty in office.

(2) An appointing authority may consider that appointing authority's member who is in neglect of duty in office or ceases to meet a county representation to have resigned and may accept the member's resignation.

a. A member is deemed in neglect of duty if the member is absent from 3 consecutive, regular Commission meetings or attends less than 50% of Commission meetings in a calendar year, unless a majority of the Commission excuses the member for good cause.

b. A member ceases to meet a residency requirement if the member is no longer a resident of the county in which the member resided when appointed to the Commission and the residency was a requirement of the appointment.

(c) All members of the Commission must identify as a person of Hispanic descent, be a person of Hispanic origin, or have a proven track record of working with people of Hispanic descent in Delaware.

(d) All members of the Commission must be part of at least 1 of the following:

(1) The business community.

(2) The education community.

(3) The health-care community.

(4) A Delaware state government agency.

(5) The nonprofit community.

(6) The legal community.

(7) The finance community.

(8) The arts or cultural community.

(e) The Commission shall elect 1 chair and 1 vice chair from among its members. If the chair becomes vacant, the Commission shall elect a new chair at its next meeting. If the vice chair becomes vacant, the Commission shall elect a new vice chair at its next meeting.

(f) In addition to duties that the Commission may create in its bylaws, the chair of the Commission has all of the following duties:

(1) Setting a date, time, and place for meetings of the Commission.

(2) Supervising the preparation and distribution of meeting notices, agendas, minutes, and other documents prepared by or on behalf of the Commission.

(g) If the chair becomes vacant, then the vice chair shall perform the duties of the chair until a replacement is elected by the Commission. If there is no vice chair, then the Secretary of State, or the Secretary's designee, shall perform the duties of the chair until a replacement is elected by the Commission.

(84 Del. Laws, c. 426, § 2; 84 Del. Laws, c. 426, § 3.)

§ 4503. Organization; quorum.

(a) The Commission shall adopt bylaws to carry out the purpose and duties of the Commission, including to do all of the following:

(1) Elect an officer.

(2) Remove an officer.

(3) Create standards and ethics for members of the Commission.

(4) Remove a member of the Commission.

(5) Create a committee.

(6) Conduct a meeting.

(7) Other matters that help the Commission perform its duties.

(b) A majority of the members must be present at a Commission meeting in order to have a quorum and conduct official business. A majority of the members present at a meeting at which a quorum is present is sufficient to approve an action of the Commission. A vacancy on the Commission is not counted for a quorum.

(84 Del. Laws, c. 426, § 1.)

§ 4504. Authority.

The Commission is under the authority of the Secretary of State and has the powers, duties, and functions described in § 4501 of this title and other duties and functions that may be referred to the Commission by the Governor, the Secretary of State, or the General Assembly.

(84 Del. Laws, c. 426, § 1.)

§ 4505. Committees; creation and purpose.

The Commission may create a committee, which may include nonmembers, to do any of the following:

(1) Engage with other organizations and individuals in the State that share a similar mission.

(2) Exchange ideas and information with other organizations and individuals in the State that share a similar mission.

(3) Provide other organizations and individuals in the State that share a similar mission the opportunity to help the Commission.

(84 Del. Laws, c. 426, § 1.)

§ 4506. Compensation.

All members of the Commission and all members of a committee established by the Commission serve without compensation.

(84 Del. Laws, c. 426, § 1.)

§ 4507. Budget.

Each fiscal year, the Commission shall send a proposed annual budget to the Secretary of State and the Commission must operate within the limit of the General Assembly’s appropriation of funds.

(84 Del. Laws, c. 426, § 1.)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 46
Office of Defense Services

§ 4600. Short title.

This chapter may be cited as the "Office of Defense Services Act."

(29 Del. C. 1953, § 4607; 54 Del. Laws, c. 227, § 1; 69 Del. Laws, c. 286, § 1; 80 Del. Laws, c. 26, § 1; 84 Del. Laws, c. 510, § 3.)

§ 4601. Office of Defense Services.

There is created the Office of Defense Services, comprised of 3 branches: Central Administration, the Public Defender's Office and the Office of Conflicts Counsel.

(29 Del. C. 1953, § 4601; 54 Del. Laws, c. 227, § 1; 80 Del. Laws, c. 26, § 1.)

§ 4602. Appointment; representation of defendants.

(a) The Office of Defense Services shall be headed by the Chief Defender. The Chief Defender shall be a qualified attorney licensed to practice in this State selected by the Governor. The Office of Defense Services shall represent, without charge, each indigent person who is under arrest or charged with a crime, under any of the following circumstances:

(1) The defendant requests it.

(2) The court, on its own motion or otherwise, so orders and the defendant does not affirmatively reject on the record the opportunity to be so represented.

(b) The determination of indigency shall be made by the Office of Defense Services. The representation will be without charge to the indigent person.

(c) Any person under the age of 18 arrested or charged with a crime or act of delinquency shall be automatically eligible for representation by the Office of Defense Services.

(29 Del. C. 1953, § 4602; 54 Del. Laws, c. 227, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 26, § 1; 80 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 510, § 2.)

§ 4603. Term of office; compensation; assistants.

(a) For appointments made after July 1, 2015, the Chief Defender shall serve for a term of 8 years from the date of appointment.

(b) The Chief Defender may appoint as many assistant attorneys, clerks, investigators, stenographers and other employees as the Chief Defender considers necessary to enable the Office of Defense Services to carry out the responsibilities of the office. Assistant Public Defenders and attorneys contracting with the Office of Conflicts Counsel must be licensed to practice in this State.

(c) The compensation of persons appointed under subsection (b) of this section shall be fixed by the Chief Defender.

(d) Salaried attorneys employed by the Office of Defense Services are prohibited from engaging in the practice of law outside the duties of the Office of Defense Services. Salaried attorneys who have already established private practices as of January 1, 2015, are exempt from the prohibition until May 28, 2025. After May 28, 2025, all salaried attorneys employed by the Office of Defense Services are prohibited from engaging in private law practice.

(29 Del. C. 1953, § 4603; 54 Del. Laws, c. 227, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 94, § 110; 80 Del. Laws, c. 26, § 1.)

§ 4604. Representation of indigent persons.

When representing an indigent person, the Office of Defense Services shall do all of the following:

(1) Counsel and defend the indigent person, whether held in custody without commitment or charged with a criminal offense, at every stage of the proceedings following arrest.

(2) Prosecute any appeals or other remedies before or after conviction that the Chief Defender considers to be in the interest of justice or as authorized by statute.

(29 Del. C. 1953, § 4604; 54 Del. Laws, c. 227, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 26, § 1; 85 Del. Laws, c. 76, § 8.)

§ 4605. Appointment of additional counsel.

For cause, the court may, on its own motion or upon the application of the Office of Defense Services or the indigent person, appoint the Office of Conflicts Counsel, or other qualified counsel, to represent the indigent person at any stage of the proceedings or on appeal. The attorneys contracting with the Office of Conflicts Counsel shall be awarded reasonable compensation and reimbursement for expenses necessarily incurred, to be fixed by the Chief Defender and paid through the Office of Conflicts Counsel.

(29 Del. C. 1953, § 4605; 54 Del. Laws, c. 227, § 1; 64 Del. Laws, c. 90, § 67A; 64 Del. Laws, c. 130, § 9(a); 64 Del. Laws, c. 212, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 26, § 1.)

§ 4606. Annual reports.

The Office of Defense Services shall make an annual report to the Governor and the General Assembly covering all cases handled by the Office of Defense Services during the preceding year.

(29 Del. C. 1953, § 4606; 54 Del. Laws, c. 227, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 26, § 1.)

§ 4607. Administrative fee assessment [Repealed].

(69 Del. Laws, c. 286, § 2; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 342, § 1; 80 Del. Laws, c. 26, § 1; repealed by 83 Del. Laws, c. 441, § 13, effective Apr. 3, 2023.)

§ 4608. Representation of indigent parents in DSCYF custody proceedings.

(a) The Office of Defense Services shall represent, without charge, indigent parents under Chapter 25 of Title 13 under any of the following circumstances:

(1) The indigent parent requests representation.

(2) The Court, on its own motion or otherwise, so orders and the indigent parent does not affirmatively reject on the record the opportunity to be so represented.

(b) The determination of indigency shall be made by the Office of Defense Services. The representation will be without charge to the indigent parent.

(84 Del. Laws, c. 510, § 3.)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 47
Forensic Science

§ 4701. Division of Forensic Science established; purpose.

The purpose of this chapter is to establish a Division of Forensic Science to provide leadership and coordination in the exercise of forensic sciences. In furtherance of that purpose, there is created the Division of Forensic Science under the supervision and control of the Director of the Division of Forensic Science. The Division of Forensic Science is established and operational within the Department of Safety and Homeland Security. The Division of Forensic Science shall have all the powers, duties, and functions heretofore vested in the Office of the Chief Medical Examiner, its personnel, and the Forensic Science Laboratory. The Office of the Chief Medical Examiner is hereby abolished.

(29 Del. C. 1953, § 4705; 50 Del. Laws, c. 502, § 1; 53 Del. Laws, c. 175, § 2; 57 Del. Laws, c. 140, § 1; 57 Del. Laws, c. 591, § 54; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 265, § 1.)

§ 4701A. Definitions [For application of this section, see 84 Del. Laws, c. 261, § 16].

For purposes of this chapter:

(1) “Biological sample” means any evidence collected for the purpose of identifying DNA.

(2) “Buccal swab” means a swab taken from the inside of an individual’s cheek.

(3) “CODIS” means the Federal Bureau of Investigation’s Combined DNA Index System.

(4) “Consensual partner elimination standard” means a blood or buccal swab taken from the consensual partner of an individual that is used to determine if the DNA profile obtained from evidence in a SAK was from a consensual partner or a possible perpetrator of a crime.

(5) “Deoxyribonucleic acid” or “DNA” means the molecules in all cellular forms that contain genetic information in a patterned chemical structure of each individual.

(6) “DFS” means the Division of Forensic Science.

(7) “DNA profile” means an analysis utilizing the short tandem repeat analysis of DNA that results in the identification of an individual’s genetic information.

(8) “Law-enforcement agency” means any of the following:

a. A police department.

b. The Department of Correction, including Probation and Parole.

(9) “Natural organic reduction” means as defined in § 3101 of Title 16.

(10) “NDIS” means the Federal Bureau of Investigation’s National DNA Index System.

(11) “Next of kin” means 1 of the following:

a. A spouse.

b. If no spouse, the decedent’s adult children.

c. If no spouse or adult children, the decedent’s parents.

d. If no spouse, adult children, or parents of the decedent, the adult sibling of the decedent.

e. If no spouse, adult children, parents of the decedent, or adult sibling of the decedent, the person who is legally entitled to claim the decedent’s remains for final disposition.

(12) “Sexual assault kit” or “SAK” means a sexual assault or rape evidence collection kit.

(13) “State DNA Index System” or “SDIS” means the centralized database of DNA identification records for this State.

(81 Del. Laws, c. 358, § 1; 84 Del. Laws, c. 261, § 11; 84 Del. Laws, c. 274, § 1; 85 Del. Laws, c. 143, § 1.)

§ 4702. Rules and regulations.

The Department of Safety and Homeland Security may adopt and promulgate rules and regulations to carry into effect this chapter.

(29 Del. C. 1953, § 4706; 50 Del. Laws, c. 502, § 1; 57 Del. Laws, c. 140, § 1; 57 Del. Laws, c. 591, § 55; 79 Del. Laws, c. 265, § 1.)

§ 4703. Appointment of professional and other personnel.

(a) The Director of the Division of Forensic Science shall appoint, with the approval of the Secretary of the Department of Safety and Homeland Security, a Chief Medical Examiner, who shall be a board-certified pathologist, with preference given to applicants with training and experience in the field of forensic pathology. The Chief Medical Examiner shall serve at the pleasure of the Director of the

Division of Forensic Science and shall be subject to removal with or without cause by the Director of the Division of Forensic Science or the Secretary of the Department of Safety and Homeland Security.

(b) The Director of the Division of Forensic Science may appoint, with the approval of the Department of Safety and Homeland Security Assistant Medical Examiners who shall be physicians with 2 years or more of training or experience in pathology, necessary numbers of Deputy Medical Examiners who shall be practicing physicians and a toxicologist who shall have a Ph.D. degree in toxicology or pharmacology or a master's degree in toxicology or pharmacology with a minimum of 3 years of experience in analytical toxicology, at such compensation as shall be determined by the Department of Safety and Homeland Security. The Director of the Division of Forensic Science may also appoint, in accordance with the state merit system regulations, technical, clerical and other personnel, as may be necessary for proper administration of the Division.

(c) The Director of the Division of Forensic Science may employ, with the approval of the Department of Safety and Homeland Security, physicians on a contract basis for part-time services, as may be required. Except as otherwise provided, all professional, technical and clerical personnel appointed in accordance with this section are directly responsible to the Director of the Division of Forensic Science and are subject to removal by the Director of the Division of Forensic Science or the Secretary of the Department of Safety and Homeland Security for cause, in accordance with any state merit system regulations applicable to the position.

(d) The Director of the Division of Forensic Science or his or her designee may conduct pre-employment drug testing of any contractor or prospective employee accepting a position with the Division, random drug testing of employees, and testing upon reasonable suspicion that an employee is impaired by an illegal drug. The timing, procedures, and specific controlled substances of any drug testing shall be conducted in accordance with policies or regulations adopted by the Division. The Division is further authorized to conduct preemployment criminal background checks of any contractor or prospective employee accepting a position with the Division, and such persons are subject to criminal background checks from time to time while working in or for the Division.

(e) The Director of the Division of Forensic Science and Chief Medical Examiner shall be subject to the same Department of Safety and Homeland Security policies and procedures with respect to overtime, vacation and leave time, and compensatory time as other Department of Safety and Homeland Security division directors. The Director of the Division of Forensic Science, Chief Medical Examiner, Assistant Medical Examiners, Deputy Medical Examiners, forensic toxicologists, and forensic chemists shall not be permitted to maintain or engage in employment, or to work as an independent contractor, outside of the Division of Forensic Science without prior written approval of the Secretary. Such prior written approval must be issued for each employer or contract for private outside employment.

(29 Del. C. 1953, § 4707; 50 Del. Laws, c. 502, § 1; 53 Del. Laws, c. 175, § 3; 57 Del. Laws, c. 140, § 1; 57 Del. Laws, c. 591, § 55; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 265, § 1.)

§ 4704. Duties of Medical Examiners.

(a) The Chief Medical Examiner and the assistant medical examiners shall carry out the provisions of this chapter to investigate all deaths throughout the State.

(b) The Chief Medical Examiner shall comply with the orders and directions of the Department of Safety and Homeland Security.

(29 Del. C. 1953, § 4708; 50 Del. Laws, c. 502, § 1; 57 Del. Laws, c. 140, § 1; 57 Del. Laws, c. 591, § 56; 79 Del. Laws, c. 265, § 1; 84 Del. Laws, c. 117, § 16.)

§ 4705. Office and equipment.

The Division of Forensic Science shall be maintained in a suitable place or places which shall be designated by the Secretary of the Department of Safety and Homeland Security. The Department of Safety and Homeland Security shall provide or arrange for proper and necessary equipment for use of the staff of the Division of Forensic Science.

(29 Del. C. 1953, § 4709; 50 Del. Laws, c. 502, § 1; 53 Del. Laws, c. 175, § 3; 57 Del. Laws, c. 140, § 1; 57 Del. Laws, c. 591, § 55; 79 Del. Laws, c. 265, § 1.)

§ 4706. Investigation of deaths [For application of this section, see 84 Del. Laws, c. 261, § 16].

(a) When an individual dies in this State, as a result of violence, by suicide or by casualty if such occurred not longer than 1 year and 1 day prior to death, while under anesthesia, by abortion or suspected abortion, by poison or suspicion of poison, by overdose death as defined at § 4799A of Title 16 or suddenly when in apparent health or when unattended by a physician or in any prison or penal institution or when in police custody or from a disease resulting from employment including disease related to injury or from an undiagnosed cause which may be related to a disease constituting a threat to public health or in any suspicious or unusual manner or if there is any unclaimed body or a body is to be cremated or subjected to natural organic reduction, it is the duty of the person having knowledge of the death or of the person issuing a permit for cremation or natural organic reduction under § 3159 of Title 16 immediately to notify the Chief Medical Examiner, an Assistant Medical Examiner, or a Deputy Medical Examiner, as the case may be, who in turn shall notify the Attorney General of the known facts concerning the time, place, manner, and circumstances of the death. A person who wilfully neglects or refuses to report the death or who refuses to make available prior medical or other information pertinent to the death investigation or who, without an order from the Division of Forensic Science, wilfully touches, removes, or disturbs the clothing or any article on or near the body shall on conviction be subject to imprisonment for not more than 1 year or pay a fine of not more than $1,000, or both.

(b) Immediately upon receipt of such notification, the Medical Examiner shall take charge of the dead body if either the Medical Examiner or the Attorney General shall deem it necessary. The Division of Forensic Science shall promptly notify a relative or close acquaintance of the deceased, if known, of such action.

(c) The Medical Examiner shall fully investigate the essential facts concerning the medical causes of death and may take the names and addresses of as many witnesses as may be practicable to obtain and shall reduce such facts as the Medical Examiner may deem necessary to writing and file the same in the Division of Forensic Science. The essential facts concerning the medical causes of death of any person who has died from an overdose death as defined at § 4799A of Title 16 shall be communicated to the Delaware Department of Justice.

(d) The Medical Examiner or a duly authorized investigator, in the absence of the next of kin, shall take possession of the personal property found on the deceased and make an exact inventory thereof on the Medical Examiner's report. If necessary an attending police officer may take temporary possession of such property in behalf of the Medical Examiner or an authorized investigator.

(e) The Medical Examiner shall take possession of any object or articles which, in the Medical Examiner's opinion, may be useful in establishing the identity of the deceased person or the cause of death and deliver them to the Attorney General. The balance of the personal property of the deceased remaining in the possession of the Medical Examiner shall be released to the next of kin of the deceased or the personal representative of the deceased.

(29 Del. C. 1953, § 4710; 50 Del. Laws, c. 502, § 1; 53 Del. Laws, c. 175, §§ 5-7; 57 Del. Laws, c. 140, § 1; 58 Del. Laws, c. 58, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 265, § 1; 80 Del. Laws, c. 220, § 2; 84 Del. Laws, c. 261, § 12.)

§ 4707. Postmortem examination; autopsy reports.

(a) When the cause of death shall have been established within reasonable medical certainty by a Medical Examiner, the Medical Examiner shall prepare a written report and file it in the Division of Forensic Science within 90 days after an investigation of such death.

(b) If, however, in the opinion of the Medical Examiner an autopsy is necessary in the public interest or as shall be requested by the Attorney General, the same shall be performed by the Chief Medical Examiner, an Assistant Medical Examiner or by such other competent pathologists as may be designated by the Chief Medical Examiner. No person who authorizes or performs an autopsy pursuant to this chapter shall be liable in any civil action for damages.

(c) A detailed report of the findings written during the progress of the autopsy, related laboratory analysis and the conclusions drawn therefrom shall be filed in the Division of Forensic Science.

(d) Promptly upon the conclusion of the postmortem examination, the body of the decedent shall be released to such person as shall be designated by a member of the decedent's immediate family, preferably the next of kin or by an appropriate representative of the decedent's estate.

(e) Upon written request the next of kin of the deceased shall receive a copy of the postmortem examination report, the autopsy report and the laboratory reports, unless there shall be a criminal prosecution pending in which case no such reports shall be released until the criminal prosecution shall have been finally concluded. The charge for completion of an insurance form for proof of death shall be $5.00.

(29 Del. C. 1953, § 4711; 50 Del. Laws, c. 502, § 1; 53 Del. Laws, c. 175, § 8; 57 Del. Laws, c. 140, § 1; 57 Del. Laws, c. 591, § 55; 58 Del. Laws, c. 58, §§ 2, 3; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 265, § 1; 81 Del. Laws, c. 358, § 2.)

§ 4708. Forensic Sciences Laboratory.

The Forensic Sciences Laboratory is established and operational within the Division of Forensic Science. The Director of the Division of Forensic Science functions as the Director of the Forensic Sciences Laboratory.

(66 Del. Laws, c. 209, § 4; 79 Del. Laws, c. 265, § 1.)

§ 4709. Power to administer oaths and issue subpoenas.

The Director of the Division of Forensic Science, the Chief Medical Examiner, the Assistant Medical Examiners and the Deputy Medical Examiners, in the course of investigation of a death, may administer oaths and affirmations and take affidavits and make examinations as to any matter within the jurisdiction of their respective offices, but the Chief Medical Examiner, the Assistant Medical Examiners and the Deputy Medical Examiners may not summon a jury of inquisition. The Chief Medical Examiner, or in the Chief Medical Examiner's absence, Assistant Medical Examiners or Deputy Medical Examiners, shall have the power to issue subpoenas.

(29 Del. C. 1953, § 4712; 50 Del. Laws, c. 502, § 1; 57 Del. Laws, c. 140, § 1; 66 Del. Laws, c. 209, § 3; 79 Del. Laws, c. 265, § 1.)

§ 4710. Records and reports; evidence.

(a) The Chief Medical Examiner is to keep full and complete records of the Division of Forensic Science pertaining to the investigation of deaths and postmortem examinations. Such records shall be properly indexed, giving the name, if known, of every deceased person investigated, the place where the body was found, the date and the cause of death and all other available information relating thereto. The original report of Medical Examiners and the detailed findings of the autopsy and subsequent laboratory examinations, if any, shall be attached to the record of each case.

(b) The Chief Medical Examiner shall deliver to the Attorney General copies of all records relating to every death in which, in the judgment of the investigating Medical Examiner, further investigation may be deemed advisable.

(c) The Attorney General may obtain from the Division of Forensic Science copies of all records or other information which the Attorney General may deem necessary.

(d) The records of the Division of Forensic Science prepared by the Director of the Division of Forensic Science or by anyone under the Director's direction or supervision or a true copy thereof certified by the Director or the Chief Medical Examiner shall be received as competent evidence in any court in this State of the matters and facts therein contained.

(29 Del. C. 1953, § 4713; 50 Del. Laws, c. 502, § 1; 57 Del. Laws, c. 140, § 1; 66 Del. Laws, c. 209, § 3; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 265, § 1.)

§ 4711. Disposition of unclaimed body or remains of indigent person [For application of this section, see 84 Del. Laws, c. 261, § 16].

(a) In any case where there is an unclaimed body or there are remains of indigent persons and it is incumbent on the State or any political subdivision thereof to bury such person found dead, the Chief Medical Examiner or a duly authorized representative shall notify the Division of Social Services of the Department of Health and Social Services to arrange for the burial unless the case falls within the category described in subsection (b) of this section.

(b) When there is a written consent of the next of kin or other legally responsible party, the remains of an indigent person may be subjected to natural organic reduction, cremated, or donated for scientific research.

(29 Del. C. 1953, § 4714; 57 Del. Laws, c. 140, § 1; 59 Del. Laws, c. 111, §§ 1-3; 61 Del. Laws, c. 429, § 1; 66 Del. Laws, c. 209, § 3; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 190; 84 Del. Laws, c. 261, § 13.)

§ 4712. Authority to provide corneas to eye banks.

(a) Upon request of an approved eye bank on behalf of a patient in need of corneal tissue for a transplant, a Medical Examiner is authorized to provide the cornea under the following conditions:

(1) A decedent who may provide a suitable cornea for transplant is under the jurisdiction of the Medical Examiner;

(2) An autopsy will be required;

(3) No objection by the decedent or next of kin is known by the Medical Examiner prior to the removal of the cornea by a representative of an approved eye bank; and

(4) Removal of the cornea for transplant will not interfere with the subsequent course of a postmortem examination or alter the postmortem facial appearance.

(b) For the purposes of this section, "approved eye bank" includes the Medical Eye Bank of Delaware and the Eye Foundation of Delaware Valley.

(c) The Medical Examiner or an approved eye bank, while acting in compliance with this section, shall not be liable to the next of kin of a decedent, whose corneal tissue is removed and donated pursuant to this section, for any civil damages.

(62 Del. Laws, c. 396, § 1; 65 Del. Laws, c. 43, § 1; 66 Del. Laws, c. 209, § 3; 81 Del. Laws, c. 358, § 3.)

§ 4713. DNA analysis and data bank.

(a) In any criminal proceeding, DNA testing shall be deemed to be a reliable scientific technique, and the evidence of a DNA profile comparison is admissible under § 3515 of Title 11 to prove or disprove the identity of any person. This section does not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court. The court shall, regardless of the results of the DNA analysis, if any, consider such other relevant evidence of the identity of the person as shall be admissible in evidence.

(b) (1) a. The Department of Correction shall take a biological sample for DNA from any person convicted on or after June 16, 1994, and sentenced to a term of confinement, of any offense or attempted offense defined in subchapter II, subpart D or subchapter V of Chapter 5, Title 11 or who is in the custody of the Department of Correction after June 16, 1994, as a result of a conviction for 1 or more of the offenses listed under this paragraph (b)(1) for law-enforcement identification purposes and inclusion in law-enforcement identification databases.

b. A person convicted for 1 or more of the offenses listed under this paragraph (b)(1) on or after June 16, 1994, who is not sentenced to a term of confinement shall provide a biological sample as a condition of such sentence at a time and place specified by the sentencing court.

(2) a. The Department of Correction shall take a biological sample for DNA from any person convicted after July 1, 2003, and sentenced to a term of confinement, of any offense that is defined and classified as a felony under Title 11 for law-enforcement identification purposes and inclusion in law-enforcement identification databases.

b. A person convicted after July 1, 2003, of a felony offense that is defined and classified as a felony under Title 11 and who is not sentenced to a term of confinement shall provide a biological sample as a condition of such sentence at a time and place specified by the sentencing court.

(c) (1) Biological samples must be obtained by qualified personnel and packaged and submitted in containers provided or approved by the Division of Forensic Science in accordance with administrative regulations promulgated by the Division of Forensic Science.

(2) No civil liability shall attach to any person authorized to obtain a biological sample under this section as a result of obtaining a biological sample from any person, provided the biological sample was obtained according to generally accepted procedures.

(d) A person who tampers or attempts to tamper with any biological sample or the container collected under subsection (b) or (c) of this section without lawful authority is guilty of a Class D felony.

(e) The Division of Forensic Science shall establish and maintain the State DNA Index System, a centralized database of DNA identification records that is compatible with NDIS policies and procedures.

(f) The purpose of SDIS is to assist federal, state, and local criminal justice and law enforcement agencies within and outside this State in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of crimes, including sex-related crimes or violent crimes and the identification of missing and unidentified persons.

(g) (1) a. The Division of Forensic Science shall receive, analyze, and classify biological samples in compliance with NDIS policies and procedures and shall record the DNA results in CODIS for identification and statistical purposes.

b. The Department of Justice, or a law-enforcement agency authorized by the Department of Justice, must inform DFS if the investigation has determined that no crime occurred in the case connected to a biological sample submitted for analysis and classification under paragraph (g)(1)a. of this section. If notice that no crime occurred is provided under this paragraph (g)(1)b., paragraph (g)(1)a. of this section does not apply to a biological sample connected to that case.

(2) DFS must also comply with the requirements under § 4713A of this title when a DNA analysis is of a biological sample from a sexual assault kit.

(3) The results of an analysis under this section are confidential, except as specifically provided under this section and under all of the following:

a. Section 4713A of this title,

b. Section 9405(d) of Title 11. Unless otherwise permitted under the law of this State, information provided to a victim or a victim's designee under § 9405(d) of Title 11 should not include the name of the individual identified using the DNA profile.

(4) DFS shall securely store the results of an analysis.

(h) Records produced from biological samples received by DFS, including the results of analysis under subsection (g) of this section, may be used only for law enforcement purposes and are exempt from disclosure under the Freedom of Information Act, Chapter 100 of this title.

(i) (1) An individual whose DNA profile has been included in SDIS may petition Superior Court for expungement on the grounds that the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed.

(2) Upon receipt of a certified court order granted under paragraph (i)(1) of this section, the Division of Forensic Science shall expunge all identifiable information in CODIS pertaining to the individual and destroy all biological samples from that individual.

(j) The Division of Forensic Science shall promulgate regulations necessary to implement this section, including procedures for the collection of biological samples and SDIS system usage and integrity.

(k) (1) Upon completion of the analysis required under this section, the Division of Forensic Science shall upload a notation of the existence of a DNA identification record in the Delaware Criminal Justice Information System (DELJIS) file for the individual. This information must be available to all requesting criminal justice agencies in the same manner and under the same conditions as all other criminal record information maintained by the State Bureau of Identification.

(2) If there is a verified association between the DNA profile and an individual, DFS shall provide this information to the Delaware Information Analysis Center (DIAC).

(*l*) A person who disseminates, receives, or otherwise uses or attempts to use information in the database, knowing that such dissemination, receipt, or use is for a purpose other than authorized by law, is guilty of a Class A misdemeanor.

(m) (1) a. DFS and law-enforcement agencies may not destroy or dispose of biological samples from an unsolved sexual assault case until 20 years after the collection of the evidence of the crime.

b. Notwithstanding paragraph (m)(1)a. of this section, if the victim was under 18 years of age at the time of the alleged offense, biological samples from an unsolved sexual assault case may not be destroyed or disposed before the victim is 40 years of age.

(2) Before destroying or disposing of a biological sample from an unsolved sexual assault case under § 2311 of Title 11, DFS and law-enforcement agencies must comply with the requirements under § 9405(e) of Title 11.

(69 Del. Laws, c. 249, § 1; 73 Del. Laws, c. 387, § 1; 74 Del. Laws, c. 223, §§ 1-12; 74 Del. Laws, c. 344, § 1; 79 Del. Laws, c. 8, § 1; 79 Del. Laws, c. 265, § 1; 80 Del. Laws, c. 353, § 1; 85 Del. Laws, c. 143, § 2.)

§ 4713A. DNA analysis, sexual assault kit testing.

(a) (1) A law-enforcement agency shall submit a SAK to the DFS laboratory no more than 30 days after the law-enforcement agency contacts DFS to discuss the evidence the law-enforcement agency has collected and what will be submitted for DNA analysis.

(2) If available, a law-enforcement agency shall submit a suspect standard or consensual partner elimination standard to the DFS laboratory with the SAK, or as soon as possible after submitting the SAK.

(3) A law-enforcement agency shall submit additional evidence items associated with a victim, suspect, or crime scene to the DFS laboratory with the SAK, or as soon as possible after submitting the SAK.

(b) (1) The DFS laboratory shall conduct DNA analysis of sexual assault kits submitted by law-enforcement agencies under § 4713(g)(1) of this title.

(2) The DFS laboratory shall complete the DNA analysis under paragraph (b)(1) of this section no more than 90 days after receipt.

(3) Each year, the average amount of time between when the DFS laboratory receives a SAK and when the complete DNA analysis and classification required under this section is completed must not exceed 90 days.

(c) (1) After completing the DNA analysis and classification, the Division of Forensic Science shall update the investigating law-enforcement agency on testing dates and outcomes of the evidence submitted under this section.

(2) The investigating law-enforcement agency shall update the Law Enforcement Investigative Support System with the evidence testing dates and upload the status and results received under paragraph (b)(2) of this section.

(d) (1) If a DNA profile is not eligible for NDIS under § 4713(g)(1) of this title due to inferior quality but the DNA profile has enough alleles present for inclusion within the SDIS, the DFS shall retain the DNA profile as a forensic sample for statewide comparison.

(2) If the Division of Forensic Science is unable to obtain an autosomal CODIS-eligible DNA profile, the investigating law-enforcement agency and the Department of Justice, in consultation with the DFS laboratory, must evaluate the case and determine if any other DNA-typing results could be used for investigative purposes.

(e) If the Division of Forensic Science is unable to meet the deadlines required under this section, the testing and analysis of untested sexual assault kits must be conducted by a federal or accredited, private crime laboratory, at the State's expense.

(f) The failure to comply with a time requirement under this section does not provide a basis for any of the following:

(1) Grounds to challenge the validity of DNA evidence or the lack of DNA evidence in any criminal or civil proceeding.

(2) For a court to exclude any evidence generated from a SAK.

(3) For an individual who is accused or convicted of committing a crime to request that the individual's case be dismissed or conviction be set aside.

(4) A claim for damages against a government employee, official, or entity.

(85 Del. Laws, c. 143, § 3.)

§ 4714. Commission on Forensic Science.

(a) The Commission on Forensic Science, hereinafter in this chapter referred to as the "Commission", is hereby established. The Commission shall provide oversight and guidance to foster professionalism within, and the development and growth of, the Division of Forensic Science. The Commission shall consist of 10 members. The Commissioners shall be the Secretary of the Department of Health and Social Service, the Secretary of the Department of Safety and Homeland Security, the Attorney General, or the Attorney General's designee, the Chief Defender or the Chief Defender's designee, a member of the Delaware State Senate appointed by the President Pro Tempore, a member of the Delaware House of Representatives appointed by the Speaker, a member appointed by the Delaware Police Chiefs Council, a member of the Delaware State Troopers Association or the Fraternal Order of Police with formal training in forensic science appointed by the Secretary of the Department of Safety and Homeland Security with the concurrence of the Governor, and 2 members, appointed by the Governor, who have expertise in forensic science.

(b) For administrative and budgetary purposes, the Commission will be placed within the Department of Safety and Homeland Security, Office of the Secretary.

(c) The Director of the Division of Forensic Science shall create an audit process to include evidence accountability, requisite certifications, and security. The Director of the Division of Forensic Science shall file a report on this audit to the Commission and Governor once a year.

(d) The Commission shall undertake the following tasks:

(1) Evaluate and monitor the needs of the Division to ensure that it is able to provide accurate, timely, and responsive forensic sciences services to all members of the criminal justice community;

(2) Evaluate and monitor the needs of the Division as may help preserve the independence of judgment and the integrity of all scientific undertakings by the Division and its personnel;

(3) Evaluate and monitor the human resources needs and the personnel and hiring practices of the Division;

(4) Receive and consider input from all stakeholders in the criminal justice community, including, without limitation, prosecutors, defense attorneys, the courts, law enforcement, victims' advocates, the Domestic Violence Coordinating Council, the Maternal and Child Death Review Commission, the Child Protection Accountability Commission, and other interested persons or parties;

(5) Evaluate and monitor the quality assurance structure and processes, including chain of custody practices for drug evidence;

(6) Evaluate and monitor professional competency and accreditation requirements and staff management policies;

(7) Review and comment upon all rules and regulations promulgated pursuant to § 4702 of this title; and

(8) Suggest and support the implementation of improvements to the operations of the Division or its communications and cooperation with other agencies of state and local government.

(79 Del. Laws, c. 265, § 1; 80 Del. Laws, c. 26, § 1; 80 Del. Laws, c. 187, § 14; 83 Del. Laws, c. 364, § 2.)

Part IV
State Agencies and Offices Not Created by Constitution
Chapter 48
Lotteries
Subchapter I
State Lottery

§ 4801. Statement of purpose.

(a) It is the purpose of this subchapter to establish a state-operated lottery under the supervision of a Director who shall be appointed by the Secretary of Finance with the written approval of the Governor and hold broad authority to administer the system in a manner which will produce the greatest income for the State.

(b) In authorizing a video lottery, it is the further purpose of the General Assembly to:

(1) Provide nonstate supported assistance in the form of increased economic activity and vitality for Delaware's harness and thoroughbred horse racing industries, which activity and vitality will enable the industry to improve its facilities and breeding stock, and cause increased employment; and

(2) Restrict the location of such lottery to locations where wagering is already permitted and/or such immediately adjacent property or properties that are owned by, or immediately adjacent properties that may be acquired by, the video lottery licensee as defined in § 4805(b)(13) of this title, and where controls exist.

(c) In authorizing the use of the Internet for certain lottery games, it is the further purpose of the General Assembly to:

(1) Expand access to certain lottery games by offering them on the Internet in a well-regulated and secure system designed to create a positive customer experience that limits access to minors, those with gambling problems, and others who should not be gaming;

(2) Improve the competitiveness of Delaware's video lottery licensees by encouraging reinvestment in their facilities and promoting the utilization of lottery games on the Internet at websites branded and promoted by the video lottery licensees and Delaware Lottery Office;

(3) Provide further support to Delaware's harness and thoroughbred horse racing industries by expanding the gaming offerings benefitting video lottery licensees and the horsemen or horsewomen who race there; and

(4) Enhance the offerings of the Delaware lottery by allowing it to develop keno and the sports lottery in a manner that promotes additional convenience and choices for Delawareans.

(59 Del. Laws, c. 348, § 1; 60 Del. Laws, c. 539, § 1; 61 Del. Laws, c. 189, § 1; 69 Del. Laws, c. 446, § 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 156, § 1; 78 Del. Laws, c. 285, § 2.)

§ 4802. State Lottery Office.

A State Lottery Office shall exist as part of the Department of Finance and shall be administered by a Director responsible for the operation of a state lottery. The net proceeds of the state lottery shall be placed in the General Fund of the State.

(59 Del. Laws, c. 348, § 1; 60 Del. Laws, c. 539, § 2.)

§ 4803. Definitions.

(a) "Charitable gaming organization" shall mean an organization, in existence as of January 1, 2013, that is a fraternal or veterans organization with national affiliation or an organization, in existence as of January 1, 2013, whose membership consists primarily of veterans honorably discharged or active duty service members.

(b) "Charitable video lottery machine" shall mean a video lottery machine that is under the control of the State Lottery Office and that has been authorized by the Director to be placed at a location operated by a charitable gaming organization. Authorized play on such device shall be restricted to members of the charitable gaming organization's active members. The Director shall promulgate rules for authorized charitable gaming organizations to report monthly the amount of proceeds that should be returned to the State.

(c) "Credit slip" shall mean the receipt generated by a video lottery terminal when a player is playing that particular video lottery terminal, or the ticket resulting from a sports lottery game.

(d) "Director," as used in this subchapter, shall mean the Director of the State Lottery Office.

(e) "Employee organization" shall mean any organization that admits or seeks to admit to membership employees of a Delaware video lottery agent and that has as a purpose the representation of such employees in collective bargaining, grievance representation, labor disputes, salaries, wages, rates of pay, hours of employment, or conditions of work.

(f) "Gaming area" shall mean a location in a video lottery facility where gaming activity is conducted at video lottery machines or table games.

(g) "Gaming employee" shall mean a person employed in the operation of a video lottery facility and determined by the Director to have employment duties and responsibilities involving the security, maintenance, servicing, repair, or operation of video lottery machines

and table game equipment, or is employed in a position that allows direct access to the internal workings of video lottery machines or table game equipment. Such employees shall include, without limitation: dealers; floorpersons; video lottery machine personnel; video lottery machine technicians; count room and cage personnel; security and surveillance employees; employees responsible for handling assets and proceeds associated with the operation of gaming activity; and employees with responsibility for policies concerning complimentaries or allowed to grant variances to policies concerning complimentaries.

(h) "Gaming excursion" shall mean an arrangement the purpose of which is to induce any person, selected or approved for participation therein on the basis of said person's ability to satisfy a financial qualification obligation related to said person's ability or willingness to gamble or on any other basis related to said person's propensity to gamble, to come to a video lottery facility for the purpose of gaming and pursuant to which, and as consideration for which, any or all of the cost of transportation, food, lodging, and entertainment for said person is directly or indirectly paid by a video lottery agent or employee thereof.

(i) "Gaming room service employee" shall mean a person employed to perform services or duties in a video lottery facility, who has access to the gaming area or restricted gaming area, but who is not included within the definition of "key employee" or "gaming employee."

(j) "Gross table game revenue" shall mean the total of all table game win or loss and poker revenue, including checks received whether collected or not, received by a video lottery agent from table game operations; provided that if the value of gross table game revenue at any video lottery facility in a given fiscal year is less than zero, any liabilities to winners in such year shall be the responsibility of the video lottery agent. Gross table game revenue shall include entry fees charged in a tournament in excess of cash prizes awarded. For purposes of this section, any check which is invalid and unenforceable shall be treated as cash and included within gross table game revenue.

(k) "Internet lottery" shall mean all lottery games in which the player's interaction with the game operated by the Office occurs over the Internet (which, for purposes of this chapter, shall include any public or private computer or terminal network, whether linked electronically, wirelessly, through optical networking technology or other means), including Internet ticket games, the Internet video lottery and Internet table games.

(*l*) "Internet table games" shall mean a lottery game in which the player's interaction with the game operated by the Office occurs over the Internet through a website or network of a video lottery agent, rather than at a table game in a video lottery facility, and in which the game is an Internet variation or compilation of a table game or table games, provided that the game is expressly authorized by rule of the Director.

(m) "Internet ticket games" shall mean a lottery game in which the player's interaction with the game operated by the Office occurs over the Internet through a website or network of the Office, and in which the winner is decided by chance through mechanical or electronic means, and which shall include keno but which shall not include the video lottery, table games, and other forms of the Internet lottery.

(n) "Internet video lottery" shall mean a lottery game in which the player's interaction with the game operated by the Office occurs over the Internet through a website or network of a video lottery agent, rather than at a video lottery machine in a video lottery facility, and in which the game is an Internet variation of a video lottery game, and which shall not include keno, table games, and other forms of the Internet lottery.

(o) "Key employee" shall mean a person employed in the operation of a video lottery facility and determined by the Director to be acting in a supervisory capacity or empowered to make discretionary decisions with respect to video lottery machine or table game operations, including, without limitation, the chief executive, financial and operation managers, video lottery department managers, cashier and cage supervisors, credit executives, pit bosses or managers, gaming employee shift managers or any other employee so designated by the Director for reasons consistent with the public policies of this subchapter, and shall include any officer or any employee of an employee organization who has direct involvement with or who exercises authority, discretion or influence in the representation of employees of a Delaware video lottery agent in collective bargaining, grievance representation, labor disputes, salaries, wages, rates of pay, hours of employment or conditions of work.

(p) "Lottery" or "state lottery" or "system" shall mean the public gaming systems or games established and operated pursuant to this subchapter and including all types of lotteries.

(q) "Lottery agent" or "lottery ticket sales agent" means a person whom the Director has licensed to sell lottery tickets.

(r) "Net moneys" shall mean all moneys received from the sale of lottery tickets after first deducting sales agent commissions and payment of prizes under $600.

(s) "Office" shall mean the State Lottery Office established by this subchapter.

(t) "Poker revenue" shall mean the total value of rake charged to players at all poker tables. The poker revenue is determined by adding the value of cash, coupons, the amount recorded on the closer, the totals of amounts recorded on the credits and markers removed from a drop box, and subtracting the amount on the opener and the total of amounts recorded on fills removed from a drop box.

(u) "Qualified child support obligation" shall mean any child support lien in excess of $150 as provided by § 2215 of Title 13.

(v) "Qualified lottery prize" shall mean any video lottery, sports lottery, table game, or charitable gaming organization prize paid by cash or check for which a W-2G is issued (but less any amounts withheld for income taxes).

(w) "Restricted gaming area" shall mean the cashier's cage, the count room, the cage booths and runway areas, the interior of table game pits, the surveillance room and catwalk areas, the video lottery machine repair room and any other area designated by the Director as a restricted gaming area.

(x) “Sports lottery” shall mean a lottery in which the winners are determined based on the outcome of any professional or collegiate sporting event, including racing, held within or without the State, but excluding collegiate sporting events that involve a Delaware college or university and amateur or professional sporting events that involve a Delaware team.

(y) “Sports lottery agent” means a person whom the Director has licensed to conduct sports lottery games.

(z) “Sports lottery machine” shall mean any machine in which bills, coins or tokens are deposited in order to play a sports lottery game. A machine shall be considered a sports lottery machine notwithstanding the use of an electronic credit system making the deposit of bills, coins or tokens unnecessary.

(aa) “Sports lottery operations employee” shall mean an individual employee, person or agent of an applicant or licensee who is responsible for the security of sports lottery operations or proceeds.

(bb) “State Lottery Fund” shall mean those moneys derived from the sale of state lottery tickets and deposited in the state account of that name and those funds appropriated for the start-up costs of the system.

(cc) “Table game” shall mean any game played in a video lottery facility with cards, dice or any mechanical, electromechanical or electronic device or machine (excluding keno, video lottery machines, and the Internet lottery) for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, twenty-one, poker, craps, roulette, bingo, wheel of fortune or any variation of these games, whether or not similar in design or operation, provided that the game is expressly authorized by rule of the Director.

(dd) “Table game equipment” shall mean gaming tables, cards, dice, chips, tiles, shufflers, drop boxes or any other mechanical, electronic or other device, mechanism or equipment or related supplies used or consumed in the operation of any table games.

(ee) “Table game win or loss” shall mean the value of gaming chips and cash won from patrons at gaming tables less the value of gaming chips and cash won by patrons at gaming tables other than poker tables. The table game win or loss is determined by adding the value of cash, total value of coupons, the amount recorded on the closer, the totals of amounts recorded on the credits and the issuance copies of markers removed from a drop box, subtracting the amount recorded on the opener and the total of amounts recorded on fills removed from a drop box. Match play coupons shall not be included, subject to limitations imposed by the Director.

(ff) “Video lottery” shall mean any lottery conducted in a video lottery facility with a video lottery machine or a network of linked video lottery machines with an aggregate progression prize or prizes (excluding keno, table games, and the Internet lottery).

(gg) “Video lottery agent” means a person whom the Director has licensed to conduct table games, video lottery games, sports lottery games, and Internet lottery games and who possesses either a horse racing meet license pursuant to Title 3 or Title 28 of the Delaware Code, a harness racing meet license pursuant to Title 3 of the Delaware Code, or both.

(hh) “Video lottery facility” shall mean a building containing a gaming area.

(ii) “Video lottery machine” shall mean any machine in which bills, coins or tokens are deposited in order to play in a game of chance in which the results, including options available to the player, are randomly determined by the machine. A machine may use spinning reels or video displays or both, and may or may not dispense coins or tokens directly to winning players. A machine shall be considered a video lottery machine notwithstanding the use of an electronic credit system making the deposit of bills, coins or tokens unnecessary.

(59 Del. Laws, c. 348, § 1; 60 Del. Laws, c. 9, § 1; 61 Del. Laws, c. 169, § 1; 61 Del. Laws, c. 189, § 1; 69 Del. Laws, c. 446, § 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 184, § 1; 71 Del. Laws, c. 253, §§ 1, 2; 75 Del. Laws, c. 89, § 154; 75 Del. Laws, c. 229, § 1; 77 Del. Laws, c. 28, § 2; 77 Del. Laws, c. 219, §§ 2-4; 77 Del. Laws, c. 329, § 65; 78 Del. Laws, c. 76, § 68; 78 Del. Laws, c. 245, § 1; 78 Del. Laws, c. 285, § 3; 79 Del. Laws, c. 1, §§ 1, 4; 79 Del. Laws, c. 77, §§ 1, 5; 80 Del. Laws, c. 78, § 73; 82 Del. Laws, c. 158, § 1; 84 Del. Laws, c. 240, § 1.)

§ 4804. Director — Appointment; qualifications; salary.

(a) The State Lottery Office shall be administered and supervised by a Director who shall be a person qualified by business experience and training to supervise the operation of a public gaming system in a manner which will produce the greatest income for the State. The Director shall be appointed by the Secretary of Finance with the written approval of the Governor.

(b) The qualifications of the person appointed as Director shall be as follows:

(1) Five or more years experience as the head of an autonomous business, division or independent segment of a large company or governmental agency having to do with public gaming. The position or positions held should have broad authority and carry major responsibility; except that experience in a public utility or other monopolistic enterprise does not meet this requirement. There shall be positive evidence that the company, division or independent segment of a large company or government agency was well managed during the tenure of the prospective Director;

(2) Shall be in good health, shall have a good reputation, particularly as a person of honesty and integrity, and shall be able to pass a thorough background investigation prior to appointment;

(3) Shall not hold political office in the government of the State either by election or appointment while serving as Director, nor shall anyone who holds elected or appointed office in the government of the State be appointed as Director until the person has completed serving the full term to which the person was elected or appointed. The Director shall be a citizen of the United States, and must become a resident of the State within 90 days of appointment.

(c) The Director shall serve on a full-time basis and shall not be engaged in any other profession or occupation. The Director shall receive such salary as provided by law.

(59 Del. Laws, c. 348, § 1; 60 Del. Laws, c. 93, § 1; 60 Del. Laws, c. 539, § 3; 70 Del. Laws, c. 186, § 1.)

§ 4805. Director — Powers and duties.

(a) The Director shall have the power and the duty to operate and administer the state lottery and to promulgate such rules and regulations governing the establishment and operation of the lottery as the Director deems necessary and desirable in order that the lottery be initiated at the earliest feasible time and in order that the system shall produce the maximum amount of net revenues consonant with the dignity of the State and the general welfare of the people. The rules shall provide for all matters necessary or desirable for the efficient and economical operation and administration of the system and for the convenience of the purchasers of lottery tickets and the holders of winning tickets, and the players of all state lottery games including, the following:

(1) Type and number of games to be conducted;

(2) Price or prices of tickets for any game;

(3) Numbers and sizes of the prizes on the winning tickets;

(4) Manner of selecting the winning tickets;

(5) Manner of payment of prizes to the holders of winning tickets;

(6) Frequency of the drawings or selections of winning tickets;

(7) Number and types of locations at which tickets may be sold and the sports lottery and keno may be conducted;

(8) Method to be used in selling tickets;

(9) Licensing of agents to sell tickets or host keno; provided, that, no person under the age of 18 shall be licensed as an agent;

(10) Manner and amount of compensation, if any, to be paid to licensed agents, other than video lottery agents, necessary to provide for the adequate availability of games to prospective buyers and for the convenience of the public;

(11) Apportionment of the total revenues accruing from the sale of tickets among:

a. Payment of prizes to the holders of winning tickets;

b. Payment of costs incurred in the operation and administration of the state lottery system, including the expenses of the office and the costs resulting from any contract or contracts entered into for promotional, advertising or operational services or for the purchase or lease of gaming equipment and materials;

c. Repayment of the moneys appropriated to the State Lottery Fund pursuant to § 3 of 59 Del. Laws, c. 348; and

d. Payment of earnings to the General Fund of the State.

(12) Such other matters necessary or desirable for the efficient and economical operation and administration of the game and for the convenience of the purchasers of tickets and the holders of winning tickets and the players of the video lottery, the sports lottery, Internet lottery, keno, and table games;

(13) Value of bills, coins or tokens needed to play the video lottery machines, sports lottery machines and table games;

(14) Licensing of agents for video lotteries;

(15) Payout from video lottery machines, provided that such payouts shall not be less than 87% on an average annual basis, and further provided that video lottery agents may return a payout greater than 87% but not greater than 95% upon 10 days written notice to the Director, and further provided that video lottery agents may, with the approval of the Lottery Director, return a greater payout percentage than 95%;

(16) A licensure requirement and enforcement procedure for officers, directors, key employees, gaming employees, gaming room service employees, sports lottery operations employees, and persons who own directly or indirectly 10% or more of such agent, in accordance with § 4828 of this title;

(17) A licensure requirement and enforcement procedure for service companies in accordance with § 4829 of this title;

(18) Standards for advertising, marketing and promotional materials used by video lottery agents;

(19) Regulations and procedures for the accounting and reporting of the payments required under §§ 4815 and 4819 of this title;

(20) The registration, kind, type, number and location of video lottery machines, sports lottery machines and table games on the licensee's premises, subject to the Director's obligations set forth in § 4820(b) of this title;

(21) The on-site security arrangements for video lottery agents and sports lottery agents;

(22) Requiring the reporting of information about video lottery agents, sports lottery agents, their employees, vendors and finances necessary or desirable to ensure the security of the lottery system. None of the information disclosed pursuant to this subsection shall be subject to disclosure under the Freedom of Information Act, § 10001 et seq. of this title;

(23) The reporting and auditing of financial information of licensees including, but not limited to, the reporting of profits or losses incurred by licensees and the reporting by licensees of such employment and payroll information as is necessary for the Director to determine compliance with § 10148(1) of Title 3 or § 100048 of Title 3 as the case may be. None of the information disclosed pursuant to this subsection shall be subject to disclosure under the Freedom of Information Act, § 10001 et seq. of this title;

(24) a. A registration requirement and enforcement procedure for any employee organization representing or seeking to represent employees who are employed by a Delaware video lottery agent. Any employee organization may at any time file with the office an

application for registration as an employee organization. However, an employee organization shall be required to file such registration application within 10 business days after it secures a signed authorization card from any employee who is employed by a Delaware video lottery agent.

Any registration statement filed by an employee organization after the signature of an authorization card but prior to the employee organization's petition for election shall not be subject to disclosure by the Lottery Office to any video lottery agent;

b. Every key employee of an employee organization shall be required to register with the office at the same time as the application for registration is filed under paragraph (24)a. of this section or within 30 days after the date on which such individual is elected, appointed or hired, whichever is later;

c. The application for registration by an employee organization or key employee of such employee organization may be denied or registration revoked under the following circumstances:

1. If such employee organization or key employee of such employee organization is in violation of standards established under the Labor-Management Reporting and Disclosure Procedure Prohibition Against Certain Persons Holding Office, 29 U.S.C § 504(a);

2. The applicant's competence, honesty or integrity pose a threat to the public interest of the State or to the reputation of or effective regulation and control of the lottery based on the applicant's associations or by virtue of the fact that the applicant has been convicted of a felony crime of moral turpitude or has been arrested for an act constituting racketeering under § 1502(9)a., b.2. or b.4. through 10. of Title 11 within 10 years prior to applying for registration hereunder or at any time thereafter. Any employee or employee organization denied registration based on an arrest for an act constituting racketeering under § 1502(9)a., b.2. or b.4. through 10. of Title 11 may apply for reconsideration of registration if subsequently acquitted or a nolle prosequi is entered or the charge is otherwise dismissed. In such instances, the Lottery Office shall reconsider the applicant's registration based on the criteria previously set forth in this subsection;

3. The organization or individual has knowingly made or caused to be made any written statement to any representative of the office or the Delaware State Police or any oral response to an official inquiry by the office, its employees or agents which was at the time and in light of circumstances under which it was made false or misleading;

4. The organization or key employee thereof holds or obtains a direct financial interest in any video lottery agent, provided the employee organization is provided a 30-day period to divest of any such direct financial interest.

The Division of Gaming Enforcement shall conduct the background checks required by this paragraph. The failure of any key employee to satisfy the requirements of paragraphs (a)(24)c.1. through 4. of this section may constitute grounds for suspension of the registration of the employee organization if the organization does not remove the key employee from the key employee's duties as defined in § 4803(o) of this title. The employee organization will be given a reasonable opportunity to remove or replace any key employee found to be in violation of paragraphs (a)(24)c.1. through 4. of this section;

d. The entity or individual filing a registration form is under a continuing duty to promptly notify the Director of any changes in disclosed information;

e. The Secretary of Finance shall, within a reasonable time, if requested by the Director, appoint a hearing officer to determine whether the application for registration shall be denied or the registration suspended or revoked. The hearing officer shall be required to hold a hearing in conformance with the requirements of § 10131 of this title. In any hearing, the Delaware Uniform Rules of Evidence shall be in effect. The denial of an application of registration or the suspension or revocation of a registration shall be bound by the provisions of §§ 10133 and 10134 of this title. The hearing officer's decision to deny an application of registration or to suspend or revoke a registration shall be appealable to the Superior Court under the Delaware Administrative Procedures Act (Chapter 101 of this title). All applications for registration shall be deemed approved unless the Director notifies the applicant within 60 days of the Director's decision not to approve and to appoint a hearing officer under this paragraph, or unless extenuating circumstances require a longer period, in which case the Director shall act with all deliberate speed to complete the process. Any employee organization may continue to provide services to employees of a Delaware video lottery agent during the review of the application process and the appeal process, except where the employee organization is found in violation of paragraph (a)(24)c.4. of this section or there has been a previous violation of paragraphs (a)(24)c.1. through 3. of this section by the employee organization within the previous 10 years;

f. Information requested in the application of registration provided for under this paragraph shall be adopted as part of the office's official rules and regulations upon notice and opportunity for a hearing under the Delaware Administrative Procedures Act [Chapter 101 of this title];

(25) The Director shall adopt procedures under the Delaware Administrative Procedures Act (Chapter 101 of this title) for employment investigations of the honesty, integrity, reputation and associations of office employees in order to determine that the employee's employment does not pose a threat to the public interest of the State or the integrity of the office. The procedures and any rules and regulations shall require any person seeking employment for compensation with the office for a position which has direct access to lottery ticket sales agents, video lottery agents, sports lottery agents, or vendors to submit such person's fingerprints and other relevant information in order to obtain the individual's entire federal and state criminal history record. Upon the Director's request, the

Division of Gaming Enforcement shall conduct the investigations required under such rules and regulations. The rules and regulations shall require new employees to submit fingerprints for purposes of the state and federal criminal history checks;

(26) Type and number of sports lottery games to be conducted, the location and licensure of facilities where the sports lottery be conducted pursuant to § 4825 of this title, the price or prices for any sports lottery games, the rules for any sports lottery games, and the payout and manner of compensation to be paid to winners of sports lottery games;

(27) Type and number of table games to be conducted, the price or prices for any table games, the rules for any table games, the payout and manner of compensation to be paid to winners of table games, and the minimum and maximum wagers for any table games;

(28) The licensure and location of facilities where keno games may be conducted, the price or prices for any keno games, the rules for any keno games, and the payout and manner of compensation to be paid to winners of keno games;

(29) The regulations and procedures for the display and presentation of messages concerning responsible gaming and the regulations, procedures and training for identification of and assistance to compulsive gamblers;

(30) The provision of complimentary services, gifts, transportation, cash, food, nonalcoholic beverages, entertainment or any other thing of value by a video lottery agent to a guest;

(31) The procedures for the review and evaluation of licensing applications, including the forms of applications, procedures for fingerprinting and other means of identification, procedures for hearings, and grounds and procedures for the approval, denial, revocation or suspension of a license;

(32) Procedures relating to internal management controls of video lottery agents, including accounting controls and employee and supervisory organizational charts and responsibilities;

(33) Standards for the manufacture, sale, distribution, maintenance, repair, and servicing of video lottery machines and table game equipment; and

(34) Standards for the conduct of the Internet lottery in accordance with this chapter.

(b) The Director shall also have the power and it shall be the Director's duty to:

(1) Appoint such deputy directors as may be required to carry out the functions and duties of the office. Each deputy director shall have had 3 years' management experience in areas pertinent to the prospective responsibilities and an additional 3 years of experience in the same field.

(2) Within the limit of the funds made available in § 3 of 59 Del. Laws, c. 348, and proceeding from the sale of lottery tickets and generated by the operations of video lottery agents, appoint such professional, technical, and clerical assistants and employees as may be necessary to perform the duties imposed upon the office by this subchapter.

(3) In accordance with this subchapter, license as agents to sell lottery tickets persons who will best serve, by location or accessibility, the public convenience and promote the sale of lottery tickets. The Director may require a bond from every agent so licensed in such amount as the Director deems necessary. Every licensed agent shall prominently display the agent's license or a copy thereof.

(4) Enter into contracts for the operation of any game or part thereof and into contracts for the promotion of the game or games. This authorization is to be construed to include, but not be limited to, contracting with any racing or other sporting association to conduct sporting events within any racetrack or sports field in the State, the outcome of which shall determine the winners of a state game or, as an alternative, to affiliate the determination of the winners of a game with any racing or sporting event held within or without the State, and, including agreements with other state, provincial or international lotteries for participation in lottery games. All contracts for other than professional services in an amount greater than $2,000 shall be awarded to the lowest responsible bidder in the manner prescribed by state bidding laws. No contract awarded or entered into by the Director may be assigned by the holder thereof except by specific approval of the Director.

(5) Make arrangements for any person or organization, including banks, to perform such functions, activities or services in connection with the operation of the system as the Director may deem advisable.

(6) Suspend or revoke any license issued pursuant to this subchapter or the rules and regulations promulgated hereunder.

(7) Certify and report monthly to the State Treasurer the total lottery revenues, prize disbursements and other expenses for the preceding month, and to make an annual report to the Governor and the General Assembly, which report shall include a full and complete statement of revenues, prize disbursements and other expenses and recommendations for such changes in this subchapter as the Director deems necessary or desirable.

(8) Report immediately to the Governor and members of the General Assembly any matters which shall require immediate changes in the laws of the State in order to prevent abuses and evasions of this subchapter or the rules and regulations promulgated hereunder or to rectify undesirable conditions in connection with the administration or operation of the gaming system. Such a report shall be disclosed to the public immediately upon issuance.

(9) Carry on a continuous study and investigation of the system:

a. For the purpose of ascertaining any defects in this subchapter or in the rules and regulations issued hereunder by reason whereof any abuses in the administration and operation of the lottery or any evasion of this subchapter or the rules and regulations may arise or be practiced;

b. For the purpose of formulating recommendations for changes in this subchapter and the rules and regulations promulgated hereunder to prevent such abuses and evasions;

c. To guard against the use of this subchapter to benefit organized gambling and crime or criminals in any manner whatsoever; and

d. To insure that this law and the rules and regulations shall be in such form and be so administered as to serve the true purpose of this subchapter.

(10) Make a continuous study and investigation of:

a. The operation and administration of similar laws which may be in effect in other states and countries;

b. Any literature on the subject which from time to time may be published or available;

c. Any federal laws which may affect the operation of the lottery; and

d. The reaction of Delaware citizens to existing and potential features of the games with a view to recommending or effecting changes that will tend to serve the purposes of this subchapter.

(11) Make available to the State Auditor or the State Auditor's representative such information as may be required to perform an annual audit as prescribed in Chapter 29 of this title.

(12) Establish state-operated sales offices, without limit as to number or location, as the Director shall deem suitable and economical in order to make lottery tickets more available to the public, which offices shall be operated solely from funds generated by the lotteries permitted by this subchapter.

(13) License as video lottery agents each person, corporation or association which, in 1993, held either a horse racing meet pursuant to Title 3 or Title 28 or a harness horse racing meet pursuant to Title 3 and who satisfies such fitness and background standards as the Director may promulgate pursuant to paragraph (a)(16) of this section. In the event that there shall have been or shall be a change of ownership or such person, corporation or association after the close of the 1993 racing meet then the issuance by the Director of a license to serve as a video lottery agent shall be conditioned upon the Director's determination that such person, corporation or association shall have met the requirements of § 4806(a)(1)-(4) and (b) of this title and satisfies such fitness and background standards as the Director may promulgate pursuant to paragraph (a)(16) of this section. Change of ownership occurring after the Director has issued a license shall automatically terminate the license 90 days thereafter unless the Director has determined after application to issue a license to the new owner(s) because the new owner(s) have met the requirements of § 4806(a)(1)-(4) and (b) of this title and satisfied such fitness and background standards as the Director may promulgate pursuant to paragraph (a)(16) of this section. Any license granted pursuant to this subsection is a privilege personal to the video lottery agent and is not a legal right. A license granted or renewed pursuant to this subsection may not be transferred or assigned to another person, nor may a license be pledged as collateral. For purposes of this subsection, "a change of ownership" shall have occurred if more than 20 percent of the legal or beneficial interests in such person, corporation or association shall be transferred, whether by direct or indirect means.

(14) Whenever the Director deems necessary, examine all accounts, bank accounts, financial statements and records of the licensee in a licensee's possession or under its control in which it has an interest and the licensee must authorize all third parties, including parents, subsidiaries or related entities, in possession or control of the accounts or records of the licensee to allow examination of any of those accounts or records by the Director. None of the information disclosed pursuant to this subsection shall be subject to disclosure under the Freedom of Information Act, § 10001 et seq. of this title.

(15) Subpoena witnesses and compel the production of books, papers and documents of a licensee in connection with any hearings of the Director and may administer oaths or affirmations to the witnesses whenever, in the judgment of the Director, it may be necessary for the effectual discharge of duties.

If any person refuses to obey any subpoena or to testify or to produce any books, papers or documents, then the Director may apply to the Superior Court of the county in which the Director may be sitting and, thereupon, the Court shall issue its subpoena requiring the person to appear and testify or to produce the books, papers and documents before the Director. Whoever fails to obey or refuses to obey a subpoena of the Superior Court shall be guilty of contempt of court and shall be punished accordingly. False swearing on the part of any witness shall be deemed perjury and shall be punished as such.

(16) Bar, pursuant to §§ 4834 and 4835 of this title, any person from entering the premises of a video lottery agent or from participating in any capacity in the play of any table game, sports lottery game, video lottery game, or Internet lottery game, and, as applicable, procure such assistance from video lottery agents as is appropriate to enforce any such bar.

(17) Impose reasonable fees, as set by the Director and payable to the Office, upon applicants for licenses pursuant to §§ 4828 and 4829 of this title for the conduct of the review and investigation of the applicant, such fees to approximate and reasonably reflect all costs necessary to defray the expenses of the lottery and Division of Gaming Enforcement.

(18) Require video lottery agents to submit regular internal control submissions, which shall contain a narrative description of the internal control system to be utilized by the video lottery facility, including, but not limited to:

a. Accounting controls, including the standardization of forms and definition of terms to be utilized in the gaming;

b. Procedures, forms and, where appropriate, formulas covering the calculation of hold percentages; revenue drop; expense and overhead schedules; complimentary services;

c. Job descriptions and the system of personnel and chain-of-command, establishing a diversity of responsibility among employees engaged in gaming operations and identifying primary and secondary supervisory oversight responsibilities; and personnel practices;

d. Procedures within the cashier's cage for the receipt, storage and disbursal of chips, cash, and other cash equivalents used in wagering; the cashing of checks; the redemption of chips and other cash equivalents used in gaming;

e. Procedures for the collection and security of moneys at the gaming tables;

f. Procedures for the transfer and recordation of chips between the gaming tables and the cashier's cage and the transfer and recordation of moneys within the facility;

g. Procedures for the transfer of moneys from the gaming tables to the counting process and the transfer of moneys within the facility for the counting process;

h. Procedures and security for the counting and recordation of table game revenue;

i. Procedures and security standards for the handling and storage of gaming apparatus, including cards, dice, machines, wheels and all other gaming equipment;

j. Procedures and rules governing the conduct of particular games and the responsibility of casino personnel in respect thereto;

k. Procedures for the security, storage and recording of cash, chips, and cash equivalents utilized in gaming operations.

(19) Make Internet lottery games available at such websites and in such a manner as determined by the Office in accordance with this chapter, and utilizing technology to ensure that players are legally eligible to engage in such gaming.

(c) (1) The licenses granted pursuant to paragraph (b)(13) of this section or § 4825 of this title may be revoked or suspended for cause upon 30 days' written notice to the licensee or due to a change in ownership as set forth in those provisions, but shall otherwise not be subject to expiration or termination. "Cause" shall by way of example and not by limitation include falsifying any application for license or report required by the rules and regulations, the failure to report any information required by the rules and regulations, the material violation of any rules and regulations promulgated by the Director or any conduct by the licensee which undermines the public confidence in the video lottery system or serves the interest of organized gambling or crime and criminals in any manner. A license may be revoked for an unintentional violation of any federal, state or local law, rule or regulation provided that the violation is not cured within a reasonable time as determined by the Director; or a longer period where the video lottery agent has made diligent efforts to cure. Notwithstanding the foregoing, nothing in this subsection shall otherwise prohibit the termination or revocation of a license in accordance with the rules and regulations adopted hereunder.

(2) Within 30 days after an adverse determination by the Director, the licensee seeking to appeal the revocation or suspension for cause may demand a hearing before the Lottery Commission and show cause why the Director's determination was in error. Failure to demand a hearing within the time allotted in this paragraph precludes the person from having an administrative hearing, but in no way affects the person's right to petition for judicial review.

(3) Upon receipt of a licensee's demand for a hearing under this subsection, the Lottery Commission shall set a time and place for the hearing. This hearing must not be held later than 30 days after receipt of the demand for the hearing, unless the time of the hearing is changed by the Lottery Commission with the agreement of the Director and the licensee. At the hearing, the licensee shall have the affirmative obligation to demonstrate by clear and convincing evidence that the Director's determination was in error under the criteria for cause established by this subsection and any regulations hereunder.

(4) If, upon completion of the hearing, the Lottery Commission determines that the licensee has met its burden of proof, an order to that effect shall be entered and the license shall be reinstated. If, upon completion of the hearing, the Lottery Commission finds that the licensee has not met its burden of proof, an order shall be entered to that effect. This order is subject to review in the Superior Court pursuant to the Administrative Procedures Act (Chapter 101 of this title).

(5) Any decision of the Director relating to the business plan or the number of video lottery machines to be awarded to licensees under § 4820(b) of this title shall be appealable under the Administrative Procedures Act (Chapter 101 of this title) in the manner of a case decision.

(59 Del. Laws, c. 348, § 1; 61 Del. Laws, c. 189, § 1; 69 Del. Laws, c. 446, §§ 4-8, 10-13; 70 Del. Laws, c. 167, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 184, § 2; 71 Del. Laws, c. 253, §§ 3-5; 74 Del. Laws, c. 53, § 1; 77 Del. Laws, c. 28, §§ 3-9; 77 Del. Laws, c. 219, §§ 5-11; 78 Del. Laws, c. 285, § 4; 79 Del. Laws, c. 1, §§ 1, 4; 79 Del. Laws, c. 77, § 5; 82 Del. Laws, c. 158, § 1; 83 Del. Laws, c. 70, § 1; 84 Del. Laws, c. 42, § 1.)

§ 4806. Lottery sales agents — Qualifications; prohibitions.

(a) No license as an agent to sell lottery tickets shall be issued to any person to engage in business exclusively as a lottery ticket sales agent except those persons hired to staff the State Lottery Office or a state-operated sales office. Before issuing a license to an agent, the Director shall consider such factors as:

(1) Financial responsibility and security of the person and the person's business or activity;

(2) Accessibility of the person's place of business or activity to the public;

(3) Sufficiency of existing licenses to serve the public convenience; and

(4) Volume of expected sales.

(b) If the Director shall find that the experience, character and general fitness of the applicant are such that the participation of such a person as a lottery ticket sales agent will be consistent with the public interest, convenience and the purposes of this subchapter, the Director shall thereupon grant a license.

For the purposes of this section, the term "person" shall be construed to mean and shall include an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" shall also be construed to mean and include all departments, commissions, agencies and instrumentalities of the State, including counties and municipalities and agencies and instrumentalities thereof.

(59 Del. Laws, c. 348, § 1; 61 Del. Laws, c. 189, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4807. Lottery sales agents — Authorization of agents.

Notwithstanding any other provision of law, any person licensed as provided in this subchapter is hereby authorized and empowered to act as a lottery ticket sales agent, a video lottery agent, or a sports lottery agent, as the case may be.

(59 Del. Laws, c. 348, § 1; 61 Del. Laws, c. 189, § 1; 69 Del. Laws, c. 446, § 14; 78 Del. Laws, c. 285, § 5.)

§ 4807A. Fingerprinting procedure required.

(a) Any person seeking a license from the State Lottery Office shall be required to submit fingerprints and other necessary information in order to obtain the following:

(1) A report of the individual's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Bureau of Identification Central Repository contains no such information relating to that person; and

(2) A report of the individual's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544. The Division of Gaming Enforcement shall be the intermediary for the purposes of this section and the State Lottery Office shall be the screening point for the receipt of said federal criminal history records.

(b) All information obtained pursuant to subsection (a) of this section shall be forwarded to the Division of Gaming Enforcement, which shall access the information and make a recommendation to the Director of suitability for licensure. The person seeking licensure shall be provided with a copy of all information forwarded to the State Lottery Office pursuant to this subsection. Information obtained under this subsection is confidential and may only be disclosed to the Director and Deputy Director of the State Lottery Office. The State Bureau of Identification may release any subsequent criminal history to the Division of Gaming Enforcement.

(c) Costs associated with obtaining criminal history information shall be paid by the person seeking licensure.

(d) A person seeking licensure shall have an opportunity to respond to the State Lottery Office regarding any information obtained pursuant to subsection (b) of this section prior to a determination of suitability for licensure. The grounds upon which a person seeking licensure may be denied consideration for a license include, but are not limited to:

(1) A conviction of a felony in this State or any other jurisdiction; or

(2) A conviction of any crime involving gambling or a crime of moral turpitude within 10 years prior to applying for a license or at any time subsequent to the granting of a license.

(e) Upon making its determination of suitability for licensure, the State Lottery Office shall forward the determination to the person seeking a license.

(f) Any person seeking a license with the State Lottery Office who has submitted to a criminal background check in this or any other state within the previous 12 months shall not be required to submit to another criminal background check; provided, however, that the person submits:

(1) the results of such previous criminal background check, including any previous federal criminal background check; and

(2) a reference from the person's most recent employer, if any, covering the previous 12 months.

(g) The State Lottery Office shall, in the manner provided by law, promulgate regulations necessary to implement this subchapter. These regulations shall include, but are not limited to:

(1) Establishment, in conjunction with the State Bureau of Identification, of a procedure for fingerprinting persons seeking licensure with the State Lottery Office and providing the reports obtained pursuant to subsection (a) of this section;

(2) Establishment of a procedure to provide confidentiality of information obtained pursuant to subsection (a) of this section and of the determination of suitability for licensure.

(70 Del. Laws, c. 167, § 2; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 70, § 2.)

§ 4808. Nonassignability of prizes.

No right of any person to a prize or a portion of a prize shall be assignable; except that payment of any prize shall be made to the estate of a deceased prize winner; and except that any person pursuant to an appropriate judicial order may be paid the prize, or portion thereof, to which the winner is entitled. The Director shall be discharged of all further liability upon payment of a prize pursuant to this section.

(59 Del. Laws, c. 348, § 1; 64 Del. Laws, c. 383, § 1.)

§ 4809. Restrictions on ticket sales; penalties.

(a) No person shall sell a ticket for any type of lottery game at a price greater than that fixed by rule or regulation of the Director. No person other than a licensed lottery sales agent or a licensed sports lottery agent shall sell lottery tickets or shares, except that nothing in this section shall be construed to prevent any person from giving lottery tickets to another as a gift or bonus.

(b) Any person convicted of violating this section shall pay a fine not exceeding $500.

(59 Del. Laws, c. 348, § 1; 83 Del. Laws, c. 70, § 3.)

§ 4810. Sales to certain persons prohibited; penalties.

(a) (1) It is unlawful for an individual who is under 18 years old to purchase a lottery ticket or participate in an internet ticket game.

(2) It is unlawful for an individual who is under 21 years old to wager on the video lottery, sports lottery, table games, internet table games, or internet video lottery.

(3) A violation of paragraph (a)(1) or (a)(2) of this section is an unclassified misdemeanor.

(4) An individual convicted of, adjudicated delinquent of, or placed on probation before judgment under § 4218 of Title 11 for violating this subsection must complete 5 hours of counseling on problem gambling.

(5) The Justice of the Peace Court has original jurisdiction over a violation of this subsection by an individual who is 18 years of age or older. The Family Court has original jurisdiction over a violation of this subsection by an individual 17 years of age or younger.

(b) No ticket shall be sold to any person under the age of 18 years, but this shall not be deemed to prohibit the purchase of a ticket for the purpose of making a gift by a person 18 years of age or older to a person less than that age.

(c) No licensed video lottery agent, sports lottery agent, or employee of such agents shall allow a person under the age of 21 to wager on the video lottery, table games, sports lottery, internet table games, or internet video lottery.

(d) A violation of subsection (b) or (c) of this section shall be a misdemeanor, except that the establishment of the following facts shall constitute a defense to any prosecution therefor:

(1) That the underage person presented proof of age or photographic identification that would lead a reasonable person to believe that the underage person was over the minimum age required in this section.

(2) That the appearance of the underage person was such that an ordinary prudent person would believe that the person was over the minimum age required in this section.

(e) No Delaware lottery games, including ticket games, video lottery, sports lottery, internet lottery, internet ticket games, keno, and table games, may be played by and no prizes received by or awarded to any officers or employees of the State Lottery Office or any member of their immediate households. Any person convicted of violating this section shall forfeit any prize money so obtained and shall be sentenced to not less than 1 year in jail and pay a fine of no less than $5,000.

(59 Del. Laws, c. 348, § 1; 60 Del. Laws, c. 539, § 4; 66 Del. Laws, c. 367, § 2; 69 Del. Laws, c. 446, § 15; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 221, § 10; 78 Del. Laws, c. 285, § 6; 81 Del. Laws, c. 250, § 1.)

§ 4811. Jurisdiction in Superior Court.

The Superior Court has exclusive jurisdiction over offenses under this subchapter, except for offenses under §§ 4810(a) and 4836(a) and (b) of this title.

(59 Del. Laws, c. 348, § 1; 61 Del. Laws, c. 189, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 221, § 11; 78 Del. Laws, c. 285, § 26; 81 Del. Laws, c. 250, § 2; 83 Del. Laws, c. 47, § 1.)

§ 4812. Disposition of unclaimed prize money.

Unclaimed prize money for the prize on a winning ticket shall be retained by the Director for the person entitled thereto for 1 year after the drawing or event in which the prize was won. If no claim is made for said money within such year, the prize money shall be reverted to the State Lottery Fund.

(59 Del. Laws, c. 348, § 1; 60 Del. Laws, c. 539, § 5; 66 Del. Laws, c. 303, § 152.)

§ 4813. Prizes to minors.

If the person entitled to a prize or any winning ticket is under the age of 14 years, the Director may direct payment of the prize by delivery to an adult member of the minor's family or a guardian of the minor a check or a draft payable to the order of the minor. The Director shall be discharged of all liability upon payment of a prize to a minor pursuant to this section.

(59 Del. Laws, c. 348, § 1.)

§ 4814. Transfer of funds and transaction records between agents and the State.

The Director may, at the Director's discretion, require any or all lottery ticket sales agents to deposit to the credit of the State Lottery Fund in banks designated by the Director all or part of the moneys received by such agents from the sale of lottery tickets and to file

with the Director or the Director's designated agents reports of their receipts and transactions in the sale of lottery tickets in such form and containing such information as the Director may require. The Director or a representative shall make such arrangements with any licensed sales agent.

(59 Del. Laws, c. 348, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4815. State Lottery Fund.

(a) All moneys received from the sale of lottery tickets, keno, and from Internet ticket games, shall be accounted for to the State Treasurer and all net moneys shall be placed into a special account known as the State Lottery Fund. From the Fund, the Director shall first pay for the operation and administration of the lottery as authorized in this subchapter and thereafter shall pay as prizes not less than 45% on the average of the total amount of tickets which have been sold and are scheduled for sale throughout the games, which percentage shall include prizes already awarded or to be awarded. The total of payments for operations and administration of the lottery shall not exceed 20% of the gross amount received from the sales of such games. The remaining moneys shall accumulate in the State Lottery Fund for the payments of operations and administration costs and on a monthly basis, or more frequently if required by the Director, the lottery shall undertake to provide into the General Fund of the State a payment of earnings of 30% of the total revenues accruing from the sales of such games or shares shall be so dedicated. In the event that the percentage allocated for operations (including prize payments) generates a surplus, said surplus shall be allowed to accumulate to an amount not to exceed $1,000,000. On a quarterly basis, the Director shall report to the Secretary of Finance any surplus in excess of $1,000,000 and remit to the General Fund of the State the entire amount of those surplus funds in excess of $1,000,000.

(b) All proceeds, net of proceeds returned to players pursuant to paragraph (b)(1) of this section, from the operation of the video lottery shall be electronically transferred daily or weekly at the discretion of the Lottery Director into a designated State Lottery account by the agent, and transferred to the State Lottery Fund by the Lottery on a daily or weekly basis and shall be applied as follows:

(1) *Proceeds returned to players.* — A portion of such proceeds, but not less than 87% of the total proceeds on an average annual basis received from the operation of a video lottery, shall be retained by and returned to the players under rules prescribed by the Director. Proceeds returned to players in excess of the payout authorized pursuant to § 4805(a)(15) of this title shall be the sole responsibility of the video lottery agent and the State Lottery's proceeds shall not be reduced on account of such excess payment. Subject to the recommendations of the Lottery Director, and approval of the Secretary of Finance, a video lottery agent may choose to offer free promotional play to players. The amount of free promotional play permitted shall be recommended by the Lottery Director and approved by the Secretary of Finance. The amount of money given away as free promotional play and used by players shall not be included in the amounts remaining after all payments to players. If the amount of money given away as free promotional play by a video lottery agent and used by players exceeds the amount authorized by the Lottery Director and the Secretary of Finance authorized during a fiscal year, the video lottery agent shall reimburse net proceeds the amount of the overage which will be distributed as outlined in paragraphs (b)(3) and (b)(4) of this section.

(2) *Certain administrative and vendor costs.* — The State shall retain a portion of such proceeds in an amount equal to 75% of all costs of equipment (both video lottery machines and related equipment), including video lottery machine license and proprietary fees, whether leased or owned by the State, used or under the control of such agent, the cost of the central computer used to monitor the equipment used by the agent, and related vendor fees, and from these proceeds, and the proceeds provided pursuant to paragraph (b)(4)a. of this section, remit these amounts to vendors.

(3) a. *Proceeds returned to the State.* —

Except as otherwise provided by this paragraph, of amounts remaining after all payments under paragraphs (b)(1) and (b)(2) of this section, there shall be returned to the State 42½%, less any qualified capital expenditure adjustment provided for in this paragraph. For licensees which conducted 40 or fewer (but at least 1) days of live harness horse races during 1992, should such licensees' video lottery proceeds, net of proceeds returned to players, at the end of any fiscal year fall below $107,500,000, then, in the subsequent fiscal year, there shall be returned to the State 41½% of amounts remaining after all payments under paragraphs (b)(1) and (b)(2) of this section, less any qualified capital expenditure adjustment provided for in this paragraph.

1. Beginning in fiscal year 2020, for each video lottery agent, the percentage of proceeds returned to the State shall be decreased by 2% if such video lottery agent's qualified capital expenditures equal or exceed 3% of video lottery agent net proceeds remaining after payments made under paragraph (b)(1) of this section for the calendar year ending the immediately preceding December 31. Notwithstanding the first sentence of this paragraph (b)(3)a.1. of this section, for calendar year ending December 31, 2018, only, qualified capital expenditures must equal or exceed 2.8%.

2. For purposes of this paragraph (b)(3)a. of this section, "qualified capital expenditures" means amounts properly characterized as capital expenditures under generally accepted accounting principles during each calendar year ending December 31 and apply to any facilities used by the video lottery agent in connection with its operations. "Qualified capital expenditures" does not include payments made for debt service.

3. Any amounts incurred or paid in any single year which exceed the 3% required for the adjustment under paragraph (b)(3)a.1. of this section may be carried forward for no more than 2 years, except that amounts used to reduce the license fee under § 4819(d)(2) of this title may not also be carried forward.

b. The State shall also receive the funds on each credit slip that has not been presented for redemption within 1 year from the date the slip is issued.

c. *Application of funds retained by the state lottery.* —

The funds retained by the state lottery shall be applied as follows: first, to the administrative costs and expenses in respect of the video lottery including, but not limited to, administrative expenses including payroll and other employment costs attributable to the operation of the video lottery by the State Lottery Office, law-enforcement and security expenses, including payroll and other employment costs of the state lottery, the Office of the Attorney General and the Division of Gaming Enforcement, attributable to the operation by the state lottery of a video lottery; second, $1,000,000 or 1%, whichever is greater, of the proceeds returned to the State under this paragraph (b)(3), to the Division of Substance Abuse and Mental Health of the Department of Health and Social Services for funding programs for the treatment, education and assistance of compulsive gamblers and their families; third, costs of the Administrator of Racing and racing inspectors referenced in Chapters 100 and 101 of Title 3; fourth, the State's contribution to the Delaware Standardbred Breeder's Program and Delaware Certified Thoroughbred Program (DCTP); and fifth, the remainder shall be paid into the State's General Fund.

d. The State's contribution to the Delaware Standardbred Breeder's Program pursuant to this subsection shall be $1,250,000, and said amount is to be allocated equally as of January 1 of the calendar year among existing licensees which conduct live harness horse racing, but moneys shall not be expended for the program until such time as a plan has been approved pursuant to paragraph (b)(4)b.2. of this section. The State's contribution to the Delaware Certified Thoroughbred Program (DCTP) pursuant to this subsection shall be $500,000, and said amount shall be allocated as of January 1 of each calendar year to the existing licensee which conducts live thoroughbred horse racing, but moneys shall not be expended for the program until such time as a plan has been approved pursuant to paragraph (b)(4)b.1. of this section.

(4) *Application of remaining proceeds.* — The proceeds remaining after payments as set forth in paragraphs (b)(1), (2) and (3) of this section shall be applied as follows:

a. *Balance of administrative and vendor costs.* — The State shall receive an amount equal to 25% of all costs of equipment (both video lottery machines and related equipment), including video lottery machine license and proprietary fees, whether leased or owned by the State, used or under the control of such agent, the cost of the central computer used to monitor the equipment used by the agent, and related vendor fees to be applied pursuant to paragraph (b)(2) of this section.

b. *Purses.* — 1. For video lottery agents licensed only to conduct horse racing meets under Chapter 101 of Title 3 or Chapter 4 of Title 28, such agents shall be paid and shall pay additional purses (and related administrative expenses of the horse racing association) to be applied under the direction of the Delaware Thoroughbred Racing Commission, for races conducted at such agent's racetrack in accordance with § 10148 of Title 3 or § 427 of Title 28 as appropriate, in an amount calculated as follows: 9.6% of the proceeds remaining after payments made under paragraph (b)(1) of this section. Seven hundred fifty thousand dollars of those proceeds, which would otherwise fund purses, on an annual basis, shall fund a Delaware Certified Thoroughbred Program (DCTP) to enhance the quantity of thoroughbred foals and/or yearlings stabled within Delaware for a period meeting the Delaware minimum residency requirement. The DCTP shall be administered by a Board comprised of the following:

A. Four members of the Delaware Thoroughbred Horseman's Association;

B. One member designated by the video lottery agent licensed to conduct live thoroughbred horse racing meets under Chapter 101 of Title 3;

C. One member appointed by the Speaker of the House of the General Assembly;

D. One member appointed by the President Pro Tempore of the Senate of the General Assembly;

E. The Secretary of Agriculture or the Secretary's designee; and

F. The Secretary of Finance or the Secretary's designee.

Members shall be chosen by the organizations they represent, and shall serve 4-year terms, except the 4 initial Board members selected by the Delaware Thoroughbred Horseman's Association shall serve an initial term of 2 years, and 4 years thereafter. The Board created hereunder must develop and present a plan for the administration of the DCTP no later than December 31, 2005. This plan and all subsequent plans amending the DCTP shall be subject to the written approval of the Secretary of Agriculture or the Secretary's designee, the Secretary of Finance or the Secretary's designee, and the Chairperson of the Thoroughbred Racing Commission or the Chairperson's designee. The Board shall transmit minutes and actions from all meetings to the Chairperson of the Delaware Thoroughbred Racing Commission within 10 days of the meeting. The Board shall submit an annual report detailing the allocation of such funds of the DCTP to the Commission and make available to the State Auditor such information as may be required to perform an annual audit of funds allocated from the DCTP. The Board may also, at its discretion, use funds from the DCTP for advertising, promotion, education and administrative purposes directly related to the program, however, the total amount for these purposes cannot exceed 5% of the total allocation. Funds dedicated to the DCTP shall not be subject to a 1-year payout requirement, but payouts may be dispersed throughout the year.

2. For video lottery agents licensed only to conduct harness racing meets under Chapter 100 of Title 3, such agents shall be paid and shall pay additional purses (and related administrative expenses of the horse racing association) to be applied under the direction of the Delaware Harness Racing Commission to purses for races conducted at such agent's racetrack in accordance with

§ 10048 of Title 3, in an amount calculated as follows: 11.35% of the proceeds remaining after payments made under paragraph (b)(1) of this section.

Two million dollars of those proceeds, which would otherwise fund purses, on an annual basis ($1,000,000 to come from each licensee which conducts live harness horse racing) to be set aside for purses under this paragraph (b)(4)b.2. shall be used to fund a Delaware Standardbred Breeders' Program which shall be administered by a board comprised of 4 members from the Delaware Standardbred Owners Association, 1 member from the Standardbred Breeders and Owners of Delaware, Inc., 1 member from each video lottery agent licensed to conduct harness racing meets under Chapter 100 of Title 3, 1 member appointed by the Speaker of House of the General Assembly, 1 member appointed by the President Pro Tempore of the Senate of the General Assembly, the Secretary of Agriculture or the Secretary's designee, and the Secretary of Finance or the Secretary's designee. Members shall be chosen by the organizations they represent, and shall serve 4-year terms except that 4 of the initial board selected by the members of the Delaware Standardbred Owners Association shall serve an initial term of 2 years, and 4 years thereafter. The board created hereunder will present a plan for the administration of the Program to the General Assembly no later than May 15, 1999. This plan, and all subsequent amendments to the plan, shall be subject to the written approval of the Secretary of Agriculture or the Secretary's designee, the Chairperson of the Delaware Harness Racing Commission or the Chairperson's designee, and the Secretary of Finance or the Secretary's designee. The board shall transmit minutes of all meetings and any proposed actions to the Delaware Harness Racing Commission within 10 days after each meeting. The board shall transmit an annual report detailing the allocation of proceeds from the fund and make available to the State Auditor or the State Auditor's representative such information as may be required to perform an annual audit of funds allocated from the Delaware Standardbred Breeders' Program. In addition to funding special purses for Delaware standardbred horses, the board created hereby may also use the funds dedicated to this Program for advertising, promotion, educational and administrative purposes. Funds dedicated to the Delaware Standardbred Breeders' Program shall not be subject to the 1-year payout requirement of § 10048 of Title 3.

3. For video lottery agents licensed to conduct harness horse racing meets under Chapter 100 of Title 3 on January 1, 1993, such agents, which in the future also conduct horse racing meets under Chapter 101 of Title 3 or Chapter 4 of Title 28, shall be paid and shall pay additional purses (and related administrative expenses of the horse racing association) administered by either the Delaware Thoroughbred Racing Commission or the Delaware Harness Racing Commission, as appropriate, in accordance with the formula set forth in paragraph (b)(4)b.2. of this section, for races conducted at such agent's racetrack based on the ratio of live horse racing days to total live racing days and live harness horse racing days to total live racing days.

4. For video lottery agents licensed to conduct horse racing meets under Chapter 101 of Title 3 on January 1, 1993, such agents, which in the future also conduct harness horse racing meets under Chapter 100 of Title 3, shall be paid and shall pay additional purses (and related administrative expenses of the horse racing association) administered by either the Delaware Thoroughbred Racing Commission or the Delaware Harness Racing Commission, as appropriate, in accordance with the formula set forth in paragraph (b)(4)b.1. of this section, for races conducted at such agent's racetrack based on the ratio of live horse racing days to total live racing days and live harness racing days to total live racing days.

c. *Jockey health and other welfare benefits.* — For video lottery agents which are licensed only to conduct thoroughbred horse racing meetings under Chapter 101 of Title 3 or Chapter 4 of Title 28, such agents annually shall be paid and shall pay the sum of $175,000 plus an additional $175,000 (which shall be subtracted from the amount such agent is paid and shall pay as additional purses under paragraph (b)(4)b.1. of this section) for a total payment of $350,000 annually, adjusted for inflation by the Delaware Thoroughbred Racing Commission, which shall be payable to fund a Delaware Jockeys Health and Welfare Benefit Fund on July 20 of each year. The Fund shall be used to provide, for jockeys who regularly ride in Delaware, health and other welfare benefits for active, disabled and retired jockeys pursuant to reasonable criteria for benefit eligibility. The Jockeys Health and Welfare Benefit Fund shall be administered by a Board, known as the Jockeys Health and Welfare Benefit Board, comprised of 1 member of the Delaware Thoroughbred Racing Commission, 1 member from the licensed agent under Chapter 101 of Title 3 or Chapter 4 of Title 28, 1 member of the Delaware Horsemen's Association, and 1 representative from the organization that represents the majority of the jockeys who are licensed and ride regularly in Delaware, 1 jockey who is licensed and rides regularly in Delaware, and 1 retired Delaware jockey who is participating in the benefit program. The Chairperson of the Commission shall serve as an ex officio member and vote on matters in the event of a tie vote on any issue. Members shall be appointed by the Commission and shall serve 2-year terms. In addition to providing funding for jockey health and other welfare benefits, the fund may expend reasonable expenses for administrative purposes.

d. *Commissions to agents.* — The portion of such proceeds remaining after the payments required by paragraphs (b)(4)a., b. and c. of this section shall be paid to such video lottery agent as commission.

For video lottery agents licensed only to conduct horse racing meets under Chapter 101 of Title 3 or Chapter 4 of Title 28, such agents shall pay $250,000 of the proceeds received under this section to fund the video lottery agent's contribution to the Delaware Certified Thoroughbred Program (DCTP) annually. Said amount shall be allocated as of January 1 of each calendar year.

For video lottery agents licensed only to conduct harness racing meets under Chapter 100 of Title 3, each agent shall pay $375,000 of the proceeds received under this section to fund the video lottery agent's contribution to the Delaware Standardbred Breeders' Program annually. Said amount shall be allocated as of January 1 of each calendar year.

(c) (1) All proceeds, net of proceeds returned to players, from the operation of the sports lottery at video lottery agents shall be electronically transferred daily or weekly at the discretion of the Lottery Director into a designated state lottery account by the agent, and transferred to the State Lottery Fund by the lottery on a daily or weekly basis. Proceeds from the sports lottery at video lottery agents, less the amounts returned to winning players and vendor fees, shall be returned to the State at a rate of 50% of the total win so experienced. Purses shall be paid from the proceeds from the sports lottery conducted at video lottery agents, less amounts returned to winning players and vendor fees, at the rate of 10.2% for video lottery agents licensed only to conduct harness racing meets and at the rate of 9.6% for video lottery agents licensed only to conduct thoroughbred racing meets. The Director, by regulation shall adopt accounting procedures for the sports lottery in order to accommodate the differences between the sports lottery and the video lottery. Administrative costs and expenses incurred by the video lottery agent for the initiation of the sports lottery and the costs of the equipment shall be solely the responsibility of the video lottery agent. The provisions of subsection (b) of this section shall not apply to the proceeds from the operation of the sports lottery.

(2) All proceeds, net of proceeds returned to players, from the operation of the sports lottery at sports lottery agents other than video lottery agents shall be held by the State Lottery Fund and such sports lottery agents shall be compensated pursuant to rules adopted under § 4805(a) of this title. Purses shall be paid from the proceeds from the sports lottery conducted at such sports lottery agents, less amounts returned to winning players and fees for sports lottery agents and vendors, to video lottery agents as follows:

a. For video lottery agents licensed only to conduct horse racing meets under Chapter 101 of Title 3 or Chapter 4 of Title 28, such agents shall be paid and shall pay additional purses at the rate of 9.6% of the proportion of all sports lottery proceeds in the prior fiscal year generated by video lottery agents that is generated by that video lottery agent.

b. For video lottery agents licensed only to conduct harness racing meets under Chapter 100 of Title 3, such agents shall be paid and shall pay additional purses at the rate of 10.2% of the proportion of all sports lottery proceeds in the prior fiscal year generated by video lottery agents that is generated by that video lottery agent.

c. For video lottery agents licensed to conduct both horse racing meets under Chapter 101 of Title 3 or Chapter 4 of Title 28 and Chapter 100 of Title 3, such agents shall be paid and shall pay additional purses at a rate between 9.6% and 10.2% determined by the Office to reflect the ratio of live horse racing days to live harness racing days.

(d) Gross table game revenue shall be electronically transferred daily or weekly at the direction of the Lottery Director into a designated state lottery account by the agent, and transferred to the State Lottery Fund by the lottery on a daily or weekly basis. Gross table game revenue shall be applied as follows:

(1) *Proceeds returned to the State.* — a. Except as otherwise provided by this paragraph, of gross table game revenue, there shall be returned to the State 15.5%.

b. The funds retained by the State shall be applied as follows: first, to the administrative costs and expenses of the Office, including, but not limited to, administrative expenses including payroll and other employment costs, and law-enforcement and security expenses, including payroll and other employment costs of the state lottery, the Office of the Attorney General, and the Division of Gaming Enforcement; second, $250,000 or 1%, whichever is greater, of the proceeds returned to the State under this paragraph, to the Division of Substance Abuse and Mental Health of the Department of Health and Social Services to be used exclusively for funding programs for the treatment, education and assistance of compulsive gamblers and their families; third, costs of the Administrator of Racing and racing inspectors referenced in Chapters 100 and 101 of Title 3; and fourth, the remainder shall be paid into the State's General Fund.

(2) *Purses.* — Of gross table game revenue, such agent shall be paid and shall pay additional purses in the amount of 4.5% of such proceeds.

a. For video lottery agents licensed only to conduct horse racing meets under Chapter 101 of Title 3 or Chapter 4 of Title 28, such purses shall be applied under the direction of the Delaware Thoroughbred Racing Commission for races conducted at such agent's racetrack in accordance with § 10148 of Title 3 or § 427 of Title 28, as appropriate.

b. For video lottery agents licensed only to conduct harness racing meets under Chapter 100 of Title 3, such purses shall be applied under the direction of the Delaware Harness Racing Commission to races conducted at such agent's racetrack in accordance with § 10048 of Title 3.

c. For video lottery agents licensed to conduct both harness racing meets under Chapter 100 of Title 3 and horse racing meets under Chapter 101 of Title 3 or Chapter 4 of Title 28, such purses shall be applied pursuant to the formulae set forth in paragraphs (b)(3)b.3. and (b)(3)b.4. of this section.

(3) The proceeds remaining after the payments in paragraphs (d)(1) and (2) of this section above shall be paid to video lottery agents as their commission.

(4) The administrative costs incurred by the Office shall be an administrative cost of the State.

(e) Gross revenue from the Internet video lottery and Internet table games shall be accounted for to the State Treasurer and all proceeds, net of moneys returned to players, shall be placed into a special account known as the State Internet Lottery Fund. From the Fund, the Director shall first pay for the operation and administration of the Internet video lottery and Internet table games. Thereafter, the first $3,750,000 of proceeds in each fiscal year shall be transferred to the State Lottery Fund for the benefit of the State. After $3,750,000 of proceeds has been transferred to the State each fiscal year, the remaining proceeds shall be distributed as follows:

(1) The proceeds from the sales of Internet video lottery games shall be distributed pursuant to paragraphs (b)(3) and (b)(4)b.1 - (b)(4)b.4 of this section, provided that the calculations for such distribution shall be done after netting out the proceeds returned to players and administrative and vendor costs; and

(2) The proceeds from the sales of Internet table games shall be distributed pursuant to subsection (d) of this section, net of proceeds returned to players, provided that the calculations for such distribution shall be done after netting out the proceeds returned to players and administrative and vendor costs.

(59 Del. Laws, c. 348, § 1; 60 Del. Laws, c. 9, §§ 2, 3; 60 Del. Laws, c. 91, § 1; 60 Del. Laws, c. 92, § 1; 60 Del. Laws, c. 539, § 6; 61 Del. Laws, c. 189, § 1; 66 Del. Laws, c. 367, § 1; 69 Del. Laws, c. 446, § 16; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 253, §§ 6-9; 71 Del. Laws, c. 414, § 8; 73 Del. Laws, c. 41, § 1; 74 Del. Laws, c. 53, §§ 2, 3; 74 Del. Laws, c. 222, §§ 1-3; 74 Del. Laws, c. 424, § 1; 75 Del. Laws, c. 98, §§ 131, 132; 75 Del. Laws, c. 229, §§ 2-4; 76 Del. Laws, c. 19, §§ 1, 2; 76 Del. Laws, c. 283, §§ 1-4, 6, 7; 77 Del. Laws, c. 28, §§ 10-15; 77 Del. Laws, c. 186, §§ 1, 2; 77 Del. Laws, c. 219, § 12; 78 Del. Laws, c. 285, §§ 7-9; 79 Del. Laws, c. 134, § 1; 79 Del. Laws, c. 311, § 1; 81 Del. Laws, c. 287, §§ 1-7; 83 Del. Laws, c. 70, § 4; 83 Del. Laws, c. 88, § 1; 84 Del. Laws, c. 32, § 1; 84 Del. Laws, c. 263, § 1.)

§ 4816. Post-audit of accounts and transactions of Office.

The State Auditor shall conduct a yearly post-audit of all accounts and transactions of the State Lottery Office. The cost of the audit shall be paid out of the State Lottery Fund moneys designated for payment of operating expenses.

(59 Del. Laws, c. 348, § 1.)

§ 4817. Exemption of lottery prizes from state and local taxation [Repealed].

Repealed by 77 Del Laws, c. 74, § 1, effective Jan. 1, 2010.

§ 4818. Disclosure of certain information regarding a prize winner.

The name and address of any prize winner under this chapter shall not be disclosed to the public by the State Lottery Office unless permission is given by the prize winner.

(66 Del. Laws, c. 367, § 3.)

§ 4819. Restrictions on location and use of video lottery and sports lottery machines; fees.

(a) Video lottery machines and table game equipment shall only be located within the confines of an existing racetrack property in this State on which was conducted in 1993 either a horse racing meet pursuant to Title 3 or Title 28 or a harness horse racing meet pursuant to Title 3 and/or such immediately adjacent property or properties that are owned by, or immediately adjacent properties that may be acquired by, the video lottery licensee authorized to conduct such horse racing or harness racing; and provided further, that video lottery machines, sports lottery machines and table game equipment shall not be located in a hotel, motel or other overnight sleeping facility.

(b) In respect of any pari-mutuel harness racing or pari-mutuel horse racing property the racing operations on which were lawful under any county or municipal zoning ordinance as of January 1, 1993, the use of video lottery machines pursuant to the provisions of this act on such property and/or on any immediately adjacent property or properties that are owned by, or immediately adjacent properties that may be acquired by, the video lottery licensee authorized to conduct such horse racing or harness racing shall not be deemed to change the character of such lawful land use and such use of video lottery machines shall not be prohibited by any such county or municipal zoning ordinance, including amendments thereto.

(c) Video lottery machines and sports lottery machines shall be connected to the lottery's central computer system, except when used for promotional tournaments in which players are not required to pay any fee to participate.The specific hours of operation for each video lottery agent are subject to the recommendation of the Lottery Director and the approval of the Secretary of Finance.

(d)(1) Except as otherwise provided in paragraph (d)(2) of this section, for the privilege of hosting the operation of table games, the State shall collect from the video lottery agents for the benefit of the General Fund, for each fiscal year after June 30, 2023, license fees totaling $3,000,000, to be paid June 1, and to be allocated among the video lottery agents offering table games as follows:

Each video lottery agent's license fee shall be the portion of $3,000,000 that is equal to the percentage of gross table game revenue generated at that video lottery facility in the calendar year immediately preceding the license fee due date out of the total gross table game revenue generated at all video lottery facilities in the calendar year immediately preceding the license fee due date.

(2) Except as otherwise provided in this paragraph (d)(2), each video lottery agent shall be permitted for purposes of this subsection to reduce the license fee it would otherwise owe for that year pursuant to paragraph (d)(1) of this section by the amount of qualified investments made in the calendar year ending the immediately preceding December 31 by the video lottery agent in the competitiveness of its facilities and business in excess of the amounts required to receive the video lottery agent's qualified capital expenditure adjustment provided for in § 4815(b)(3)a. of this title, if such qualified investments are increased by the amount of such video lottery agent's proportional share of the $3,000,000 license fee. If amounts incurred or paid in any year exceed the 3% required for the adjustment under § 4815(b)(3)a.1 of this title and are utilized for a reduction in license fees required by this section, the amount used to reduce the license fee under this paragraph (d)(2) may not also be carried forward under § 4815(b)(3)a.3. of this title. The video lottery agents shall provide the Director annually an accounting of the qualified investments made pursuant to this paragraph.

a., b. [Repealed.]

(3) [Repealed.]

(69 Del. Laws, c. 446, § 18; 74 Del. Laws, c. 53, § 4; 75 Del. Laws, c. 229, § 5; 76 Del. Laws, c. 156, §§ 2, 3; 76 Del. Laws, c. 283, § 5; 77 Del. Laws, c. 28, §§ 16-18; 77 Del. Laws, c. 219, §§ 13, 14; 78 Del. Laws, c. 285, § 10; 81 Del. Laws, c. 287, § 8; 84 Del. Laws, c. 32, § 2; 84 Del. Laws, c. 263, § 2.)

§ 4819A. Charitable video lottery machines use and restrictions.

(a) An eligible charitable gaming organization must apply for and receive the approval of the Director to operate charitable video lottery machines. The application form which will be promulgated by the Director shall at a minimum include the name of the eligible organization, the location at which the organization is applying to have video lottery machines, the individual who will be the primary contact and the vendor who will supply the charitable video lottery machines. Such approval will take into consideration a recommendation from the Division of Gaming Enforcement before a license is approved by the Director.

(b) *Proceeds returned to players.* — A portion of such proceeds, but not less than 60% or greater than 86% of the total proceeds on an average annual basis received from the operation of a charitable video lottery machine, shall be retained by and returned to the players under rules prescribed by the Director.

(c) Proceeds returned to the State. Amounts remaining after all payments to players under subsection (b) of this section, there shall be returned to the State 40%. If the Director determines that a charitable video lottery machine at an authorized charitable gaming organization is connected to the lottery's central computer system, then there shall be 35% returned to the State. From the amount returned to the State, the vendor who supplies the charitable video lottery machines shall be paid. In addition, 1% of the proceeds returned to the State from this section shall be sent to the Division of Substance Abuse and Mental Health of the Department of Health and Social Services for funding programs for the treatment, education and assistance of compulsive gamblers and their families.

(d) *Application of remaining proceeds.* — The proceeds remaining after payments as set forth in subsections (b) and (c) of this section shall be made to the respective charitable gaming organization.

(e) The maximum number of charitable video lottery machines that a charitable gaming organization may apply to have and be approved by the Director is 25. Each eligible charitable gaming organization may have up to 10 charitable video lottery machines, plus 1 additional charitable video lottery machine for every 70 members of the charitable gaming organization over 500 members of said organization. Any change in the membership requirements of a charitable gaming organization that in effect would alter the number of charitable video lottery machines a charitable organization would be authorized to have must be approved by the Director of the Lottery.

(f) The charitable gaming organization shall submit to the Director a report monthly regarding the amount played and amount returned to the players from the charitable video lottery machines in their respective locations. The form of the report shall be promulgated by the Director.

(g) The Lottery Office or the Division of Gaming Enforcement shall have access to the charitable video lottery machines in order to make sure that the intent of 79 Del. Laws, c. 1 is being enforced.

(h) The Department of Finance shall enact regulations on an emergency basis to implement the operation of the charitable video lottery machines for the approved charitable gaming organizations.

(i) Any organization denied application of being a qualified charitable gaming organization as defined by § 4803(a) of this title may enter the appeal process outlined in § 4830(j) of this title.

(j) Effective January 1, 2014, charitable gaming organizations will be required to donate at least 40% of the organization's proceeds from charitable video lottery machine gaming annually to a charitable purpose, including donations to an organization's national programs; DE-based 501(c) [26 U.S.C. § 501(c)] charities, local individuals in need, payment in the form of scholarships, sponsorships of local organizations and the use of supplies, equipment and facilities that benefit the communities within the State. For purposes of meeting the 40% threshold, charitable gaming organizations are prohibited of making donations to another qualified charitable gaming organization that has been approved by the Lottery Director and is operating. A report on this activity shall be submitted to State Lottery Office by March 31 of each year on a form promulgated by the Lottery Director. If a charitable organization does not meet the 40% threshold, then it may apply for a waiver from the Secretary of Finance citing the reasons for not obtaining the required level of donations. A decision will be made by the Secretary of Finance whether or not to grant the waiver for a particular year.

(k) (1) An Advisory Council on Charitable Gaming Planning is established and shall serve in an advisory capacity to the Secretary of Finance. Its membership shall include:

a. The Director of the State Lottery Office.

b. One member appointed by the President Pro Tempore of the Senate who is a member of an eligible charitable gaming organization.

c. One member appointed by the Speaker of the House who is a member of a eligible charitable gaming organization.

d. Two members appointed by the Governor who are members of eligible charitable gaming organizations.

(2) The Governor shall designate 1 member to serve as Chairperson of the Council, who shall serve in that capacity for 2 years and shall be eligible for reappointment.

(3) The Council shall consider matters relating to the effectiveness of current operational procedures and recommendations for new operational procedures or regulations.

(4) Members of the Council shall serve without compensation.

(5) Any member of the Council other than the Director of the State Lottery Office shall be subject to removal and replacement, without cause, at any time by the person who appointed or designated the member.

(6) The Council shall meet at least 1 time each calendar year, at the call of the Director, the Chairperson, or a majority of the members.

(7) The Council shall submit a report on its activities to the Secretary of Finance by November 5 of each year, together with recommendations for legislative and/or administrative changes it deems desirable.

(*l*) [Repealed.]

(79 Del. Laws, c. 1, § 2; 79 Del. Laws, c. 77, §§ 2, 5; 79 Del. Laws, c. 292, § 70; 80 Del. Laws, c. 78, §§ 74, 75; 82 Del. Laws, c. 158, § 1.)

§ 4820. Rights and obligations of Director and video lottery agent relating to video lottery machines, sports lottery machines and table game equipment.

(a) All video lottery machines, sports lottery machines and table game equipment shall be at all times subject to state control and the use of any such video lottery machines, sports lottery machines and table game equipment shall occur only with the approval of the Office. All video lottery machines and sports lottery machines shall be owned or leased by the State and shall be obtained from manufacturers licensed under § 4805(a)(17) of this title. All video lottery machines and sports lottery machines shall be leased or purchased under the procedures set forth in Chapter 69 of this title. All table game equipment shall be leased, purchased or used by a video lottery agent only upon the approval of the Office and from manufacturers licensed under § 4805(a)(17) of this title. Any video lottery agent must file with the Director a copy of any current or proposed agreement or disclose any other relationship between the agent, its parents, subsidiaries, related entities, directors, officers or key employees for the sale, lease, maintenance, repair or other assignment to the agent's facility of video lottery machines, sports lottery machines and table game equipment, or any other relationship with any vendor, manufacturer or other party which stands to benefit financially from the possession or use of video lottery machines, sports lottery machines or table game equipment by such agent. Failure to file such information shall constitute grounds for the revocation or suspension of a license. The lottery may own or lease video lottery machines pursuant to this subsection that require the payment of an additional license or proprietary fees and the number of such license or proprietary fee machines at any licensed video lottery agent may not exceed more than 5% of the total number of video lottery machines at the licensed racetrack property unless the Director finds that an additional number of such machines are necessary to increase revenues, will not produce reductions in the overall net proceeds from the lottery, will protect the public welfare, and will ensure the security of the video lottery.

(b) (1) Upon submission by a video lottery agent of a proposed plan for the lease or purchase of video lottery machines in accordance with procedures to be established by the Director, the Lottery Director shall lease or purchase the number, type and kind of video lottery machines necessary for the efficient and economical operation of the lottery, or the convenience of the players and in accordance with the plan of the licensee, provided that no more than 2,500 video lottery machines shall be located within the confines of a racetrack property unless the Director recommends up to an additional 1,500 for each racetrack property, and further provided that the Director may recommend the amendment of such plan where the Director finds that such amendments are necessary to increase revenues, provided such amendments do not produce reductions in the overall net proceeds from the video lottery, protect the public welfare or ensure the security of the video lottery, provided that the maximum number of video lottery machines under this subsection shall not include video lottery machines at each racetrack used exclusively for promotional tournaments in which players are not required to pay any fee to participate. Such recommendations by the Lottery Director are subject to the approval of the Secretary of Finance. No more than 30 promotional tournament machines are permissible at each racetrack. The Director's lease or purchase of video lottery machines under this subsection shall be pursuant to the procedures used for procurement under §§ 6981 and 6982 of this title.

(2) No refund of license fees shall be payable for any unexpired term of a license.

(c) Upon submission by a video lottery agent of a proposed plan for the lease or purchase of sports lottery machines in accordance with procedures to be established by the Director, the Lottery Director shall lease or purchase the number, type and kind of sports lottery machines necessary for the efficient and economical operation of the lottery, or the convenience of the players, and in accordance with the plan of the licensee, provided that the Director may recommend the amendment of such plan where the Director finds that such amendments are necessary to increase revenues, protect the public welfare or ensure the security of the video lottery. The Director's lease or purchase of sports lottery machines under this subsection shall be pursuant to the procedures used for procurement under Chapter 69 of this title.

(d) Each video lottery agent shall be responsible for the security and safekeeping of the video lottery machines, sports lottery machines and table game equipment of which it has physical custody.

(e) The Director shall contract with an independent laboratory, which shall be licensed as a service company, to test video lottery machines, sports lottery machines and table game equipment and related equipment on a periodic basis to ensure that the machines and equipment comply with the requirements of this chapter and any other applicable standards and regulations. The manufacturer, vendor or lessor of such machines and equipment shall pay all costs associated with such testing.

(f) Each video lottery agent shall hold the Director and this State harmless from and defend and pay for the defense of any and all claims which may be asserted against the Director, the State or the employees thereof, arising from the participation in the games at a

video lottery facility; specifically excluding, however, any claims arising from the negligence or wilful misconduct of the Director, the State or the employees thereof.

(g) Each video lottery agent shall provide access to all records of the licensee and the physical premises of the business or businesses where the agent's lottery activities occur for the purpose of monitoring or inspecting the agent's activities and the lottery games, machines and associated equipment. None of the information disclosed pursuant to this subsection shall be subject to disclosure under the Freedom of Information Act, § 10001 et seq. of this title.

(h) Prior to commencing the operations of any table game in a gaming area, a video lottery agent shall submit to the Office for its approval a detailed floor plan depicting the location of the gaming area in which table game equipment will be located, the proposed arrangement of the table game equipment, and sufficient area to be used by the Office and Division of Gaming Enforcement for their operations at the video lottery facility. Within 30 days, the Office shall approve such plans that satisfy the rules and regulations promulgated by the Office and shall deny such other plans. Amendments to an approved floor plan shall be submitted to the Office for its approval, and the Office shall, within 15 days, approve such amendments that satisfy the rules and regulations promulgated by the Office and shall deny such other plans.

(69 Del. Laws, c. 446, § 19; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 253, § 10; 73 Del. Laws, c. 139, § 1; 74 Del. Laws, c. 53, §§ 5, 6; 74 Del. Laws, c. 307, § 131; 75 Del. Laws, c. 229, § 6; 77 Del. Laws, c. 28, §§ 19, 20; 77 Del. Laws, c. 219, §§ 15- 18; 78 Del. Laws, c. 285, § 11.)

§ 4821. Decision to forego video lottery.

Any person, corporation or association licensed under Chapter 100 of Title 3 to conduct a harness horse racing meet during 1993 which conducted live harness horse races on 30 days or less during 1993 may forego the opportunity to become a video lottery agent under this chapter. Any such person, corporation or association electing to forego such opportunity shall notify the Director and all other video lottery agents of such decision, and so long as such person, corporation or association conducts live harness horse races on at least 90% of the same number of racing days as were conducted by such person, corporation or association in 1992, and so long as such person, corporation or association maintains and awards an average purse per race which is not less than the average purse per race offered by such person, corporation or association during 1992, then such person, corporation or association shall receive an annual payment of $100,000 from all video lottery agents licensed under Chapter 101 of Title 3 and $75,000 from all video lottery agents licensed under Chapter 100 of Title 3 or Chapter 4 of Title 28, such payment to be made on an annual basis commencing 6 months after the first customer plays the video lottery and shall continue so long as the video lottery is in operation. Video lottery agents licensed under more than 1 chapter of Title 28 and Title 3 shall only make 1 payment as set forth in the preceding sentence. An election to forego the opportunity to become a video lottery agent shall be effective for 1 year from the date of such election, after which time the licensee making the election may apply for licensure to become a video lottery agent, or may elect to forego such opportunity for an additional 1 year.

(69 Del. Laws, c. 446, § 27.)

§ 4822. Annual crime report.

The State Lottery Office, with the assistance of the Attorney General's Office and the Division of Gaming Enforcement, shall annually provide to the General Assembly a report detailing the crimes that occur within the communities surrounding each racetrack property, including an analysis of crimes relating to table gaming, whether in or outside the property of a video lottery facility.

(69 Del. Laws, c. 446, § 28; 77 Del. Laws, c. 219, § 19; 83 Del. Laws, c. 70, § 5.)

§ 4823. Enforcement.

(a) Whoever violates this chapter or any rule or regulation duly promulgated thereunder, or any condition of a license issued pursuant to § 4805 of this title, or any administrative order issued pursuant to this section, shall be punishable as follows:

(1) If the violation has been completed, by a civil penalty imposed by Superior Court, which shall have jurisdiction of civil penalty actions brought pursuant to this section, of not less than $1,000 nor more than $10,000 for each completed violation. Each day of a continued violation shall be considered as a separate violation if, on each such day, the violator has knowledge of the facts constituting the violation and knows or should know that such facts constitute or may constitute a violation. Lack of knowledge regarding such facts or violation shall not be a defense to a continued violation with respect to the first day of its occurrence.

(2) If the violation is continuing or there is a substantial likelihood that it will reoccur, the Director may also seek a temporary restraining order, preliminary injunction or permanent injunction in the Court of Chancery, which shall have jurisdiction of an action for such relief.

(3) In the Director's discretion, the Director may impose an administrative penalty of not more than $1,000 for each violation. Each day of continued violation shall be considered as a separate violation if the violator has knowledge of the facts constituting the violation and knows or should know that such facts constitute or may constitute a violation. Lack of knowledge regarding such facts or violation shall not be a defense to a continued violation with respect to the first day of its occurrence. Prior to the assessment of an administrative penalty, written notice of the Director's proposal to impose such penalty shall be given to the violator, and the violator shall have 30 days from receipt of such notice to request a public hearing. Any public hearing, if requested, shall be held prior to the imposition of the penalty and shall be governed by § 10125 of this title. If no hearing is timely requested, the proposed penalty shall

become final and shall be paid no later than 60 days from receipt of the notice of proposed penalty. Assessment of an administrative penalty shall take into account the circumstances, nature and gravity of the violation, as well as any prior history of violations, the degree of culpability, the economic benefit to the violator resulting from the violation, any economic loss to the State and such other matters as justice may require. In the event of nonpayment of an administrative penalty within 30 days after all legal appeal rights have been waived or otherwise exhausted, a civil action may be brought by the Director in Superior Court for the collection of the penalty, and for interest, from the date payment was due, attorneys' fees and other legal costs and expenses. The validity or amount of such administrative penalty shall not be subject to review in an action to collect the penalty. Any penalty imposed after a public hearing is held pursuant to this subsection shall be appealable to Superior Court, and such appeal shall be governed by § 10142 of this title.

(4) In the Director's discretion, the Director may endeavor to obtain compliance with requirements of this chapter by written administrative order. Such order shall be provided to the responsible party, shall specify the complaint, and propose a time for correction of the violation. It may also provide an opportunity for a public hearing at which the Director shall hear and consider any submission relevant to the violation, corrective action or the deadline for correcting the violation.

(b) The Director shall enforce this chapter.

(c) Any interest, costs or expense collected under this section shall be appropriated to the State Lottery Office to carry out the purposes of this chapter.

(71 Del. Laws, c. 253, § 11.)

§ 4824. Advisory Council on Video Lottery Planning.

(a) An Advisory Council on Video Lottery Planning is established and shall serve in an advisory capacity to the Secretary of Finance. Its membership shall include:

(1) The Director of the State Lottery Office.

(2) One member from each licensed video lottery agent, to be designated by the respective agent.

(3) Two members representing all of the licensed manufacturers of video lottery machines to be designated by the Director of the State Lottery Office, and/or the licensed manufacturer of the central computer systems to be designated by the Director of the State Lottery Office.

(4) One sports lottery agent designated by the Director of the State Lottery Office.

(b) The Governor shall designate one member to serve as Chairperson of the Council, who shall serve in that capacity for 2 years and shall be eligible for reappointment.

(c) The Council shall consider matters relating to the growth and competitive vitality of the video lottery industry in the State, including but not limited to:

(1) The status of video lottery game development issues in the State;

(2) The status of known game problem resolution;

(3) Personnel issues and concerns affecting the industry;

(4) The effectiveness of current operational procedures and recommendations for new operational procedures or regulations;

(5) The competitive vitality of the video lottery industry in the State, and recommendations for marketing and technological improvements;

(6) Issues and concerns relating to the repair and maintenance of video lottery machines and related equipment, including preventive maintenance programs;

(7) Video lottery agent or manufacturer specific projects that will impact the operation of the video lottery; and

(8) Issues and concerns of the State Lottery Office relating to video lottery operations and the status of internal control approvals.

(d) Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable necessary expenses incident to their duties as members in accordance with state law.

(e) Any member of the Council other than the Director of the State Lottery Office shall be subject to removal and replacement, without cause, at any time by the person who appointed or designated the member.

(f) The Council shall meet at least 1 time each calendar year, at the call of the Director, the Chairperson, or a majority of the members.

(g) The Council shall submit a report on its activities to the Secretary of Finance by November 5 of each year, together with recommendations for legislative and/or administrative changes it deems desirable.

(74 Del. Laws, c. 53, § 7; 78 Del. Laws, c. 285, § 12; 82 Del. Laws, c. 158, § 1.)

§ 4825. Sports lottery.

(a) The Director shall, pursuant to the authority granted under § 4805(a)(1) and (b)(4) of this title, commence a sports lottery as soon as practicable. The Director shall, by rules and regulations, provide for the features and attributes of a sports lottery. The regulations must, in the Director's judgment, administer the sports lottery in a manner which will produce the greatest income for the State while minimizing or eliminating the risk of financial loss to the State.

(b) A person under the age of 21 may not purchase a sports lottery ticket, or wager on a sports lottery machine, or in any way participate in the sports lottery.

(c) The Director may commence a sports lottery located at facilities operated by video lottery agents licensed by the State and such other sports lottery agents as shall be licensed pursuant to the terms of this chapter. Licenses awarded to video lottery agents relative to the video lottery shall automatically allow those agents to operate facilities at which the sports lottery can be conducted.

(d) The Director may, in the Director's discretion, grant licenses to operate the sports lottery to sports lottery agents, which shall be a qualified, person, business, organization or entity that owns or operates an appropriate property. Before issuing a license to a sports lottery agent, each person seeking a license shall comply with the criminal background check required by this chapter and at least 1 person shall receive a background check to the standard of a sports lottery operations employee. In granting licenses, the Director shall consider the factors in § 4806(a) of this title and, if the Director shall find that the experience, character and general fitness of the applicant are such that the participation of such a person as a sports lottery agent will be consistent with the public interest, convenience and purposes of this chapter, the Director shall thereupon grant a license. In prioritizing applications for a license under this section, the Director shall give preference to proposals likely to foster economic growth and maximize employment. Change of ownership of the licensed business, organization or entity occurring after the Director has issued a license shall automatically terminate the license 90 days thereafter unless the Director has determined after application to issue a license to the new owner or owners because the new owner or owners have met the requirements of this chapter. Any license granted pursuant to this subsection is a privilege personal to the sports lottery agent and is not a legal right. A license granted or renewed pursuant to this subsection may not be transferred or assigned to another person, nor may a license be pledged as collateral. Each sports lottery agent shall be responsible for the security and safekeeping of the sports lottery machines of which it has physical custody. Each sports lottery agent shall provide access to all records of the licensee and the physical premises of the business or businesses where the agent's lottery activities occur for the purpose of monitoring or inspecting the agent's activities and the lottery games, machines and associated equipment. None of the information disclosed pursuant to this subsection shall be subject to disclosure under the Freedom of Information Act, § 10001 et seq. of this title. For purposes of this subsection, "a change of ownership" shall have occurred if more than 20% of the legal or beneficial interests in such person, corporation or association shall be transferred, whether by direct or indirect means.

(77 Del. Laws, c. 28, § 1; 78 Del. Laws, c. 285, § 13.)

§ 4826. Internet lottery.

(a) The Director is authorized to operate an Internet lottery in accordance with this chapter, other Delaware laws, and federal law.

(b) No Internet lottery game shall be conducted unless the software, computer or other gaming equipment utilized can verify that the player engaged in such game is physically present in the State at the time they engage in such games. The Office shall confirm that players of the Internet lottery are, in fact, verified to be physically located in the State at the time they place a wager in such games. Notwithstanding the foregoing, persons who are not physically present in this State may engage in Internet lottery games only if the Office determines that such games are not inconsistent with federal law and the law of the jurisdiction in which the person is physically present, or if such games are conducted pursuant to an interstate compact to which the State is a party that is not inconsistent with federal law.

(c) The Director shall have the duty to promulgate such rules and regulations governing the Internet lottery as the Director deems necessary and desirable in order that the Internet lottery be initiated at the earliest feasible time in a manner that provides for the security and effective administration of such games, including but not limited to:

(1) The type, number, payout, wagering limits, and rules for Internet lottery games;

(2) The creation, utilization, of Internet lottery accounts by players of the Internet lottery, provided that such accounts shall be possessed only by a natural person and not in the name of any beneficiary, custodian, joint trust, corporation, partnership or other organization or entity, and provided that such accounts shall not be assignable or otherwise transferable;

(3) Procedures for logging in Internet lottery account holders, authenticating their identity, agreeing to the terms, conditions and rules applicable to such games, and logging out, including procedures for automatically logging off persons from the Internet lottery after a specified period of inactivity;

(4) Procedures for acquiring funds in an Internet lottery account by cash, transfer or other means, the withdraw of such funds from such accounts, the suspension of Internet lottery account activity for security reasons, the termination of Internet lottery accounts and disposition of proceeds therein, and the disposition of unclaimed amounts in dormant Internet lottery accounts pursuant to Chapter 11 of Title 12;

(5) Mechanisms by which the Office or persons playing Internet lottery games may place limits on the amount of money being wagered per game or during any specified time period, or the amount of losses incurred during any specified time period;

(6) Mechanisms to exclude from the Internet lottery persons not eligible to play by reason of age, inclusion on a list of self-excluded persons in § 4834 of this title, or inclusion by the Director on a list for exclusion pursuant to § 4835 of this title;

(7) Procedures for the security and reliability of Internet lottery games and Internet lottery accounts, protection of the software, computers and other equipment used in the Internet lottery, and mechanisms to prevent tampering or utilization by unauthorized persons; and

(8) Mechanisms by which the Office shall require that accounts for Internet ticket game purchases be funded by purchase of a prepaid card or other mechanism obtained from a lottery agent through which players can transfer money or credits for Internet ticket game play.

(d) The Director shall cause each Internet site on which the Internet lottery is conducted to include an advertisement for and link to additional information for services for the treatment, education and assistance of compulsive gamblers and their families.

(78 Del. Laws, c. 285, § 14.)

§ 4827. Table gaming.

(a) *Legislative findings.* — (1) The General Assembly finds that the video lottery operated by the Delaware Lottery plays a critical role in the economy of the State; that it has made significant revenue contributions to the State; that it has provided for significant employment opportunities in the State; that it has greatly benefited the horse breeding, horse racing and agricultural industries in the State; that it has contributed to the preservation of open space in the State; that it has enhanced tourism in the State; that it has provided many indirect benefits to various segments of the State's economy; and that video lottery agents have made significant investments in their personnel and their facilities to host the video lottery.

(2) The General Assembly finds that allowing the Delaware Lottery also to offer table gaming at the sites of video lottery agents could further the success of the Delaware lottery; foster additional revenue contributions to the State; promote Delaware as a leisure and tourism destination; create as many as 750 new jobs; and provide other indirect benefits throughout the State's economy.

(3) The General Assembly finds that table game wagers authorized under this article are lotteries under state control. Each game involves the 3 essential elements necessary for a lottery: consideration, chance and a prize. The General Assembly finds that where a table game wager has mixed elements of chance and skill, it will continue to qualify as a lottery as long as chance is the predominant factor. The General Assembly further finds that the outcome of the table games expressly enumerated under this subchapter is determined predominantly by chance.

(4) The General Assembly finds that an essential element of the regulation and control of video lottery agents by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and gaming operations. The General Assembly further finds that the regulatory provisions of this act are designed to extend strict state control over all persons, locations, practices and associations related to the operation of licensed video lottery agents.

(b) The Director shall, pursuant to the authority granted under § 4805 of this title, establish an initial regulatory framework for table games and commence table game operations as soon as reasonably possible. The Director shall, by rules and regulations, provide for the features and attributes of the table game operations.

(c) The regulations must administer table game operations in a manner that minimizes or eliminates the risk of financial loss to the State.

(d) Table game operations shall be conducted exclusively at video lottery facilities owned and operated by video lottery agents licensed in the State. Licenses awarded to video lottery agents relative to the video lottery shall allow those agents to act as agents for the State with respect to table game operations, and such licenses shall be subject to the same license requirements and procedures as video lottery licenses pursuant to this subchapter.

(e) On March 15 of each year, each video lottery agent shall report to the Office, in a form and in a manner required by the Office, and to the General Assembly the number of full-time and part-time employees engaged in the conduct of table games and the number of full-time and part-time employees otherwise engaged.

(77 Del. Laws, c. 28, § 1; 77 Del. Laws, c. 219, § 1.)

§ 4828. Licensing of video lottery agent directors, officers, and employees.

(a) The Director shall have the power and duty to license those persons required by this chapter to be licensed and to promulgate rules and regulations for such purpose. The licensure procedure shall include the satisfaction of such security, fitness and background standards as determined necessary relating to competence, honesty and integrity, such that a person's reputation, habits and associations do not pose a threat to the public interest of the State or to the reputation of or effective regulation and control of the lottery.

(b) It shall be the obligation of the video lottery agent to notify the Director on a continuing basis of any change in officers, directors, key employees, gaming employees, gaming room service employees, sports lottery operations employees and persons who own, directly or indirectly, 10% or more of such entity. Persons holding key employee licenses on January 28, 2010, shall remain licensed as key employees and shall not be required to seek licensure under this section until the license is to be renewed. Persons holding video lottery operations employee licenses shall remain licensed as a gaming employee, but shall be required to seek renewal of their licenses no later than July 28, 2010.

(c) [Repealed.]

(77 Del. Laws, c. 219, § 20; 83 Del. Laws, c. 70, § 6.)

§ 4829. Licensing of service companies.

(a) "Service company" shall mean:

(1) Any vendor offering goods or services relating to the manufacture, operation, maintenance, security, distribution, service or repair of video lottery machines, sports lottery machines or table game equipment directly to the State;

(2) Any vendor offering goods or services to a video lottery agent on a regular and continuing basis, as defined in regulations promulgated hereunder; or

(3) Any person providing gaming excursion services to a video lottery agent.

(b) The Director shall have the power and duty to license those service companies meeting this definition as the Director determines to be necessary to the integrity of the operations of the lottery, and to promulgate rules and regulations for such purpose. The licensure procedure shall include the satisfaction of such security, fitness and background standards as determined necessary relating to competence, honesty and integrity, such that a service company's reputation, habits and associations do not pose a threat to the public interest of the State or to the reputation of, or effective regulation and control of, the lottery. Vendors holding licenses as technology providers or other service provider shall remain licensed as a service company and shall not be required to seek licensure under this section until the license is to be renewed. Vendors licensed or approved by the Harness Racing Commission or the Thoroughbred Racing Commission to provide services to a video lottery agent need not secure a service company license pursuant to this section unless such vendor seeks to provide services other than those already authorized.

(c) Each service company identified in this section shall be licensed in accordance with the standards of a key employee. The owners, management, and supervisory personnel of each such service company shall be qualified to the standards of and for the term of a key employee. The employees of each such service company whose duties and responsibilities involve the security, maintenance, servicing, repair, or operation of video lottery machines or table game equipment shall be licensed to the standards of and for the term of a gaming employee.

(d) Each service company identified in paragraph (a)(2) of this section shall be licensed in accordance with the standards of a key employee except as to the requirement to establish financial stability, integrity and responsibility. The owners, management, and supervisory personnel of each such service company shall be qualified to the standards of a key employee, except as to the requirement to establish financial stability integrity and responsibility.

(e) Each service company identified in paragraph (a)(3) of this section shall be licensed in accordance with the standards of a key employee except as to the requirement to establish financial stability, integrity and responsibility. The employees of each such service company whose duties and responsibilities include arranging, procuring or selecting participants in a gaming excursion shall be qualified to the standards of a key employee, except as to the requirement to establish financial stability integrity and responsibility.

(f) For purposes of this section, an owner of a corporation shall be defined as "any person who owns directly or indirectly more than 10% of the equity securities of the corporation."

(g) (1) Each service company identified in paragraph (a)(1) of this section shall be licensed as a service company prior to conducting any business whatsoever, provided, however, that upon a finding of good cause by the Director for each business transaction, the Director may permit an applicant for such service company license to conduct business transactions prior to the licensure of that company.

(2) Each service company identified in paragraph (a)(2) of this section, may transact business with a video lottery agent prior to obtaining a service company license upon the filing of a vendor registration form by a video lottery agent for such service company pursuant to regulations promulgated hereunder.

(h) [Repealed.]

(i) The risk manager of the sports lottery must be a bookmaker currently licensed to operate, and operating, sports books in the United States and the sports lottery technology system provider must be licensed to operate lotteries in the United States. The Director may determine whether the licensing standards of another state are comprehensive, thorough and provide similar adequate safeguards and, if so, may, in the Director's discretion, license an application already licensed in such state without the necessity of a full application and background check.

(77 Del. Laws, c. 219, § 20; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 70, § 7.)

§ 4830. Standards of licensing.

(a) All applicants, licensees, registrants, or any other person who must be qualified pursuant to this chapter shall have the continuing duty to provide any assistance or information required by the Director or the Division of Gaming Enforcement, and to cooperate in any background check or investigation conducted by the Division of Gaming Enforcement or in any hearing conducted by the Director. If an applicant, licensee, registrant or any other person who must be qualified pursuant to this act refuses to provide information, evidence or testimony upon formal request by the Director or the Division of Gaming Enforcement, the Director may deny or revoke the application, license, registration or qualification of such person.

(b) An applicant for a key license or gaming employee license shall be required to establish that applicant's qualifications for obtaining a license by clear and convincing evidence. The Director of the Delaware lottery shall deny a license to any applicant who fails to prove by clear and convincing evidence that the applicant is qualified under the provisions of this chapter.

(1) An applicant for a key license or gaming employee license shall provide such information, documentation and assurances as may be required to establish by clear and convincing evidence that the applicant has good character, honesty and integrity.

(2) An applicant for a key license or gaming employee license has the affirmative obligation to provide such information, documentation and assurances as may be required to establish by clear and convincing evidence that the applicant has financial stability, responsibility and integrity.

(c) The Director shall deny a license to any applicant or revoke the license of any licensee based on the following criteria:

(1) The conviction of a felony in any jurisdiction;

(2) The conviction of a gambling offense or a crime of moral turpitude in any jurisdiction within 10 years prior to applying for a license or at any time subsequent to the granting of a license;

(3) The commission of any act within 10 years prior to applying for a license or at any time subsequent to the granting of a license in any jurisdiction, which would constitute any offense enumerated in paragraphs (c)(1) and (2) of this section, even if such conduct has not been prosecuted, or if prosecuted, has not resulted in a conviction;

(4) A conviction which has been the subject of a pardon or order of expungement shall not be grounds for automatic disqualification under paragraphs (c)(1) and (2) of this section, but may be grounds for disqualification under paragraph (c)(3) of this section. Such conviction also may be considered in evaluating an applicant's ability to demonstrate the applicant's qualifications pertaining to good character, honesty and integrity;

(5) Current prosecution for any offense listed in paragraphs (c)(1) and (2) of this section, provided that, at the request of the applicant, the Director shall defer its decision on the application during the pendency of the charge;

(6) The failure to provide information, documentation and assurances required by the act or requested by the Director, or the supplying of information which is untrue or misleading as to a material fact pertaining to the criteria for obtaining a license;

(7) Notorious or unsavory reputation that would adversely affect public confidence and trust that the Delaware Lottery is free from criminal or corruptive elements; or

(8) Anything that, in the opinion of the Director, would denigrate or undermine the integrity or overall soundness of the lottery, including but not limited a person's reputation, habits and associations that may pose a threat to the public interest of the State or to the reputation or effective control of the lottery.

(d) Notwithstanding the provisions in paragraphs (c)(1), (2), and (3) of this section above for the denial or revocation of a license, no application should be denied and no license should be revoked if the applicant or licensee is able to demonstrate that applicant's or licensee's rehabilitation by clear and convincing evidence. In determining whether an applicant or licensee has affirmatively established that applicant's or licensee's rehabilitation, the Director shall consider the following factors:

(1) The conviction occurred more than 5 years from the date of application;

(2) The nature and duties of the position applied for;

(3) The nature and seriousness of the offense or conduct;

(4) The circumstance under which the offense or conduct occurred;

(5) The age of the applicant or licensee when the offense or conduct was committed;

(6) Whether the offense or conduct was an isolated or repeated incident; and

(7) Any evidence of rehabilitation including, without limitation, good conduct in prison or in the community; successful completion of court-ordered probation; counseling or medical treatment received; and the recommendations of persons who have had the person under their supervision.

(e) Participation in gaming operations as a licensed employee or service company under this chapter shall be deemed a revocable privilege conditioned upon the proper and continued qualification of the individual licensee and upon the discharge of the affirmative responsibility of each such licensee to provide to the regulatory and investigatory authorities established by this subchapter, any assistance and information necessary to assure that the policies declared by this subchapter are achieved. Consistent with this policy, it is the intent of this chapter to preclude the creation of any property right in any license permitted by this chapter, or the accrual of any value to the privilege of participation in gaming operations, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such privilege.

(f) (1) All information and data required by the Office to be furnished in the application or investigative process, or which otherwise may be obtained by the Office or Division of Gaming Enforcement, pertaining to an applicant's criminal record, financial record, family and background, including, but not limited to, an application form, license investigation report, or request for placement on the self-exclusion list, shall be considered confidential, shall not be public records subject to Chapter 100 of this title, and shall not be revealed in whole or in part except in the ordinary administration of the chapter, or upon the lawful order of a court of competent jurisdiction, or, with the approval of the Attorney General, to a duly authorized law-enforcement agency. The Division of Gaming Enforcement may enter into agreements with other law-enforcement agencies or other gaming regulatory agencies that have law-enforcement status for the sharing of confidential information. Any person who violates this paragraph (f)(1) shall be guilty of a Class A misdemeanor.

(2) All information and data required by the Office or the Division of Gaming Enforcement to be furnished, or which otherwise may be obtained by the Office or the Division of Gaming Enforcement, relative to internal controls of a video lottery agent shall be considered confidential, shall not be public records subject to Chapter 100 of this title, and shall not be revealed in whole or in part except in the ordinary administration of the chapter, or upon the lawful order of a court of competent jurisdiction, or, with the approval of the Attorney General, to a duly authorized law-enforcement agency. Any person who violates this paragraph (f)(2) shall be guilty of a Class A misdemeanor.

(g) The licensure procedure shall take no more than 90 days to complete, unless extenuating circumstances require a longer period, in which case the Director and the State shall act with all deliberate speed to complete the process. The Division of Gaming Enforcement or

persons acting at the direction of the Division of Gaming Enforcement shall conduct the security, fitness and background checks required by this chapter.

(h) The Director may issue temporary licenses for good cause and upon a finding that the issuance of a temporary license is necessary to allow for the efficient operation of the video lottery facility. Temporary licenses shall remain in effect for no more than 6 months from the date of issuance.

(i) The Director of the Delaware Lottery may issue an emergency order for the suspension of any license, other than a video lottery agent license, if the Director finds that:

(1) A licensee has been charged with a violation of the criminal laws of Delaware or any jurisdiction; and

(2) Such action is necessary to preserve the public policy of this subchapter.

An emergency order shall set forth the grounds upon which it is issued and shall be effective immediately upon issuance, and remain in effect until further order of the Director. An emergency order for suspension shall be served upon the licensee within 5 days of issuance. The person or entity against whom the emergency order has been issued shall be entitled to a hearing on an appeal to the Lottery Commission for reconsideration in accordance with the provisions of this chapter and the regulations promulgated hereunder.

(j) (1) Within 30 days after an adverse determination by the Director, the applicant or licensee seeking to appeal the denial of a permit application or revocation or suspension of a previously issued permit may demand a hearing before the Lottery Commission and show cause why the Director's determination was in error. Failure to demand a hearing within the time allotted in this section precludes the person from having an administrative hearing, but in no way affects the person's right to petition for judicial review.

(2) Upon receipt of a demand for hearing, the Lottery Commission shall set a time and place for the hearing. This hearing must not be held later than 30 days after receipt of the demand for the hearing, unless the time of the hearing is changed by the Lottery Commission with the agreement of the Director and the person demanding the hearing. At the hearing, the person seeking the hearing shall have the affirmative obligation to demonstrate by clear and convincing evidence that the Director's determination was in error under the criteria for licensing established by this chapter and any regulations hereunder.

(3) If, upon completion of the hearing, the Lottery Commission determines that the person seeking the hearing has met that person's own burden of proof, an order to that effect should be entered and the license issued. If, upon completion of the hearing, the Lottery Commission finds that the person seeking the hearing has not met that person's own burden of proof, an order shall be entered to that effect. This order is subject to review in the Superior Court pursuant to the Administrative Procedures Act [Chapter 101 of this title].

(k) Any person whose license has been revoked or whose application for a license has been denied shall be prohibited from reapplying for any license for a period of 5 years from the date of the order denying or revoking the license.

(77 Del. Laws, c. 219, § 20; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 42, § 139.)

§ 4831. Prohibition on employment of persons or service companies without a license.

(a) It shall be unlawful for any licensed agent to employ or continue to employ an individual or service company that is required to possess a license under the provisions of this chapter, but that is not licensed. A licensed agent who violates the provisions of this section shall pay a fine imposed by the Director of not less than $1,000 and not more than $5,000. A licensed person who knowingly violates the provisions of this section is guilty of a class A misdemeanor.

(b) Any individual or service company that works or is employed in a position whose duties require licensing under the provisions of this chapter, without holding the requisite license, is guilty of a class A misdemeanor.

(77 Del. Laws, c. 219, § 20; 83 Del. Laws, c. 70, § 8.)

§ 4832. Prohibition on employee gaming.

It shall be unlawful for any key employee or gaming employee who is required to hold a license under this chapter to wager on table games or the video lottery in a video lottery facility in which such employee is employed. Violation of this section shall subject the violator to the imposition of a fine.

(77 Del. Laws, c. 219, § 20; 70 Del. Laws, c. 186, § 1.)

§ 4833. Exemption from federal law.

Pursuant to § 2 of Chapter 1194, 64 Stat. § 1134, 15 U.S.C. § 1172, the State, acting by and through its duly elected and qualified members of the General Assembly, does declare and proclaim that the State is exempt from Chapter 1194, 64 Stat. § 1134, 15 U.S.C. § 1172, and that the shipment of table gaming equipment, sports lottery machines and video lottery machines to video lottery agents in Delaware, done in accordance with federal law, shall be a legal shipment of a gambling device within the State.

(77 Del. Laws, c. 219, § 20.)

§ 4834. List of persons self-excluded from gaming activity.

(a) The Director shall provide by regulation for the establishment of a list of persons self-excluded from gaming activity at video lottery facilities or through the Internet lottery. A person may request placement on the list of self-excluded persons by acknowledging in a manner to be established by the Director that the person is a problem gambler and by agreeing that, during the period of voluntary

exclusion, the person may not collect any winnings or recover any losses resulting from any gaming activity at a video lottery facility or through the Internet lottery.

(b) A person may request placement on the list of self-excluded persons for any of the following periods:

(1) Lifetime;

(2) Five years;

(3) One year.

(c) The Director shall establish procedures for placements on and removals from the list of self-excluded persons and procedures for the transmittal to operators of a video lottery facility of identifying information concerning self-excluded persons.

(d) The Director shall require licensed agents of video lottery facilities to establish procedures designed to:

(1) Prevent self-excluded persons from engaging in any gaming activity;

(2) Remove them from any forms of advertising or promotions; and

(3) Deny self-excluded persons access to credit, complimentaries, check cashing privileges, and similar benefits.

(e) The list of self-excluded persons shall be confidential and not open to public inspection under Chapter 100 of this title.

(f) A licensed video lottery agent and the directors, officers and employees of a video lottery agent shall not be liable to any self-excluded person or any other party in any judicial proceeding for any harm, monetary or otherwise, that may arise as a result of the failure of the video lottery facility to withhold gaming privileges to a self-excluded person.

(g) A licensed video lottery agent and the directors, officers and employees of a licensed video lottery agent shall not be liable to any self-excluded person or any other party in any judicial proceeding for any harm, monetary or otherwise, which may arise as a result of disclosure in any manner, other than a wilfully unlawful disclosure, of the identity of any self-excluded person.

(77 Del. Laws, c. 219, § 20; 78 Del. Laws, c. 285, § 15.)

§ 4835. Exclusion or ejection of certain persons from video lottery facilities and Internet lottery games; exclusion of certain persons from participating in sports lottery games.

(a) The Director shall by regulation provide for the establishment of a list of persons who are to be excluded or ejected from any video lottery agent's facility and excluded from participating in any capacity in the play of any table game, sports lottery game, video lottery game, or Internet lottery game. Persons shall be placed on the list by order of the Director, predicated upon the filing of a petition by the Division of Gaming Enforcement. Persons shall be placed on the list if a reasonable basis exists for believing that the person's engagement in the games or presence in the facility is inimical to the interests of this State, or to the operation of a video lottery agent's facilities, or both. Such provisions shall define the standards for exclusion and shall require the Director and the Division of Gaming Enforcement to consider any:

(1) Prior conviction of a crime which is a felony in this State or under the laws of the United States; or a crime involving moral turpitude; or a violation of the gaming laws of any state;

(2) Violation or conspiracy to violate any of the provisions of § 1471 of Title 11;

(3) The failure to disclose an interest in a video lottery facility for which the person must obtain a license;

(4) Wilful evasion of fees or taxes;

(5) Notorious or unsavory reputation which would adversely affect public confidence and trust that the Delaware Lottery is free from criminal or corruptive elements; or

(6) Written order of a governmental agency which authorizes the exclusion or ejection of the person from an establishment at which gaming or pari-mutuel wagering is conducted.

(b) The Director also shall provide by regulation for the establishment of a list of persons who are to be excluded from participating in any capacity in the play of any sports lottery game, whether such sports lottery game is conducted at a video lottery agent's facility or a sports lottery agent's facility. The Director may place a person on the list of excluded sports lottery players by an order that shall be predicated upon the completion of an investigation conducted by the Division of Gaming Enforcement and its written report to the Director. Such regulatory provisions shall define the standards for exclusion from participation in any sports lottery games and shall require the Director to consider 1 or more of the following factors:

(1) Prior conviction of a crime that is related to sports betting in any jurisdiction.

(2) Anything that, in the opinion of the Director, would denigrate or undermine the integrity or overall soundness, financial stability, or reputation of the lottery, which may include a person's reputation, habits, and associations that may pose a threat to the public interest of the State or the reputation or effective control of the lottery.

(c) (1) The Director may issue an emergency order to exclude any person from participating in any capacity in the play of any sports lottery game if the Director finds that the person poses an immediate threat that would denigrate or undermine the integrity or overall soundness, financial stability, or reputation of the lottery, which may include a person's reputation, habits, and associations that may pose a threat to the public interest of the State or the reputation or effective control of the lottery.

(2) An emergency order shall set forth the grounds upon which it is issued and shall be effective immediately upon issuance and shall remain in effect until further order of the Director. In addition, an emergency order to exclude a person from participating in

any capacity in the play of any sports lottery game shall be served upon the excluded sports lottery player within 7 calendar days of issuance. After the Division of Gaming Enforcement completes an investigation and report to the Director that confirms the excluded sports lottery player meets the criteria of this subsection or that the excluded sports lottery player does not meet the criteria of this subsection, the Director shall issue a further order regarding the excluded sports lottery player, which order may finalize the decision to exclude the sports lottery player or reverse the decision to exclude the sports lottery player.

(d) In considering placement on the exclusion list, it shall be improper to discriminate on any basis prohibited by § 711(b) of Title 19.

(e) Whenever the name and description of any person is placed on a list pursuant to this section, the Director shall serve notice of such fact to such person:

(1) By personal service;

(2) By certified mail to the last known address of such person; or

(3) By publication daily for 1 week in 1 of the principal newspapers published in the city of Dover and in 1 of the principal newspapers published in the city of Wilmington, Delaware.

(f) Within 30 days after service by mail or in person or 60 days after the last publication, the person named may demand a hearing before the Lottery Commission and show cause why that person's name should be taken from such a list. Failure to demand a hearing within the time allotted in this section precludes the person from having an administrative hearing, but in no way affects that person's right to petition for judicial review.

(g) Upon receipt of a demand for hearing, the Lottery Commission shall set a time and place for the hearing. This hearing must not be held later than 30 days after receipt of the demand for the hearing, unless the time of the hearing is changed by the Lottery Commission with the agreement of the Division of Gaming Enforcement, the Director, and the person demanding the hearing. At the hearing, the Division of Gaming Enforcement, or the Director, whichever initiated the placement of the person on the exclusion list or the list of excluded sports lottery players, shall have the affirmative obligation to establish a reasonable basis that the person named for exclusion satisfies the criteria for exclusion established by this section and any regulations hereunder.

(h) If, upon completion of the hearing, the Lottery Commission determines that:

(1) The Division of Gaming Enforcement or the Director has not met the burden of proof, an order shall be entered requiring that the person's name be removed from the list of excluded persons or the list of excluded sports lottery players and requiring the Director to so notify all video lottery agents of the person's removal from the list.

(2) Placing the person on the exclusion list or the excluded sports lottery players list was proper, an order shall be entered to that effect, and the Lottery Commission shall serve a copy of that order on the person so named pursuant to subsection (e) of this section, as well as all video lottery agents. This order is subject to review in the Superior Court, which shall have exclusive jurisdiction over appeals of exclusion listings from the Lottery Commission.

(i) Nothing contained in this section shall:

(1) Affect the common law right of a video lottery agent, as an owner or lessor of property, from excluding or ejecting any person from its property for any reason that is not unlawful or excluding any person from participation in Internet lottery games for any reason that is not unlawful; or

(2) Be applicable to any action undertaken by a video lottery agent in the exercise of such right.

(77 Del. Laws, c. 219, § 20; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 285, §§ 16, 17; 82 Del. Laws, c. 158, § 1; 83 Del. Laws, c. 421, § 1.)

§ 4836. Penalties for wagering by excluded persons.

(a) Any person whose name has been placed on the list of persons to be excluded from participating in any capacity in the play of any sports lottery game or Internet lottery game or excluded or ejected from a video lottery agent's facility, except for persons whose name has been placed on the self-exclusion list, who thereafter knowingly participates in any capacity in the play of any sports lottery game or Internet lottery game or enters the premises of a video lottery facility, is guilty of a class A misdemeanor.

(b) Any person whose name has been placed on the self-exclusion list, who thereafter knowingly enters a gaming area or engages in the Internet lottery, is guilty of a class A misdemeanor.

(c) A video lottery agent shall have a duty to keep from its premises any person who is on the list of persons to be excluded from entering a video lottery facility and shall have a duty to keep from its gaming room any person who is on the self-exclusion list. The Director may revoke, limit, condition, or suspend the license of a video lottery agent, or impose a fine or other monetary penalty, if that video lottery agent knowingly fails to exclude or eject from its premises any person placed on the list of persons to be excluded or ejected, or knowingly fails to exclude or eject from its gaming room any person on the self-exclusion list.

(d) A person who is prohibited from gaming activity by any order of the Director, or court of competent jurisdiction, or by any provision of this subchapter, including underage persons and any person on the exclusion or self-exclusion list, shall not collect, in any manner or proceeding, any winnings or recover any losses arising as a result of any prohibited gaming activity. The Director shall provide by regulation for the procedures of handling the forfeiture of any winnings or the prohibition of recovering any losses by persons prohibited from gaming activity as set forth in this subsection.

(e) In addition to any other penalty provided by law, any money or thing of value which has been obtained by any person prohibited from gaming activity in a video lottery facility shall be subject to an order of forfeiture by the Director, following notice to the prohibited person and an opportunity for the prohibited person to be heard as set forth by regulation.

(f) The Director also shall establish regulations concerning the disposition of any forfeited funds received under this section.

(77 Del. Laws, c. 219, § 20; 78 Del. Laws, c. 285, § 18; 82 Del. Laws, c. 158, § 1.)

§ 4837. Lottery Commission.

(a) The Lottery Commission is created in the Department of Finance. The Lottery Commission shall be composed of 5 members who shall be citizens of the State, including at least 1 certified public accountant, 1 lawyer, 1 businessperson, 1 person with experience in law enforcement, and 1 public member, all of whom shall be appointed by the Governor and confirmed by the Senate, provided however, no member shall be a member of the Standardbred Owners Association, the Delaware Thoroughbred Horsemen's Association, or an owner, employee or agent of a video lottery agent or sports lottery agent. The Governor shall name the Chairperson of the Commission from among its members and the Chairperson shall serve in that capacity at the Governor's pleasure. Each of the members shall serve for a term of 5 years and until that member's successor qualifies. No member shall serve for more than 1 full 5-year term. Not more than 3 members of the Commission shall be of the same political party. No member shall hold any elected or appointed office under the government of the United States or the State or be a candidate for such office.

(b) A person appointed to fill a vacancy on the Lottery Commission holds office for the remainder of the unexpired term of the former member. Of the initial members, 1 must be appointed for a 1-year term, 1 must be appointed for a 2-year term, 1 must be appointed for a 3-year term, and 1 must be appointed for a 4-year term and the remainder must be appointed for a 5-year term. Thereafter, all members shall serve 5-year terms.

(c) Prior to the nomination of a candidate to serve on the Lottery Commission, the Division of Gaming Enforcement shall review, in accordance with the standards of a key employee, the background, qualifications and suitability of each nominee and make an appropriate report to the Governor. The Governor may at any time, after notice and hearing, remove any Commission member for gross inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office.

(d) To serve on the Lottery Commission, a member may not be and may not ever have been an employee, officer, director, owner of securities of a video lottery agent or sports lottery agent, or owner of a licensed service company, nor a member of the immediate family of an employee, officer, director or owner of a video lottery agent or sports lottery agent; may not ever have had a material or financial interest in a video lottery agent, sports lottery agent, or a licensed service company; and may not ever have been engaged in any services on behalf of a video lottery agent, sports lottery agent, or a licensed service company related to the activities of the lottery. The provisions of Chapter 58 of Title 29 (State Employees', Officers' and Officials' Code of Conduct) apply to all members of the Lottery Commission and to all agents appointed or otherwise employed by the Lottery Commission. No person convicted of a felony or crime involving moral turpitude shall be eligible for appointment nor appointed as a commissioner.

(e) The Lottery Commission shall have powers, duties and responsibilities as specified in this title. Included among the powers, duties and responsibilities are those specified in this subsection. The Lottery Commission shall receive reasonable staff support in the performance of its duties from Department of Finance staff who do not report to the Office, and from a deputy attorney general assigned to the Commission. The Lottery Commission shall:

(1) Provide the Secretary of Finance and Director with advice and guidance with respect to the development of policy in those areas where rule- and regulation-making authority is entrusted to the Director.

(2) Provide guidance on new initiatives which may from time to time be proposed by the Director and recommend to the Director initiatives that the Commission believes would benefit the Lottery.

(3) Conduct hearings relating to licensing disputes, exclusion list disputes, and other disputes as specified in this chapter or by rule and regulation.

(4) As it deems necessary, subpoena witnesses and documents, administer and examine persons under oath, and appoint hearing officers as the Commission finds appropriate to conduct investigations and hearings pursuant to this chapter. If any person refuses to obey any subpoena or to testify or to produce any books, papers or documents, then the Director may apply to the Superior Court of the county in which the Commission may be sitting and, thereupon, the Court shall issue its subpoena requiring the person to appear and testify or to produce the books, papers and documents before the Director. Whoever fails to obey or refuses to obey a subpoena of the Superior Court shall be guilty of contempt of court and shall be punished accordingly. False swearing on the part of any witness shall be deemed perjury and shall be punished as such.

(5) Review and approve all regulations issued by the Director on or after July 1, 2010, pursuant to specific provisions of this title, before such regulations are implemented.

(f) The members of the Board shall receive $250 for each day's attendance at the meetings of the Commission, not to exceed 24 days' attendance in any 1 calendar year; and they shall be reimbursed for their actual travel and other necessary expenses incurred in attending meetings and transacting the business of the Commission.

(77 Del. Laws, c. 219, § 20; 78 Del. Laws, c. 285, §§ 19, 20.)

§ 4838. Delinquent child support.

(a) The Director of the Division of Child Support Services, Department of Health and Social Services shall enter into a cooperative agreement with the Director and the operator of each video lottery or charitable gaming organization facility within this State whereby the Director of the Division of Child Support Services shall provide information regarding individuals with a qualified child support obligation for the purpose of satisfying such obligation in part or in whole with any qualified lottery prizes won by such individuals. Prior to awarding any qualified lottery prize, an operator of a lottery facility shall determine if the winner of such prize owes a qualified child support obligation. In the event that a qualified child support obligation is owed, such prize shall be reduced by:

(1) One hundred percent in the event that the qualified lottery prize is less than or equal to the qualified child support obligation; or

(2) The amount of the qualified child support obligation in the event that the qualified lottery prize exceeds the qualified child support obligation.

Any remaining amounts shall be awarded to the qualified lottery prize winner.

(b) The specific information and the manner and frequency with which it is made available or otherwise exchanged between the Division of Child Support Services, the Director and each operator of a video lottery facility in this State shall be as determined by each cooperative agreement, but such cooperative agreement must specify:

(1) That the Division of Child Support Services shall make available or otherwise provide or update information at least once each calendar month;

(2) That the operator of a video lottery facility shall make use of automated data exchanges to the maximum extent feasible and will remit to the Division of Child Support Services those qualified lottery prizes that offset qualified child support obligations as set forth in the written agreements;

(3) The procedure by which the operator of a video lottery facility will remit to the Division of Child Support Services those qualified lottery prizes that offset qualified child support obligations;

(4) That the operator of the video lottery facility will provide the qualified prize winner written notice of the amount withheld from the qualified lottery prize and instructions for contesting an intercept directly to the Division of Child Support Services; and

(5) Any such other matters as the parties to such an agreement shall deem necessary to carry out the provisions of this section.

(c) An operator of a video lottery facility shall not be liable under any state law to any person or government agency for any of the following:

(1) Any disclosure of information to the Division of Child Support Services under this section.

(2) As provided in § 513(c)(4) of Title 13, with regard to any order of child support made payable to the Division, the Division's records shall be presumptive of the payment or nonpayment of each installment payment.

(3) Any other action or omission taken in good faith to comply substantially with the requirements of this section.

(d) The Director shall promulgate such rules and regulations as is deemed necessary to carry out the provisions of this section.

(78 Del. Laws, c. 245, § 1; 79 Del. Laws, c. 77, § 4; 80 Del. Laws, c. 234, § 23; 84 Del. Laws, c. 240, § 2.)

§§ 4839-4849. [Reserved.]

Subchapter II

Tri-State Lotto Compact

§ 4850. Short title.

This compact shall be known and may be cited as the "Tri-State Lotto Compact."

(66 Del. Laws, c. 183, § 1; 69 Del. Laws, c. 446, § 17; 77 Del. Laws, c. 219, § 21.)

§ 4851. Compact.

The State of Delaware is hereby authorized to enter into the following compact with the states of Vermont, Maine and New Hampshire subject to the terms and conditions stated in the Compact.

(66 Del. Laws, c. 183, § 1; 69 Del. Laws, c. 446, § 17; 77 Del. Laws, c. 219, § 21.)

§ 4852. General provisions.

(a) *Statement of policy and purpose.* — The State of Delaware enters this compact to implement the operation of Tri-State Lotto, for the purpose of raising additional revenue for each of the party states. Tri-State Lotto is not intended to replace any existing lottery game in the party states but, rather, to be run in addition to these games. Tri-State Lotto tickets will be sold in each area to be determined by the Commission. Fifty percent of the gross sales from each state will be aggregated in a common prize pool, and operating costs will be charged proportionally to the sales made by each of the party states. The remaining revenues generated within each state will remain in that particular state.

(b) *Definitions.* — (1) "Commission" means the Tri-State Lotto Commission or its successor, created and established by this Compact;

(2) "Concurrent legislation" means legislation enacted by one of the party states which is concurred in by the other party states in the form of enactments having like effect;

(3) "Lotto" means a game of lotto as prescribed by the Commission;

(4) "Party states" means the states of New Hampshire, Maine, Vermont, and Delaware; and

(5) "Tri-State Lotto" means a combined lotto game for all member states, with common tickets, common advertising and a common prize pool.

(66 Del. Laws, c. 183, § 1; 69 Del. Laws, c. 446, § 17; 77 Del. Laws, c. 219, § 21.)

§ 4853. Procedures and conditions governing the Tri-State Lottery.

(a) *Creation of the Tri-State Lotto Commission.* — The party states, for the purpose of operating Tri-State Lotto, establish the Tri-State Lotto Commission.

(b) *Nature of the Commission.* — The Commission shall be an interstate body, both corporate and politic, serving as a common agency of the party states and representing them both collectively and individually in the exercise of its powers and duties.

(c) *Organization of the Commission.* — The Commission shall be composed of one member from each of the party states. Each party state Lottery Director, Sweepstakes Commission or State Lottery Commission shall appoint one of its members to serve the Tri-State Lotto Commission. Each member shall hold office at the pleasure of the appointing authority. The Commission shall elect a chairperson from among its members annually.

(d) *Functioning of the Commission.* — (1) The Commission's functions shall be performed and carried out by its members and by advisory committees or panels as the Commission may establish, and by officers, independent contractors, agents, employees and consultants as may be appointed by the Commission. All officers, independent contractors, agents, consultants and employees shall hold office at the pleasure of the Commission, unless the Commission otherwise decides, and the Commission shall prescribe their powers, duties and qualifications and fix their compensation and other terms of their employment.

(2) No action of the Commission shall be effective or binding unless there is a unanimous decision by all of the representatives of the various party states.

(3) The members of the Commission shall receive compensation for their services pursuant to this Compact and in accordance with the policies of the respective states, and they shall be reimbursed for the expenses they naturally and necessarily incur in the performance of their duties.

(4) No member of the Commission who is otherwise a public officer or employee shall suffer a forfeiture of office or employment, or any loss or diminution in the rights and privileges pertaining to office or employment, by reason of membership on the Commission.

(e) *Powers and duties of the Commission.* — (1) The Commission shall have the power and it shall be its duty to operate and administer Tri-State Lotto and to promulgate rules and regulations governing the establishment and operation of the lotto, including but not limited to the following topics:

a. The design of the game;

b. The price of the tickets;

c. The number and size of the prizes on the winning tickets;

d. The manner of selecting the winning tickets and paying the prizes;

e. The frequency of the drawings;

f. The type or types of locations at which tickets may be sold;

g. The method to be used in selling tickets;

h. The compensation required to be paid to Tri-State Lotto sales agents in order to assure adequate availability of tickets and public convenience in purchasing tickets; and

i. The development of an internal security plan designed to prevent player fraud.

(2) The Commission, or its designee, shall also have the power and it shall be its duty to license sales agents to sell Tri-State Lotto tickets, in accordance with subsection (g) of this section. The Commission may require a bond from any licensed agent, in an amount to be determined by the Commission.

(3) The Commission shall make monthly and year-end reports to the state Lottery Director, Sweepstakes Commission or State Lottery Commission of the party states, which shall include a complete statement of Tri-State Lotto revenues, prize disbursements and other expenses, and any other information the party states may require.

(4) All Tri-State Lotto accounts and transactions shall be subject to annual post-audits conducted by independent auditors retained by the Commission for this purpose.

(5) In addition to the powers enumerated above, the Commission shall have the power to adopt a corporate seal and enter into contracts, including but not limited to contracts with other governments or agencies, to hire, lease, acquire and dispose of property to

the extent necessary to carry out its functions, powers and duties as set forth in this section, and to expend or authorize expenditures of moneys for the purpose of operating Tri-State Lotto pursuant to this Compact. The party states each shall have the right to require an audit as a party state may from time to time consider proper.

(6) The Commission shall also have additional powers, incidental to the express powers granted to it by this Compact, as may be necessary or proper for the effective performance of its functions.

(f) *Cooperation and assistance of other agencies.* — To avoid duplication of effort and in the interest of economy, the Commission may make use of existing studies, plans, data and other materials in the possession of the governmental agencies of the party states and their respective political subdivisions. Each agency is authorized to make these materials available to the Commission and otherwise to assist it in the performance of its functions. The officers and personnel of these agencies, and of any other government or agency, may serve at the request of the Commission upon advisory committees and panels as the Commission creates; and the officers and personnel may serve upon the committees and panels without forfeiture of office or employment and with no loss or diminution in the status, rights and privileges which they otherwise enjoy.

(g) *Licensing of Tri-State Lotto sales agents.* — (1) The Commission or its designee may license as agents to sell Tri-State Lotto tickets those persons as in its opinion will best serve the public convenience except that no license shall be issued to any person to engage in business exclusively as a sales agent.

(2) For purposes of this section the term "person" shall be construed to mean and include an individual, partnership, association, organization, club, company, corporation, trust, estate, society, joint stock company, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" shall also be construed to mean and include agencies and instrumentalities of the State, and counties, cities, towns and villages.

(3) Before issuing a license to any person, the Commission shall consider with respect to the person:

a. Financial responsibility and the security of the business or activity in which the person is engaged;

b. Accessibility of the place of business or activity to the public;

c. Sufficiency of existing licenses to serve public convenience;

d. Whether the place of business or activity is predominantly frequented by persons under the age of 18 years;

e. Volumes of expected sales; and

f. The possession of a valid party state lottery license.

(h) *Suspension and revocation of license.* — (1) The Commission may suspend or revoke, after notice and hearing, any license issued pursuant to this Compact. The license may, however, be temporarily suspended by the Commission without prior notice, pending any prosecution, investigation or hearing. A license may be suspended or revoked by the Commission for just cause, including but not limited to 1 or more of the following reasons:

a. Failure to account for tickets received or the proceeds of the sale of tickets or to file a bond if required by the Commission or to comply with instructions of the Commission concerning the licensed activity;

b. Conviction of any criminal offense;

c. Failure to file any return or report, to keep records, or to pay any tax;

d. Engaging in fraud, deceit, misrepresentation or conduct prejudicial to public confidence;

e. Insufficiency of the number of tickets sold by the sales agent; and

f. A material change since issuance of the license with respect to any of the matters required to be considered by the Commission under paragraph (g)(3) of this section.

(2) Any suspension or revocation of a state license to sell lottery tickets shall automatically result in suspension of the Tri-State Lotto license.

(i) *Inapplicability of conflicting statutes.* — (1) Any law providing for any penalty or disability for the sale of lottery tickets or any acts done in conjunction with a lottery which conflicts with the provisions of the Compact shall not apply to the sale of tickets or acts performed pursuant to this Compact.

(2) The provisions of this Compact shall apply and take precedence in the event of any conflict between the provisions contained in this Compact and the provisions of other laws of any of the party states.

(j) *Sale of tickets prohibited.* — (1) No tickets shall be sold at a price greater than those fixed by the Commission; nor shall a sale be made to any person other than a licensed sales agent. Any person who violates any of these provisions shall be subject to the sanctions of each respective party state's lottery statutes.

(2) No ticket shall be sold to any person under the age of 18 years, but this shall not be deemed to prohibit the purchase of a ticket for the purpose of making a gift by a person 18 years of age or older to a person less than that age. Any licensee or the employee or agent of any licensee who sells or offers to sell a ticket to any person under the age of 18 shall be subject to the sanctions of each respective party state's lottery statutes.

(3) No ticket shall be sold to and no prize shall be paid to any of the following persons:

a. Any member, officer or employee of the Commission; or

b. Any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of abode of any of the foregoing persons.

(k) *Collection and disposition of revenue.* — (1) All moneys received by any and all Tri-State Lotto sales agents from the sales of Tri-State Lotto tickets, less the amount, if any, retained pursuant to paragraphs (e)(1)g. and (e)(1)h. of this section shall be delivered weekly to the state Lottery Director, Sweepstakes Commission or State Lottery Commission of the party state in which sales were made.

(2) Within 1 week after a Tri-State Lotto drawing has been held, the party states shall pay the Commission, who in turn shall promptly pay to an account known as the Tri-State Lotto Prize Account, moneys as are necessary for the payment of prizes, less actual prizes paid by the respective party state in the preceding week, but not to exceed 50 percent of the total amount for which tickets have been sold.

(3) Interest earned by the Tri-State Lotto Prize Account shall accrue to the party states in direct proportion to their contribution to the account. Distribution shall be made at least semi-annually.

(4) The withdrawals, pursuant to subsection (l) of this section, of moneys from the Tri-State Lotto Prize Account deposited by the Commission shall be subject to a check signed by a member of the Commission or such officer, employee or agent of the Commission as the Commission may designate. The moneys in the Prize Account shall be paid out of the account on vouchers certified or approved by the Commission or its designated officer, agent or employee.

(5) The Commission shall receive from party states, within 1 week after a Tri-State Lotto drawing, an additional sum of moneys not to exceed 15 percent of the total amount for which tickets have been sold. The moneys shall be deposited in a bank, banking house or trust company selected by the Commission in an account to be named the Tri-State Lotto Operations Account. The operations account shall be used to pay Tri-State Lotto current operating costs which shall be charged proportionally to the sales made by each of the party states. If operating costs exceed or fall short of the amount obtained in the account, appropriate adjustments shall be made on a quarterly basis within 30 days at the end of each quarter.

(6) Interest earned by the Tri-State Lotto Operations Account shall accrue to the party states in direct proportion to their contribution to the account. Distribution shall be made at least semi-annually.

(*l*) *Certification of prize winners and payment of prizes.* — (1) All prizes over $5,000 shall be awarded to holders of winning tickets provided in this section. Within 1 week after any drawing selection of prize winning tickets, the Commission shall deliver to each of the party states a certified list of the tickets to which the prizes are awarded and amount of each prize. Upon delivery of the certified list and voucher of the Commission, moneys sufficient for the payment of the prizes may be withdrawn from the prize account established in paragraph (k)(2) of this section. The Commission shall each month provide each party state with a record of all withdrawals. Payment of prizes shall be made by the Commission, or its designee, to holders of the tickets to which prizes are awarded, except that a payment of any prize drawn may be paid to the estate of a deceased prize winner, and except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled. The Commission, its officers, agents and employees shall be discharged of all further liability upon payment of a prize pursuant to this subsection.

(2) If the person entitled to a prize on any winning ticket is under the age of 18 years, and the prize is less than $5,000, the Commission may make payment by delivery to an adult member of the minor's family or a guardian of the minor of a check or draft payable to the order of the minor. If the person entitled to a prize of any winning ticket is under the age of 18 years and if the prize is $5,000 or more, the Commission may make payment to the minor by depositing the amount of the prize in any bank to the credit of an adult member of the minor's family or a guardian of the minor as custodian for the minor. The Commission shall be discharged of all further liability upon payment of a prize to a minor pursuant to this subdivision.

(3) Prizes may be paid in such manner as the Commission may direct in its rules and regulations as long as the rules and regulations are not inconsistent with this Compact.

(m) *Unclaimed prize money.* — Unclaimed prize money for the prize on a winning ticket shall be retained by the Commission for payment of the person entitled for 1 year after the drawing in which the prize was won. If no claim is made for the prize within 1 year from the date of the drawing, the prize money shall be credited to the prize pool. Upon the expiration of 1 year from the drawing date, the ticket holder shall forfeit any claim or entitlement to the prize moneys.

(n) *Duration of Commission and Tri-State Lotto.* — The Commission and Tri-State Lotto shall continue in existence until this Compact is revoked by all of the party states. The withdrawal of 1 party state shall not render the Compact invalid between the remaining states.

(o) *Interpretation.* — This Compact shall be construed liberally to accomplish its purpose.

(p) *Amendments.* — Amendments and supplements to this Compact may be adopted by concurrent legislation of the party states.

(q) *Immunity.* — The Commission and the party states shall be immune from:

(1) Any claim based upon an act or omission of an employee exercising due care, in the execution of a statute or regulation, whether or not the statute or regulation is valid, or based upon the exercise or performance or failure to exercise or perform a discretionary function or duty on the party of the employee whether or not the discretion involved is abused;

(2) Any claim arising in respect to the assessment or collection of any fee or commission or the levy upon or detention of any goods or merchandise by a law-enforcement officer;

(3) Any claim for damages caused by the fiscal operations of the Commission;

(4) Any claim arising out of alleged assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, fraud, interference with contractual rights or invasion of the right of privacy; or

(5) Any other claim for which a remedy is provided or which is governed specifically by other statutory enactment.

(r) *Fiscal year.* — The fiscal year of the Tri-State Lotto Commission shall be from July 1 of 1 calendar year to June 30 of the succeeding calendar year.

(s) *State tax exemption.* — The prizes received pursuant to this Compact shall be exempt from all state, county, municipal and local taxes within the party states.

(66 Del. Laws, c. 183, § 1; 69 Del. Laws, c. 446, § 17; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 219, § 21.)

§ 4854. Penalties.

(a) No person shall sell a ticket or share in a ticket at a price greater than that fixed by the Commission. No person other than a lottery agent can sell lottery tickets. Nothing in this section shall be construed to prevent any individual purchaser from giving lottery tickets or shares to another as a gift. Any person convicted of violating this subchapter may be punished by imprisonment for 6 months and a fine of $1,000.

(b) Any person who falsely or fraudulently makes, forges, alters or counterfeits, or causes or procures to be made, forged, altered or counterfeited, any Commission ticket or any part thereof, or any person who knowingly and wilfully utters, publishes, passes or tenders as true, any forged, altered or counterfeited Commission lottery tickets may be punished by imprisonment for 6 months and a fine of $5,000.

(c) Any subsequent offense may be punished by imprisonment for 2 years and $20,000 fine for each offense.

(66 Del. Laws, c. 183, § 1; 69 Del. Laws, c. 446, § 17; 77 Del. Laws, c. 219, § 21.)

§ 4855. Allocation of profits.

The profits received by the State of Delaware through the sale of Tri-State Lotto tickets shall be deposited in the General Fund in accordance with § 4815 of this title.

(66 Del. Laws, c. 183, § 1; 69 Del. Laws, c. 446, § 17; 77 Del. Laws, c. 219, § 21.)

Subchapter III

Interactive Fantasy Contests

(82 Del. Laws, c. 69, § 1.)

§ 4860. Short title.

This subchapter shall be known and may be cited as the “Delaware Interactive Fantasy Contests Act.”

(81 Del. Laws, c. 105, § 1; 81 Del. Laws, c. 371, § 1; 82 Del. Laws, c. 69, § 1.)

§ 4861. Legislative findings and purpose.

(a) The General Assembly hereby finds and declares that:

(1) Interactive fantasy sports are not games of chance because they consist of fantasy sports games or contests in which the fantasy sports teams are selected based upon the skill and knowledge of the participants and not based on the current membership of an actual team that is a member of an amateur or professional sports organization;

(2) Interactive fantasy sports contests are not wagers on future contingent events and are not under the contestants’ control or influence because contestants have control over which players they choose and the outcome of each contest is not dependent upon the performance of any 1 player or any 1 actual team. The outcome of any fantasy sports contest does not correspond to the outcome of any 1 sporting event. Instead, the outcome depends on how the performances of participants’ fantasy roster choices compare to the performance of others’ roster choices.

(b) Based on the findings in subsection (a) of this section, the General Assembly declares that interactive fantasy sports do not constitute gambling in Delaware within the meaning of §§ 1401-1431 of Title 11.

(c) The General Assembly further finds that as the Internet has become an integral part of society, and interactive fantasy sports a major form of entertainment for many consumers, any interactive fantasy sports enforcement and regulatory structure must begin from the bedrock premise that participation is lawful and licensed interactive fantasy sports industry is a privilege and not a right, and that regulatory oversight is intended to safeguard the integrity of the games and participants to ensure accountability and the public trust. Interactive fantasy sports should continue to be enjoyed broadly and offered by licensed interactive fantasy sports operators in the state and not exclusively by any single brick and mortar casino.

(81 Del. Laws, c. 105, § 1; 81 Del. Laws, c. 425, § 20; 82 Del. Laws, c. 69, § 1.)

§ 4862. Definitions.

As used in this subchapter the following terms shall have the following meanings:

(1) “Authorized Delaware player” means an authorized player located in Delaware.

(2) “Authorized player” means an individual, who is not prohibited by this subchapter, that participates in an interactive fantasy sports contest offered by a registrant.

(3) “Director” means the Director of the Delaware Division of Gaming Enforcement.

(4) “Division” means the Delaware Division of Gaming Enforcement.

(5) “Entry fee” means cash or cash equivalent that is paid by an authorized player or an authorized Delaware player to a registrant to participate in an interactive fantasy sports contest offered by such registrant.

(6) “Highly experienced player” means an authorized player who has done 1 of the following:

a. Entered more than 1,000 contests offered by a single operator or registrant.

b. Won more than 3 prizes valued at $1,000 each or more from a single operator or registrant.

(7) “High school sport or athletic event” means a sport or athletic event offered or sponsored by or played in connection with a public or private institution that offers education services at the secondary level.

(8) “Horse racing event” means any sport or athletic event conducted in Delaware that is subject to the provisions of Chapters 100 and 101 of Title 3, or any sport or athletic event conducted outside of Delaware, which if conducted in Delaware would be subject to the provisions of Chapters 100 and 101 of Title 3.

(9) “Interactive fantasy sports contest” or “contest” meansan online simulated game of skill wherein 1 or more contestants compete against each other by using their knowledge and understanding of athletic events and athletes to select and manage rosters of players whose performance directly corresponds with the actual performance of competitors on sports teams and in sports contests. It does not include contests that are free to all participants or contests that encompass an entire season of the activity in which the underlying competition is being conducted, consists of at least 150 underlying competitions, and the prize or prizes awarded, if any, are determined by agreement of the participants only in order to distribute fully the participants’ contributions to a fund established to award a prize or prizes for the contest.

(10) “Interactive fantasy sports operator” or “operator” means any person or entity that offers any interactive fantasy sports contest to any player through any interactive fantasy sports platform.

(11) “Interactive fantasy sports platform” or “platform” means any online method by which access to an interactive fantasy sports contest is provided.

(12) “Interactive fantasy sports registrant” or “registrant” means an operator that is registered by the Director. A registrant may utilize multiple interactive fantasy sports platforms and offer multiple contests.

(13) “Minor” means any person under the age of 18 years.

(14) “Prohibited sports event” means any collegiate sporting event that involves a Delaware college or university, or any high school sport or athletic event, or any horse racing event.

(15) “Resident percentage” means, for each interactive fantasy sports contest, the percentage, rounded to the nearest tenth of a percent, of the entry fees collected from authorized Delaware players, divided by the entry fees collected from all authorized players in interactive fantasy sports contests.

(16) “Sports event” shall mean any amateur or professional sport or athletic event, except a prohibited sports event.

(17) “Ultimate equitable owner” shall mean a person who owns or controls any ownership interest of 10% or more in a person or entity either directly or indirectly, regardless of whether the person or entity owns or controls the ownership interest through 1 or more other persons or proxies, powers of attorney, or other variances.

(81 Del. Laws, c. 105, § 1; 81 Del. Laws, c. 371, § 1; 82 Del. Laws, c. 69, § 1.)

§ 4863. Registration.

(a) (1) No operator shall administer, manage, or otherwise make available an interactive fantasy sports platform to persons located in Delaware unless registered with the Director pursuant to § 4864 of this title. A registrant may use multiple interactive fantasy sports platforms and offer multiples types of contests. This subchapter, and any and all rules and regulations adopted under the authority of this subchapter, shall apply only to interactive fantasy sports contests for which an authorized player pays an entry fee.

(2) [Repealed.]

(b) Registration issued by the Director shall remain in effect for 3 years. The Director shall establish a process for renewal.

(c) The Director shall publish a list of all operators registered in Delaware pursuant to this subchapter on a state website for public use.

(d) Interactive fantasy sports contests offered by a registrant in accordance with the provisions of this subchapter shall not constitute gambling as defined in §§ 1401-1431 of Title 11.

(e) The Director shall promulgate regulations to implement the provisions of this subchapter, including the development of the initial form of the application for registration. Such regulations shall provide for the registration and operation of contests in Delaware and shall include responsible protections with regard to compulsive play and safeguards for fair play.

(f) Registration as an Interactive Fantasy Sports Operator only grants the registrant the privilege to operate interactive fantasy sports contests in the State in accordance with the rules and limitations of this chapter.

(81 Del. Laws, c. 105, § 1; 82 Del. Laws, c. 69, § 1.)

§ 4864. Scope of registration review.

(a) The Director shall prescribe the initial form of the application for registration which shall include the following requirements:

(1) The full name and principal address of the operator

(2) If a corporation, the name of the state in which incorporated and the full names and addresses of any partner, officer, director, shareholders holding 10% or more equity, and ultimate equitable owners.

(3) If a business entity other than a corporation, the full names and addresses of the principals, partners, members, and other types of equity holders holding 5% or more equity, and ultimate equitable owners.

(4) Whether such corporation or entity files information and reports with the United States Securities and Exchange Commission as required by § 13 of the Securities Exchange Act of 1934 (15 U.S.C. § 78m); or whether the securities of the corporation or entity are regularly traded on an established securities market in the United States.

(5) The type and estimated number of contests to be conducted annually.

(6) A statement of the assets and liabilities of the operator.

(7) *Criminal record.* —

a. Information regarding the criminal record, if any, of the following individuals, if those individuals are involved in the day-to-day management of interactive fantasy sports contests or operations, and as applicable to the entity's business structure:

1. Each partner of a partnership holding 10% or more of the partnership;

2. Each member of a limited liability company holding 10% or more of the LLC;

3. Each director and officer of a nonpublicly held corporation;

4. Each director and officer of a publicly held corporation;

5. Each stockholder holding 10% or more of a corporation; and

6. Ultimate equitable owners.

b. Individuals identified in paragraph (a)(7)a. of this section shall have a duty to disclose on the application for registration whether they have been convicted of a crime, other than traffic violations and convictions that have been expunged, and provide the nature of the crime, the date and place of the conviction, and the legal disposition of the case.

c. *Fingerprinting procedure required.* —

1. Individuals identified in paragraph (a)(7)a. of this section shall be required to submit fingerprints and other necessary information in order to obtain the following:

A. A report of the individual's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Bureau of Identification Central Repository contains no such information relating to that individual; and

B. A report of the individual's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544. The State Bureau of Identification shall be the intermediary for the purposes of this section and the Division shall be the screening point for the receipt of said federal criminal history records.

2. All information obtained pursuant to this subsection shall be forwarded to the Division, which shall access the information and make a determination to approve or deny an application for registration. A copy of all information forwarded to the Division shall be provided to the individual. The individual shall have an opportunity to respond in writing to the Division regarding any information obtained pursuant to paragraph (a)(7)a. of this section prior to a determination of suitability for registration. Information obtained under this subsection is confidential and may only be disclosed to the Director and designated personnel of the Division. The State Bureau of Identification may release any subsequent criminal history to the Division.

3. An individual whose criminal record is required pursuant to paragraph (a)(7)a. of this section who has submitted to a criminal background check in this or any other state within the previous 12 months shall not be required to submit to another criminal background check if the individual submits:

A. The results of such previous criminal background check, including any previous federal criminal background check; and

B. A reference from the individual's most recent employer, if any, covering the previous 12 months.

4. Individuals identified in paragraph (a)(7)a. of this section of those operators who received a conditional registration or registration to administer, manage or otherwise make available an interactive fantasy sports platform to offer interactive fantasy sports contests to persons located in Delaware on or before August 25, 2017, shall submit by January 1, 2019, at the registrant's expense, fingerprints and other necessary information in order to obtain a criminal background pursuant to this paragraph (a)(7).

(b) The Director may require the full names and addresses of the officers and directors of any creditor of the operator, and of those stockholders, members, partners, or other equity holders who hold more than 10% of the stock, interests, or equity of the creditor.

(c) The Director may impose a monetary penalty, not to exceed $1,000 per violation, deny any application for registration, or suspend, refuse to renew, or revoke any existing registration issued pursuant to this subchapter, upon the finding that the operator or registrant, or any individual identified in paragraph (a)(7)a. of this section has done any of the following:

(1) Knowingly made a false statement of material fact or has deliberately failed to disclose any information required by the Director.

(2) Had a registration or license to offer or conduct contests denied, suspended, or revoked in any other state or country for just cause.

(3) Legally defaulted in the payment of any obligation or debt due to the federal government, or any state or political subdivision.

(4) Within 10 years of the date of the application for registration, has been:

a. Found guilty of any illegal, corrupt, or fraudulent act, practice, or conduct in connection with any interactive fantasy sport contest in this or any other state; or

b. Convicted of a felony, or any criminal offense involving dishonesty or breach of trust;

(5) At any time, knowingly failed to comply with any requirement of this chapter, any regulations promulgated by the Director, or any other additional requirements of the Director.

(d) The Director may revoke a registration if the Director finds that facts not known at the time the Director considered the application that if know, would have justified the denial of the application.

(e) When the Director denies, revokes or fails to renew an application, the operator shall be afforded notice and the right to be heard and offer proof in opposition to such determination in accordance with the regulations of the Director.

(f) All information and data required by the Director to be furnished in the application or investigative process, or which otherwise may be obtained by the Division, pertaining to an applicant's criminal record, financial record, and background, including an application form and registration investigation report, shall be considered confidential, shall not be public records subject to Chapter 100 of this title, and shall not be revealed in whole or in part except in the ordinary administration of the chapter, or upon the lawful order of a court of competent jurisdiction, or with the approval of the Attorney General, to a duly authorized law-enforcement agency. The Director may enter agreements with other law-enforcement agencies or other interactive fantasy sports contest regulatory agencies for the sharing of confidential information. Any person who violates this subsection (f) shall be guilty of a class A misdemeanor.

(g) All information and data required by the Director to be furnished, or which otherwise may be obtained by the Division, relative to internal controls of an operator or registrant shall be considered confidential, shall not be public records subject to Chapter 100 of this title, and shall not be revealed in whole or in part except in the ordinary administration of the chapter, or upon the lawful order of a court of competent jurisdiction, or with the approval of the Attorney General, to a duly authorized law-enforcement agency. Any person who violates this subsection (g) shall be guilty of a class A misdemeanor.

(h) The Director may issue a temporary registration for good cause and upon a finding that the issuance of a temporary registration is necessary to allow for the efficient operation of daily interactive fantasy sports. Temporary registration shall remain in effect for no more than 12 months from the date of issuance.

(81 Del. Laws, c. 105, § 1; 81 Del. Laws, c. 371, § 1; 82 Del. Laws, c. 69, § 1.)

§ 4865. Required safeguards; minimum standards.

(a) As a condition of registration, each operator and registrant shall implement commercially reasonable measures to:

(1) Limit each authorized player to 1 active and continuously used account.

(2) Prohibit minors from participating in any contest, which includes:

a. If a registrant becomes or is made aware that a minor has participated in 1 of its contests, such registrant shall promptly, within no more than 2 business days, refund any deposit received from the minor, whether or not the minor has engaged in or attempted to engage in a contest; provided, however, that any refund may be offset by any prizes already awarded;

b. Each registrant shall publish and facilitate parental control procedures to allow parents or guardians to exclude minors from access to any contest or platform; and

c. Each registrant shall take appropriate steps to confirm that an individual opening an account is not a minor.

(3) When referencing the chances or likelihood of winning in advertisements or upon contest entry, make clear and conspicuous statements that are not inaccurate or misleading concerning the chances of winning and the number of winners.

(4) Enable authorized players to exclude themselves from contests and take reasonable steps to prevent such players from entering a contest from which they have excluded themselves.

(5) Permit any authorized player to permanently close an account registered to such player, on any or all platforms supported by such operator or registrant, at any time and for any reason.

(6) Offer introductory procedures for authorized players that explain contest play and how to identify a highly experienced player.

(7) Identify all highly experienced players in any contest by a symbol attached to such players' usernames, or by other easily visible means, on all platforms supported by such operator or registrant.

(8) Disclose the number of entries that a single authorized player may submit to each contest.

(9) Disclose the maximum number of total entries allowed for each contest.

(10) Implement measures to protect the privacy and online security of authorized players and their accounts.

(11) Offer all authorized players information regarding the authorized player's account history and account details;

(12) Ensure authorized players' funds are protected upon deposit and segregated from the operating funds of such operator or registrant and otherwise protected from corporate insolvency, financial risk, or criminal or civil actions against such operator or registrant.

(13) List on each website, in a prominent place, information concerning assistance for compulsive play, including a toll-free number directing callers to reputable resources containing further information, which shall be free of charge.

(14) Ensure the value of any prizes and awards offered to authorized players shall be established and made known to such players in advance of the contest.

(15) Ensure all winning outcomes reflect the relative knowledge and skill of the authorized players and shall be determined predominantly by accumulated statistical results of the performances of individuals in sports events.

(16) Ensure no winning outcome shall be based on the score, point spread, or performance of a single actual sports team, or any combination of such teams.

(17) Ensure no winning outcome shall be based solely on any single performance of an individual athlete in a single sport or athletic event.

(18) Ensure no game or contest shall be based on a prohibited sports event.

(19) Prevent the sharing of confidential information that could affect interactive fantasy sports contest play with third parties until such information is made publicly available.

(20) Prohibit employees of the registrant and any family members living in the same household as those employees from competing in a public interactive sports contest.

(21) Prohibit individuals who participate or officiate in a sports event that is the subject of a fantasy contest from entering an interactive fantasy sports contest that is determined, in whole or in part, on the accumulated statistical results of the sports event in which the individual is participating or officiating.

(b) Each registrant shall restrict the number of entries submitted to 1 entry by a single authorized player for a contest involving 12 entries or fewer. Each registrant shall restrict the number of entries submitted by a single authorized player to 2 entries for a contest involving 13-36 entries. Each registrant shall restrict the number of entries submitted by a single authorized player to 3 entries for a contest involving 37-100 entries. In any contest involving more than 100 entries, registrants shall restrict the number of entries submitted by a single authorized player to 3% of all entries or 150 entries, whichever is smaller.

(c) For all advertised contests, the registrant shall prominently include information about the maximum number of entries that may be submitted by a single authorized player for that contest.

(d) Registrants may establish contests, representing less than 2% of the total number of contests it offers, in which there is no restriction on the number of entries by a single authorized player, provided that:

(1) The registrant clearly discloses that there are no limits on the number of entries by a single authorized player; and

(2) That the cost of participating in a contest with no restriction on the number of entries by a single authorized player is $50 or more per entry.

(e) Operators shall not directly or indirectly operate, promote or advertise any platform or contest to persons located in this State, unless such operation, promotion or advertising is pursuant to this subchapter.

(f) Registrants shall not offer any contest based on any prohibited sports event.

(g) Registrants shall not permit any minor to enter any contest.

(h) Advertisements for contests and prizes offered by a registrant shall not target minors, or self-excluded persons. Representations or implications about average winnings from contests shall not be unfair or misleading. Such representations shall include, at a minimum:

(1) The median and mean net winnings of all authorized players participating in contests offered by such registrant; and

(2) The percentage of winnings awarded by the registrant to highly experienced players participating in contests offered by such registrant within the preceding calendar year.

(i) Registrants shall prohibit the use of third-party scripts or scripting programs for any contest and ensure that measures are in place to deter, detect and, to the extent reasonably possible, prevent cheating, including collusion, and use of cheating devices, including use of third party software programs that submit entry fees or adjust the athletes selected by an authorized player.

(j) Operators and registrants shall develop and prominently display procedures for the filing of a complaint by the authorized player against such registrant. An initial response shall be given by such registrant to such player filing the complaint within 48 hours. A complete response shall be given by such registrant to such player filing the complaint within 10 business days. An authorized player may file a complaint alleging a violation of the provisions of this subchapter with the Director.

(k) Registrants shall maintain records of all accounts belonging to authorized players and retain such records for 5 years.

(81 Del. Laws, c. 105, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 371, § 1; 82 Del. Laws, c. 69, § 1; 84 Del. Laws, c. 42, § 1.)

§ 4866. Powers and duties of the Director.

(a) The Director shall promulgate regulations to implement the provisions of and effectuate the policy and objectives of this subchapter as the Director may deem necessary or advisable, including the development of the initial form of the application for registration. Such regulations shall provide for the registration and operation of contests in Delaware and shall include, without limitation, responsible protections with regard to compulsive play and safeguards for fair play. Such regulations may regulate the conduct and operation of contests and platforms, protect contestants and promote the fairness, honesty and integrity of contests. Provided, however, the Director shall not promulgate resolutions or limitations addressing any of the following:

(1) Rules or the administration of an individual game or contest.

(2) The statistical makeup of a game or contest.

(3) The digital platform of a platform operator.

(b) The Director shall have the following powers and duties for purposes of administrating, regulating, and enforcing the provisions of this subchapter:

(1) All powers and duties assigned by this subchapter, as well as all powers necessary and properly to fully and effectively execute this subchapter.

(2) To approve and deny applications for registration to conduct contests in Delaware state, and to suspend, refuse to renew, or revoke any registration issued to a registrant under this subchapter.

(3) To review each platform and contest offered by an operator or registrant.

(4) To accept and investigate complaints of any kind from an authorized player and attempt to mediate such complaints where appropriate.

(5) To investigate alleged violations of this subchapter.

(6) To initiate proper enforcement proceedings where such action is deemed by the Director to be necessary or appropriate.

(7) All powers and duties assigned by this subchapter.

(81 Del. Laws, c. 105, § 1; 82 Del. Laws, c. 69, § 1.)

§ 4867. Annual report.

(a) Each registrant shall annually submit a report to the Director no later than June 30 of each year, which shall include all of the following information as it shall apply to accounts held by authorized players located in Delaware:

(1) The number of accounts held by authorized players on all platforms offered by the registrant, and the number of accounts held by highly experienced players on all platforms offered by the registrant.

(2) The total number of new accounts established in the preceding year, as well as the total number of accounts permanently closed in the preceding year.

(3) The total number of entry fees received from authorized players.

(4) The total number of prizes awarded to authorized players.

(5) The total amount of interactive fantasy sports revenue received by the registrant.

(6) The total amount of authorized players that requested to exclude themselves from contests.

(7) Any additional information that the Director deems necessary to carry out the provisions of this subchapter.

(b) Upon the submission of such annual report, to such extent that the Director deems it to be in the public interest, the Director shall be authorized to conduct a financial audit of any registrant, at any time, to ensure compliance with this subchapter.

(c) The Director shall annually publish a report based on the aggregate information provided by all registrants pursuant to subsection (a) of this section, which shall be published on a state website no later than 180 days after the deadline for the submission of individual reports as specified in subsection (a) of this section.

(81 Del. Laws, c. 105, § 1; 82 Del. Laws, c. 69, § 1.)

§ 4868. Fees.

[Transferred to § 2301(d)(3) of Title 30 by 81 Del. Laws, c. 371, § 1, effective August 10, 2018.]

(81 Del. Laws, c. 105, § 1.)

§ 4869. Disposition of fees.

[Transferred to § 2301(d)(3) of Title 30 by 81 Del. Laws, c. 371, § 1, effective August 10, 2018.]

(81 Del. Laws, c. 105, § 1.)

§ 4870. Determination of fee liability [Repealed].

(81 Del. Laws, c. 105, § 1; repealed by 81 Del. Laws, c. 371, § 1, effective Aug. 10, 2018.)

§ 4871. Contests authorized.

Interactive fantasy sports contests registered and conducted pursuant to the provisions of this subchapter are hereby authorized.

(81 Del. Laws, c. 105, § 1; 82 Del. Laws, c. 69, § 1.)

§ 4872. Contests prohibited.

The conduct of unregistered interactive fantasy sports contests is prohibited.

(81 Del. Laws, c. 105, § 1; 82 Del. Laws, c. 69, § 1.)

§ 4873. Unregistered practice.

(a) Where the Director has determined, upon notice and hearing pursuant to Chapter 101 of this title, that an operator has administered, managed or otherwise made available an interactive fantasy sports platform to persons located in Delaware regulated by this subchapter without having lawfully registered or that an operator or registrant previously registered under this subchapter is engaged in a practice regulated by this subchapter notwithstanding that the operator's registration has been suspended or revoked, the Director may issue a cease and desist order. In addition to the power to issue a cease and desist order, the Director may seek a injunctive relief prohibiting such unlawful practice and seek the imposition of other civil penalties defined by this subchapter.

(b) Upon notice and hearing pursuant to Chapter 101 of this title, the Director may fine any operator or registrant who violates such cease and desist order not less than $1,000 or more than $5,000 for each offense. Each day a violation continues may be deemed a separate offense in the Director's discretion.

(81 Del. Laws, c. 371, § 1; 82 Del. Laws, c. 69, § 1.)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 49
Office of Highway Safety

§ 4901. Office of Highway Safety established.

There is established the Office of Highway Safety, which Office shall be under the direction and supervision of the Department of Safety and Homeland Security pursuant to Chapter 82 of this title.

(60 Del. Laws, c. 631, § 1; 76 Del. Laws, c. 391, § 2.)

§ 4902. Coordinator; personnel; merit system.

(a) The Office of Highway Safety shall be administered by a Coordinator. The Office shall employ such personnel as required to meet the federal guidelines for a state agency responsible for highway safety in accordance with the Highway Safety Act of 1966, as amended [23 U.S.C. § 401 et seq.].

(b) All employees of the Federal-State Highway Safety Coordinator's Office, heretofore established pursuant to executive order, including the Coordinator and Deputy Coordinator, shall be transferred to the Office of Highway Safety, and shall be deemed to be employees of such Office and employees of the State in classified service with all the benefits accrued as merit employees as of July 22, 1976.

(60 Del. Laws, c. 631, § 1; 68 Del. Laws, c. 84, § 157.)

§ 4903. Powers, duties and functions.

(a) The Office of Highway Safety shall have all the powers, duties and functions heretofore vested in the Federal-State Highway Safety Coordinator's Office established by executive order and such other powers, duties and functions conferred and mandated by the Highway Safety Act of 1966, as amended [23 U.S.C. § 401 et seq.].

(b) The Office of Highway Safety may solicit and receive subscriptions, donations, and other funds from individuals or organizations for the purpose of implementing highway safety programs and projects that support the mission of reducing traffic fatalities and injuries in Delaware.

(60 Del. Laws, c. 631, § 1; 84 Del. Laws, c. 288, § 1.)

§ 4904. Federal merit system standards.

Notwithstanding any other provisions of this chapter, the Office is authorized and directed to take such action with respect to matters involving personnel as may be necessary to insure the continued eligibility of this State for grants-in-aid under any federal law or program.

(60 Del. Laws, c. 631, § 1.)

Part IV
State Agencies and Offices Not Created by Constitution

Chapter 50
State Economic Development

Subchapter I
General Provisions

§ 5001. Legislative findings [Transferred].

Transferred to § 8701A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5002. Definitions [Transferred].

Transferred to § 8702A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5003. Delaware Economic Development Office — Created; purposes [Transferred].

Transferred to § 8703A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5004. Delaware Economic Development Office — Appointment, qualifications and compensation of Director; Acting Director [Transferred].

Transferred to § 8704A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5005. Delaware Economic Development Office — Powers, duties, and functions of Director [Transferred].

Transferred to § 8705A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5006. Delaware Economic Development Office — Powers and duties [Transferred].

Transferred to § 8706A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5007. Council on Development Finance [Transferred].

Transferred to § 8707A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5008. Tourism Advisory Board [Transferred].

Transferred to § 8708A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5009. Delaware Economic Development Office — Staff [Transferred].

Transferred to § 8709A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5010. Delaware Economic Development Office — Collection and distribution of information; sale of publications [Transferred].

Transferred to § 8710A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5011. Delaware Economic Development Office — Preparation of annual capital budget [Transferred].

Transferred.

§ 5012. Assistance for tourism and business promotion [Transferred].

Transferred to § 8712A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5013. Assumption of powers of Office [Transferred].

Transferred to § 8713A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5014. Rights of appeals continued [Transferred].

Transferred to § 8714A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5015. Transition provisions [Transferred].

Transferred to § 8715A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5016. Reports [Transferred].

Transferred to § 8716A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5017. Misnomer of Office in donation [Transferred].

Transferred to § 8717A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5018. Budget [Transferred].

Transferred to § 8718A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5019. Supremacy [Transferred].

Transferred to § 8719A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

Subchapter I-A

Delaware State Housing Authority

§§ 5020-5026. Findings and purpose; definitions; transfer and establishment; powers and duties; housing director; division of housing; council on housing; transition provisions [Repealed].

Repealed by 71 Del. Laws, c. 357, § 3, effective July 2, 1998.

Subchapter I-B

Delaware Strategic Fund

§ 5027. Findings and purpose; creation of the Fund [Transferred].

Transferred to § 8727A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5028. Fund purposes [Transferred].

Transferred to § 8728A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5029. Findings and determinations for assistance [Transferred].

Transferred to § 8729A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

Subchapter II

Business Development Corridor and Economic Support Program

§§ 5030-5032. Legislative intent; qualifying businesses; evaluation preferences; development corridor; and the Business Development Corridor and Economic Support Program [Repealed].

Repealed by 75 Del. Laws, c. 98, § 47, effective July 1, 2005.

Subchapter II-A

Delaware Technical Innovation Program

§ 5035. Creation; definitions [Transferred].

Transferred to § 8735A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5036. Duties [Transferred].

Transferred to § 8736A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5037. Matching funds for federal Small Business Innovation Research Program [Transferred].

Transferred to § 8737A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5038. Reporting [Transferred].

Transferred to § 8738A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

Subchapter II-B

Human Investment and Partnership Program

§ 5039. Declaration of policy [Transferred].

Transferred to § 8739A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5040. Establishment of the Human Investment and Partnership Program [Transferred].

Transferred to § 8740A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5041. Responsibilities and functions of the Human Investment and Partnership Program [Transferred].

Transferred to § 8741A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5042. Human Investment and Partnership Council [Repealed].

Repealed by 77 Del. Laws, c. 106, § 6, effective July 6, 2009.

§ 5043. Reporting to the Governor and the General Assembly [Transferred].

Transferred to § 8743A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

Subchapter III

Advanced Real Property Acquisition Fund

§§ 5044, 5045. Idle moneys to be held in Capital Investment Fund; authorization for sale of school district bonds [Transferred].

Transferred.

Subchapter III-A

The Small Business Revolving Loan and Credit Enhancement Fund

§ 5046. Legislative intent [Transferred].

Transferred to § 8746A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5047. Creation of the Fund [Transferred].

Transferred to § 8747A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5048. Fund purposes [Transferred].

Transferred to § 8748A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5049. Fund eligibility [Transferred].

Transferred to § 8749A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

Subchapter IV

Delaware Economic Development Authority

§ 5051. Findings; declaration of policy [Transferred].

Transferred to § 8751A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5052. Definitions [Transferred].

Transferred to § 8752A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5053. Established; organization [Transferred].

Transferred to § 8753A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5054. Deauthorization of state-guaranteed bonds [Transferred].

Transferred to § 8754A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5055. Application for assistance; findings and determinations [Transferred].

Transferred to § 8755A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5056. Bonds [Transferred].

Transferred to § 8756A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5057. Covenants with bondholders [Transferred].

Transferred to § 8757A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5058. Pledge of revenues or other property [Transferred].

Transferred to § 8758A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5059. Limitation on liability of State [Transferred].

Transferred to § 8759A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5060. Negotiability of bonds [Transferred].

Transferred to § 8760A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5061. Default in payment of state-guaranteed bonds; insufficient revenues to make payment [Transferred].

Transferred to § 8761A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5062. Limitation of powers of State [Transferred].

Transferred to § 8762A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5063. Delaware Development Corporation [Repealed].

(63 Del. Laws, c. 387, § 13(a); 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 186, § 1; repealed by 78 Del. Laws, c. 229, § 3, eff. Apr. 19, 2012.)

§ 5064. Bonds as legal investments for institutions and fiduciaries [Transferred].

Transferred to § 8764A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5065. Exemption from taxation [Transferred].

Transferred to § 8765A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5066. Property of Authority exempt from judicial process [Transferred].

Transferred to § 8766A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5067. Liberal construction of subchapter [Transferred].

Transferred to § 8767A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5068. Inconsistent laws inapplicable; facsimile signatures [Transferred].

Transferred to § 8768A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

Subchapter V

Delaware Economic Development Training Act

§ 5070. Definitions [Transferred].

Transferred to § 8770A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5071. Economic Development Training Board [Repealed].

Repealed by 71 Del. Laws, c. 163, § 1, effective July 9, 1997.

§ 5072. Powers and duties [Transferred].

Transferred to § 8772A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5073. Annual report [Transferred].

Transferred to § 8773A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

Subchapter V-A

Development Incentive Fund

§§ 5074-5079. Legislative intent; creation of Fund; Fund purposes; Fund eligibility; findings and determinations for assistance; report to General Assembly [Repealed].

Repealed by 69 Del. Laws, c. 77, § 23(e), effective July 1, 1993.

Subchapter VI

First State Improvement Fund [Repealed].

§ 5080. Created; appropriation [Repealed].

(65 Del. Laws, c. 197, § 1; repealed by 81 Del. Laws, c. 49, § 1, eff. July 1, 2017.)

§ 5081. Purposes [Repealed].

(65 Del. Laws, c. 197, § 1; repealed by 81 Del. Laws, c. 49, § 1, eff. July 1, 2017.)

§ 5082. Investment, accounting and disbursement; use of Capital Improvement Fund [Repealed].

(65 Del. Laws, c. 197, § 1; 65 Del. Laws, c. 212, § 19; 66 Del. Laws, c. 206, § 11; repealed by 81 Del. Laws, c. 49, § 1, eff. July 1, 2017.)

§ 5083. Expenditures [Repealed].

(65 Del. Laws, c. 197, § 1; repealed by 81 Del. Laws, c. 49, § 1, eff. July 1, 2017.)

§ 5084. Funding of bicentennial community improvement projects; Bicentennial Community Improvement Committee [Repealed].

(65 Del. Laws, c. 197, § 1; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 16(5); repealed by 81 Del. Laws, c. 49, § 1, eff. July 1, 2017.)

§ 5085. Emergency and special expenditures [Repealed].

(65 Del. Laws, c. 197, § 1; repealed by 81 Del. Laws, c. 49, § 1, eff. July 1, 2017.)

§ 5086. Termination [Repealed].

(65 Del. Laws, c. 197, § 1; repealed by 81 Del. Laws, c. 49, § 1, eff. July 1, 2017.)

§ 5087. Liberal construction of subchapter [Repealed].

(65 Del. Laws, c. 197, § 1; repealed by 81 Del. Laws, c. 49, § 1, eff. July 1, 2017.)

§ 5088. Inconsistent laws superseded [Repealed].

(65 Del. Laws, c. 197, § 1; repealed by 81 Del. Laws, c. 49, § 1, eff. July 1, 2017.)

Subchapter VII

Allocation of State Private Activity Bond Ceiling to Governmental Units, Establishment of Industrial Revenue Bond Committee and Reporting Requirements

§ 5090. Definitions [Transferred].

Transferred to § 8790A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5091. Allocation of state ceiling [Transferred].

Transferred to § 8791A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5092. Industrial Revenue Bond Committee [Transferred].

Transferred to § 8792A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5093. Reports to Secretary of Finance [Transferred].

Transferred to § 8793A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

Subchapter VIII

Delaware Investment Tax Credit Program

§ 5095. Legislative findings; authorization [Transferred].

Transferred to § 8795A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5096. Eligibility for tax credits [Transferred].

Transferred to § 8796A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5097. Qualification of businesses seeking investment under Program [Transferred].

Transferred to § 8797A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5098. Certification of individuals for tax credits [Transferred].

Transferred to § 8798A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

§ 5099. Revocation of qualification or certification [Transferred].

Transferred to § 8799A of this title by 81 Del. Laws, c. 49, § 1, effective July 1, 2017, by virtue of § 23 of the act.

Part V
Public Officers and Employees

Chapter 51
General Provisions

§ 5101. Oath of office; fee.

Every person elected or appointed to any public office of trust or profit in this State, before entering upon the duties of such office, shall take and subscribe the oaths or affirmations set forth in article XIV of the Delaware Constitution. Such oaths, reduced to writing, duly signed and certified, shall be recorded in the office of the recorder of the county of the official's residence. No fee shall be required by the recorder of any person appointed by the Governor to serve as a volunteer member of an advisory council.

(Code 1852, §§ 435, 440; Code 1915, § 377; Code 1935, § 346; 29 Del. C. 1953, § 5101; 61 Del. Laws, c. 387, § 2.)

§ 5102. Oath to support Constitution.

Every officer and employee of the State or any political subdivision thereof shall take an oath to support and defend the Constitution of the United States and the Constitution of the State before commencing duties as such officer or employee.

(48 Del. Laws, c. 264, § 1; 29 Del. C. 1953, § 5102; 70 Del. Laws, c. 186, § 1.)

§ 5103. Payment of debts as condition of employment.

No agency of the State shall employ or retain upon its payroll any person who refuses or neglects to make an effort to pay, by making regular partial payments on any unsecured debt, duly contracted for by such person while in the employ of the State. Whoever refuses or neglects to comply with or violates this section shall thereafter be disqualified for membership or employment on any such agency.

(40 Del. Laws, c. 79, §§ 1, 2; Code 1935, § 444; 29 Del. C. 1953, § 5103.)

§ 5104. Saturday as holiday.

Saturday shall be a legal holiday throughout each year for all elective and appointive officials, deputies, clerks and other employees of the State, except members of the State Police, employees of the Department of Safety and employees assigned to rotating and shift work. Saturday shall be a holiday for employees of the Department of Safety throughout the year excepting the last 2 Saturdays of each quarter. During the periods stated, state offices affected hereby shall not be open for business on Saturdays.

(Code 1935, § 3321; 47 Del. Laws, c. 247; 48 Del. Laws, c. 197; 48 Del. Laws, c. 297, §§ 1, 2; 29 Del. C. 1953, § 5104.)

§ 5105. Leave of absence for military service; pension rights; term of successor appointees.

(a) In the case of any employee of this State who is called to the service of or voluntarily enters the armed forces of the United States or the National Guard of the State, when in continuous active service, the state agency, board, department or other employing officer or agency of this State employing such employee shall grant to such employee a leave of absence which shall cover the entire period of such employee's service, not exceeding 5 years or until the term of service to which such employee has been called or volunteered has been terminated. Upon the completion of such leave of absence and service, such employee shall be reinstated in the position held at the time that such leave of absence was granted, and such employee shall be continued in employment under the same terms and conditions as if such employee had been in the continuous service of such employing agency during the period of the leave of absence.

(b) Any employee of the State taking a leave of absence authorized by subsection (a) of this section who, as a member of the Delaware National Guard or a United States military reserve organization, has been ordered to active duty to augment active forces for any operational mission, shall continue to receive that employee's own state compensation during the initial period of active duty prescribed by the military, to be reduced by any military compensation received. While on such leave of absence, for a period not to exceed 2 years, the employee and the employee's dependents shall continue to receive benefits provided under the State's group health insurance plan, provided that the employee continues to pay any employee-share premium for such plan. The Department of Human Resources shall develop any rules and regulations necessary to implement the provisions of this subsection. These rules shall make it the responsibility of the employee to initiate the claim and supply the required military pay information. The State shall be responsible for collecting information relating to State compensation. Claims shall be filed within 90 days of release from active duty or passage of this legislation, whichever is later.

(c) For the purpose of subsection (b) of this section state compensation shall be limited to base salary. Military compensation shall include base salary, basic allowance for quarters (BAQ), basic allowance for subsistence (BAS), hazardous duty pay and all other supplemental compensation.

(d) In the event that any state employee who shall have entered the armed services under a leave authorized by subsection (a) of this section shall have been employed in any agency of the state government having a pension plan for employees or which shall come under any pension plan enacted or to be enacted by the General Assembly of the State, the time spent by such employee in the armed services shall accrue to such employee's benefit in establishing such employee's right to a pension. If during the time any such employee shall

be in the armed services the total time spent actually as an employee plus the time spent in the armed services shall equal that period of time necessary to establish the right to retirement and to a pension, such employee shall upon application to the proper agency having jurisdiction be entitled to retirement and the pension prescribed by the rules of that agency in the same manner and with the same effect as if such employee had spent all of the required time in the actual employment of that agency.

(e) This section shall be retroactive to protect the rights of any employee who shall have qualified as provided in this section prior to April 24, 1945, and such employee shall be entitled to all such pension money as shall have accrued since the time of having so qualified.

Any person who may be appointed to replace any employee referred to in subsections (a)-(e) of this section shall be appointed only for the period covered by the leave of absence granted pursuant to subsection (a) of this section.

(43 Del. Laws, c. 84; 45 Del. Laws, c. 105; 29 Del. C. 1953, § 5105; 68 Del. Laws, c. 21, §§ 2, 3; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 429, § 2; 74 Del. Laws, c. 190, § 2; 74 Del. Laws, c. 421, § 2; 75 Del. Laws, c. 88, § 20(6); 75 Del. Laws, c. 234, § 2; 75 Del. Laws, c. 429, § 1; 81 Del. Laws, c. 66, § 23.)

§ 5106. Employee salary deductions.

(a) Upon receipt of written authorization from any state employee, the Secretary of Finance shall deduct from the employee's salary such sum as the employee shall direct for state provided employee benefits. Effective upon the implementation of the new payroll system, deductions shall be in equal amounts and withheld from all paychecks received by the employee, with the exception of deductions for employee health, life and dental insurance premiums which shall be withheld from the first 2 paychecks received during any month. The Secretary of Finance will set forth rules of practice and procedure with regard to employee deductions.

(b) For employee salary deductions excluding state provided employee benefits: upon receipt of written authorization from any state employee, the Secretary of Finance shall deduct from the employee's salary such sum as the employee shall in writing direct for deductions. Deductions shall be withheld from all paychecks received by the employee, with the exception of dues paid to the American Federation of State, County and Municipal Employees, which shall be withheld from the first 2 paychecks received during any month. The Secretary of Finance will set forth rules of practice and procedure with regard to deductions for employees.

(c) Subsection (b) of this section shall not be effective until implementation has been approved by the State Treasurer, Secretary of Finance, Director of the Office of Management and Budget and Controller General.

(d) Salary reductions voluntarily taken pursuant to subsection (b) of this section shall not affect the compensation used in the calculation of pension benefits under any state pension plan.

(42 Del. Laws, c. 75, §§ 1, 2; 29 Del. C. 1953, § 5106; 54 Del. Laws, c. 190; 56 Del. Laws, c. 53, § 1; 68 Del. Laws, c. 84, § 63; 69 Del. Laws, c. 64, § 114; 71 Del. Laws, c. 354, §§ 34-36; 72 Del. Laws, c. 94, § 128; 72 Del. Laws, c. 258, § 32; 75 Del. Laws, c. 88, §§ 21(13), 26(2).)

§ 5107. Cancellation of bond on expiration of term; petition; notice; order of Court.

(a) At any time after the expiration of the term of office of any state or county officer in this State who is required to give bond or other obligation with surety for the faithful performance of duties as such officer, such officer may present a petition to the Superior Court of the particular county in which the bond or other obligation is filed or recorded in such form as shall be prescribed by the Court, stating all of the facts proper and necessary to lay before the Court and the reasons for asking that the bond or other obligation theretofore entered into by such officer should be cancelled and satisfied of record.

(b) Before any hearing shall be had upon the petition, the petitioner shall cause a copy of the petition to be published in 1 or more newspapers published in the county at least once a week for 3 successive weeks, and in addition thereto the Court may require such additional notice of the filing of the petition as it deems advisable.

(c) Upon the presentation of any such petition, by such officer, as stated in subsection (a) of this section, to the Superior Court of the particular county in which the bond or obligation is filed or recorded, the Court shall inquire into all the facts and circumstances of the particular case, and, if satisfied from the evidence presented that the officer has performed all of the duties lawfully required of the officer and has properly accounted for all moneys or other property or things of value coming into the officer's hands as such officer and there are no reasons why the bond or other official obligation of such officer should not be cancelled and satisfied of record, then the Court may make an order that the bond or other official obligations of such officer be cancelled and that the recorder of deeds of the county where the bond or other official obligation is recorded shall mark the same satisfied of record.

(36 Del. Laws, c. 111, §§ 1, 2; Code 1935, §§ 351, 352; 46 Del. Laws, c. 55; 29 Del. C. 1953, § 5107; 70 Del. Laws, c. 186, § 1.)

§ 5108. Action against officer for state moneys.

Action may be brought in the name of the State against any officer for money received by or legally chargeable to the officer for fines, forfeitures or fees appertaining to the funds of the State.

(Code 1852, § 2244; Code 1915, § 4095; Code 1935, § 4586; 29 Del. C. 1953, § 5108; 70 Del. Laws, c. 186, § 1.)

§ 5109. Meetings of state boards and commissions; executive sessions [Repealed].

Repealed by 60 Del. Laws, c. 641, § 4, effective Jan. 1, 1977.

§ 5110. Election of employee to public office; leave.

In the event any employee of this State, including any employee of the public schools, is elected to any public office provided for by the Constitution of the State or the Delaware Code, such employee shall be granted such leave of absence without pay as is reasonable and necessary to perform the duties in such office. Upon the completion of such leave, the employee shall be reinstated in the position which the employee held at the time such leave of absence was granted.

(29 Del. C. 1953, § 5110; 52 Del. Laws, c. 93; 70 Del. Laws, c. 186, § 1.)

§ 5111. Benefits to surviving spouse of persons elected to state or county office.

Whenever a person who has been elected to any office of the State or the counties by the qualified voters of the State shall die while in office and shall leave a spouse surviving, an amount equal to one half of the salary which would have been paid to such person for the unexpired term of such office shall be paid to the surviving spouse from the state or county general fund, as the case may be, in the same manner as previously paid to the person in office.

(29 Del. C. 1953, § 5111; 53 Del. Laws, c. 407; 54 Del. Laws, c. 33, §§ 1, 2.)

§ 5112. Employees not to be supplied with, nor reimbursed for, food consumed during working hours; exceptions.

(a) No full-time employee of the State whose salary is paid by the State shall receive any additional stipend for the purchase of food, be supplied with food or be reimbursed for food that was consumed during normal working hours within the State.

(b) Subsection (a) of this section shall not apply to:

(1) Employees of state agencies who regularly receive wages in kind in addition to their salaries;

(2) Employees of the Division of Small Business;

(3) The expenditures of funds for food supplies as part of employee recognition activities established pursuant to § 5950 of this title;

(4) The expenditures of funds for food supplied as part of an agency training function, such as a retreat or workshop, held away from the agency's home location.

(5) State Police recruits during the period of their training; or

(6) Circumstances where approval has been granted by the Director of the Office of Management and Budget and the Controller General.

(29 Del. C. 1953, § 5112; 53 Del. Laws, c. 401, § 9; 62 Del. Laws, c. 393, § 1; 67 Del. Laws, c. 444, § 2; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 118, § 29; 73 Del. Laws, c. 310, § 4; 75 Del. Laws, c. 88, § 21(13); 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 17.)

§ 5113. Leave for Olympic competition.

(a) The State shall grant to any employee leave from employment to participate as a member of the United States Team in any competition sanctioned by the United States Olympic Committee. Any leave so granted shall not exceed the time required for actual participation in the competition, plus a reasonable time for travel and return from the site of the competition and a reasonable time for precompetition training with the team at the site, or 90 working days, whichever is less. The State shall compensate the employee at the employee's regular rate of pay during any leave granted for participation in such Olympic competition. Pay for each day of leave shall not exceed the amount the employee would receive for a standard workday and the employee shall not be paid for any day spent on such leave for which the employee would not ordinarily receive pay as part of the employee's regular employment.

(b) For purposes of subsection (a) of this section the term "employee" includes all those individuals who are employed by the State and receive a paycheck from the State for such work as they normally do for the State.

(c) For the purposes of subsection (a) of this section the term "United States Team" includes any group leader, coach, official, trainer or athlete who is a member of the official delegation of the United States in competition sanctioned by the United States Olympic Committee.

(d) The Department of Human Resources shall implement this section by the adoption of appropriate rules and regulations.

(61 Del. Laws, c. 538, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 66, § 24.)

§ 5114. Membership in Blood Bank of Delaware [Repealed].

(63 Del. Laws, c. 80, § 41; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 94, § 77; 72 Del. Laws, c. 204, § 2; 75 Del. Laws, c. 88, § 20(6); 81 Del. Laws, c. 66, § 25; repealed by 84 Del. Laws, c. 260, § 1, effective May 16, 2024.)

§ 5115. Protection of public employees reporting suspected violation of law.

(a) For purposes of this section, the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Elected official" shall mean the Auditor of Accounts, a state, school district, county or municipal official elected by popular vote of same and employees of said offices.

(2) "Public employee" shall mean any full-time or part-time employee of the State, its school districts, or a county or municipal government.

(b) No public employee shall be discharged, threatened or otherwise discriminated against with respect to the terms or conditions of employment because that public employee reported, in a written or oral communication to an elected official, a violation or suspected violation of a law or regulation promulgated under the law of the United States, this State, its school districts, or a county or municipality of this State unless the employee knows that the report is false.

(c) An employee who alleges a violation of this section may bring a civil action for appropriate injunctive relief, actual damages, or both, within 90 days after the occurrence of the alleged violation of this section.

(64 Del. Laws, c. 97, § 1; 69 Del. Laws, c. 230, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5116. Leave of absence upon adoption of child.

(a) Any employee of the State who has been continuously employed on a full-time basis for at least 1 year at the time of application for leave under this section is entitled to 6 weeks unpaid leave upon the adoption of a minor child who is over 6 years of age. Said employee shall be entitled to be reinstated in the position held at the time of the granting of the leave of absence. Neither vacation leave nor sick leave shall be accumulated during such leave of absence without pay under this section.

(b) Any employee of the State who has been continuously employed on a full-time basis for at least 1 year at the time of application for leave under this section shall be entitled to utilize accumulated sick leave to travel out of the United States for the purpose of adopting a child from a foreign country. Before leave shall be granted the employee must provide documentation that they have applied for the adoption and that the travel is required for the adoption to be approved. Once the adoption has been approved the employee's leave will be pursuant to the Family and Medical Leave Act, [29 U.S.C. § 2601 et seq.]. Said employee shall be entitled to be reinstated in the position held at the time of the granting of the leave of absence. Neither vacation nor sick leave shall be accumulated during such leave of absence, either with or without pay, under this subsection.

(c) The State Personnel Commission is empowered to adopt appropriate rules and regulations to implement this section.

(64 Del. Laws, c. 419, § 1; 75 Del. Laws, c. 115, §§ 1, 2; 81 Del. Laws, c. 285, § 2.)

§ 5117. Employees neither supplied with, nor reimbursed for, parking expenses associated with commutation to work; exceptions.

(a) No state agency may rent parking spaces for employees' or state officials' private vehicles. It is the intent of this section to clearly establish that state employees are liable for the full cost of commuting to and from work, including the cost of parking, and that the State will not participate in the payment of any of that commuting cost, including parking costs.

(b) This section does not alter the existing policy of reimbursing employees for expenses incurred while traveling on state business.

(c) Subsection (a) of this section shall not apply to the use of rented parking spaces, as part of an approved employee recognition program established pursuant to § 5950 of this title.

(d) Subsection (a) of this section shall not apply to any commuter benefit approved by the Department of Transportation pursuant to subchapter V of Chapter 20 of Title 30.

(65 Del. Laws, c. 87, § 25; 67 Del. Laws, c. 444, § 3; 68 Del. Laws, c. 426, § 1.)

§ 5118. Unauthorized use of state mail services and/or state-paid-for postage.

(a) Any person who uses state mail services and/or state-paid-for postage for such person's own personal use or for the benefit or use of any person, committee, organization or association not entitled thereto is guilty of a class C misdemeanor and shall be fined not more than $300 per each occurrence.

(b) (1) Except as otherwise provided in this subsection all envelopes, wrappers, labels or cards used to transmit state-paid-for mail shall bear in a conspicuous manner the words "OFFICIAL BUSINESS, PENALTY FOR PRIVATE USE $300" and an endorsement above the warning showing the name of the agency, authority, board, bureau, commission or office from which, or officer from whom, it is transmitted.

(2) The Executive Office of the Governor (DDB-10-01-01) may exempt themselves from the requirements of paragraph (b)(1) of this section.

(c) Each House of the General Assembly shall prescribe for itself such rules and regulations which shall govern the use of state mail services and state-paid-for postage and it shall take such other action as it considers necessary and proper for the members and members-elect to conform to its rules.

(66 Del. Laws, c. 55, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5119. Leave for volunteer emergency duty.

Any state employee, who is an active volunteer firefighter or active auxiliary member may, with the approval of the agency which employs such person, be permitted to respond to fire, rescue, ambulance or other emergency calls during regular hours of employment without loss of pay, vacation, sick leave or personal leave credit.

(69 Del. Laws, c. 38, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5120. Paid leave for birth of a child or adoption of a child.

(a) Any full-time employee, who has been employed by the State for at least 1 year, shall be entitled to 12 weeks of paid leave upon the birth of a child of the employee, or upon the adoption by the employee of a child who is 6 years of age or younger.

(b) Notwithstanding the exhaustion of any benefits provided under the Family and Medical Leave Act (29 U.S.C. § 2601 et. seq.), in the event a mother who is a full-time employee has a pregnancy complication that warrants a prolonged or extended hospitalization of the mother or the infant in the antepartum or immediate postpartum period, including giving birth to monoamniotic twins, or multiples of 3 or more, the mother shall be entitled to unpaid leave for at least 6 weeks following the discharge of the newborn or newborns from the hospital or other medical facility.

(c) The entitlement to leave under subsection (a) of this section shall expire at the end of the 12-month period beginning on the date of such birth or adoption.

(d) Without regard to length of employment, a full-time or part-time employee of the State shall be entitled to use accumulated sick leave upon the birth of a child of the employee, or upon the adoption of a child who is 6 years of age or younger pursuant to the rules adopted by the Merit Employee Relations Board or State Personnel Office.

(e) The rights and benefits described in this section shall run concurrently with any rights and benefits available under the Family Medical Leave Act, 29 U.S.C. § 2601 et seq. and short-term disability benefit pursuant to § 5253 of Title 29 for the birth of a child.

(f) No state agency, board, department or other employing officer or agency of this State may alter or terminate the benefits of or terminate the employment of any full-time employee as a result of taking parental leave pursuant to this section.

(72 Del. Laws, c. 174, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 166, § 1; 81 Del. Laws, c. 285, § 3.)

§ 5121. Leave for serving on veteran funeral detail.

Any state employee who is a veteran or a member of the National Guard Reserve may serve on 1 veteran funeral detail per calendar year without loss of pay, vacation, sick leave or personal leave credit.

(73 Del. Laws, c. 76, § 1.)

§ 5122. Leave for bone marrow or organ donation.

(a) *Definitions.* — (1) "Bone marrow" means the soft material that fills human bone cavities.

(2) "Bone marrow donor" means a person from whose body bone marrow is taken to be transferred to the body of another person.

(3) "Organ" means a human organ that is capable of being transferred from the body of a person to the body of another person.

(4) "Organ donor" means a person from whose body an organ is taken to be transferred to the body of another person.

(b) In any calendar year, a state employee is entitled to the following leave in order to serve as a bone-marrow donor or organ donor:

(1) No more than 7 days of leave to serve as a bone marrow donor;

(2) No more than 30 days of leave to serve as an organ donor.

(c) A state employee may use the leave provided by this section without loss or reduction of pay, leave to which the employee is otherwise entitled, credit for time or service, or performance or efficiency rating.

(d) This section applies to employees who are included in a collective bargaining unit, unless a collective bargaining agreement contains provisions dealing with leave for bone marrow and organ donation.

(73 Del. Laws, c. 76, § 1.)

§ 5123. Employee housing.

An agency may provide housing for an employee without reduction in salary provided such housing is on the site of the principal location of employment and further provided that the head of the department or agency has determined that such location of the employee is necessary to the operation of the agency and that the employee has no other employment. No agency shall provide an employee with a housing allowance or compensation for housing.

(73 Del. Laws, c. 310, § 5.)

§ 5124. Unpaid leaves of absence.

(a) An unpaid leave of absence may not be granted to a state employee for the purpose of serving a term of incarceration imposed upon the employee after a conviction as defined in § 222(3) of Title 11.

(b) The term "state employee" means an employee in any position of state employment, except a constitutionally created position or an elected position. State employees include, but are not limited to: classified service positions; merit comparable positions; school district employees; and employees of the Delaware State Police.

(77 Del. Laws, c. 11, § 1.)

§ 5125. Bereavement leave.

(a) *Definitions.* —

(1) “Miscarriage” means a loss of pregnancy prior to 20 weeks gestation.

(2) “Other loss” includes a diagnosis that negatively impacts pregnancy and loss of pregnancy including termination regardless if medically necessary.

(3) “State employee” means any full-time or part-time employee of the State.

(4) “Stillbirth” is a loss of pregnancy from 20 weeks gestation or more.

(b) Any state employee shall be entitled to a maximum of 5 days of paid bereavement leave for the miscarriage, stillbirth, or other loss suffered by the employee.

(84 Del. Laws, c. 76, § 1.)

§ 5126. Compassionate leave.

(a) For purposes of this section:

(1) “Immediate family” means the employee’s spouse or domestic partner; parent, stepparent or child of the employee, spouse or domestic partner; employee’s grandparent or grandchild; employee’s sibling; or any minor child for whom the employee has assumed and carried out parental responsibilities.

(2) “State employee” means any benefit-eligible full-time or part-time employee of the State hired to work 30 or more hours. “State employee” does not include casual seasonal employees as defined by § 5903(17)a. of this title, or an individual in an equivalent casual seasonal position with an employer covered by State employee benefits.

(b) Upon the death of an immediate family member, a state employee shall be granted 37.5 hours (37.5 hour weekly schedule) or 40 hours (40-hour weekly schedule) leave with pay, or on a pro-rata basis for part-time Delaware state employees.

(c) An employee requesting leave under this section must supply supporting documentation if requested.

(d) An employee may request approval for a person not specified as immediate family under subsection (a)(1) of this section.

(84 Del. Laws, c. 77, § 1.)

Part V
Public Officers and Employees
Chapter 52
Health Care Insurance

§ 5201. Definitions.

For purposes of this chapter:

(1) "Chronic care management" means the services in the Chronic Care Management Services Program, as administered by the Centers for Medicare and Medicaid Services, and includes Current Procedural Terminology ("CPT") codes 99487, 99489, and 99490.

(2) An "eligible child dependent" is one who is:

a. The child of a regular officer, employee or eligible pensioner or spouse of a regular officer, employee or eligible pensioner, either by birth or adoption, who is under the age of 26 or is unmarried, regardless of age, and incapable of self support because of an intellectual, mental or physical disability which existed before age 21; or

b. An unmarried child under the age of 19 years or the age of 24 if a full time student who depends for support upon and resides with a regular officer, employee or eligible pensioner in a regular parent-child relationship and qualifies as a dependent of the regular officer, employee or eligible pensioner under Internal Revenue Code § 105 (26 U.S.C. § 105).

(3) a. "Eligible pensioner" means any of the following:

1. An individual who is receiving or is eligible to receive retirement benefits in accordance with the state employees' pension plan under Chapters 53 and 55 of this title, the State Police pension plan under subchapter II and subchapter III of Chapter 83 of Title 11, the pension plan for state judiciary under Chapter 56 of this title, or is receiving retirement or disability benefits under the teachers' retirement and disability plan under Chapter 39 of Title 14.

2. Individuals who were employed by the county prothonotary offices immediately prior to October 1, 1987, and who chose to remain in their respective county pension plans and who would otherwise be eligible to receive retirement benefits in accordance with the state employees' pension plan under Chapters 53 and 55 of this title.

3. Employees who are receiving disability benefits under § 5253(c) of this title.

b. For purposes of § 5202(a) & (b) of this title, "eligible pensioner" includes the eligible pensioner's eligible spouse and child dependents.

(4) "FDA" means the Food and Drug Administration.

(5) "First employed" means the date when the eligible pensioner was first employed as a regular officer or employee.

(6) "Mandatory retirement" means mandatory retirement under § 8361 of Title 11.

(7) "Maximum state share" means the amount of the premium that the State pays for a plan on behalf of a regular officer or employee or an eligible pensioner before the proration ratio is applied under § 5202(b) of this title.

(8) "Medicare" means the federal Medicare Program, 42 U.S.C. § 1395 et seq.; U.S. Public Law 89-87, as as amended.

(9) "Plan" means a health-care insurance plan provided under this chapter.

(10) "Premium" means the total premium or subscription charge for a plan.

(11) "Primary care" means health care provided by a physician or an individual licensed under Title 24 to provide health care, with whom the patient has initial contact and by whom the patient may be referred to a specialist and includes family practice, pediatrics, internal medicine, and geriatrics.

(12) a. "Regular officer or employee" means any of the following:

1. An individual who works the regularly scheduled full-time hours of the employing agency.

2. An individual who works at least 30 or more hours per week or 130 hours per month, with allowable interruptions, in a position of a continuing nature on a regular schedule expected to last at least 1 year from the date of initial appointment. The appointing authority shall determine at the time of appointment the qualifications of an appointee regarding the continuing nature and appointment duration criteria under this paragraph (12)a.2.

3. An employee who is receiving disability benefits under § 5253(b) of this title.

4. A member of a board or commission, if the member qualified for and was receiving coverage under the Delaware state group health insurance contract on January 1, 1993, as a member of that board or commission.

b. A regular officer or employee called to active duty with Guard or Reserve for other than training purposes is deemed to be a "regular officer or employee" for the period of active duty until the period of active duty reaches 2 years.

c. "Regular officer or employee" does not include any of the following:

1. An employee appointed to a temporary or seasonal position.

2. A member of a board or commission, except as provided under paragraph (12)a.4. of this section.

(13) "Therapeutic equivalent" means a contraceptive drug, device, or product that is all of the following:

a. Approved as safe and effective.

b. Pharmaceutically equivalent to another contraceptive drug, device, or product in that it contains an identical amount of the same active drug ingredient in the same dosage form and route of administration and meets compendial or other applicable standards of strength, quality, purity, and identity.

c. Assigned, by the FDA the same therapeutic equivalence code as another contraceptive drug, device or product.

(29 Del. C. 1953, § 5201; 57 Del. Laws, c. 319; 58 Del. Laws, c. 27; 62 Del. Laws, c. 158, § 1; 63 Del. Laws, c. 408, § 1; 64 Del. Laws, c. 297, § 1; 65 Del. Laws, c. 449, §§ 1, 2; 67 Del. Laws, c. 47, § 61; 68 Del. Laws, c. 8, § 2; 69 Del. Laws, c. 64, §§ 27, 65; 70 Del. Laws, c. 118, § 30; 71 Del. Laws, c. 132, § 35; 71 Del. Laws, c. 354, § 40; 72 Del. Laws, c. 94, §§ 37, 41; 72 Del. Laws, c. 204, § 3; 74 Del. Laws, c. 421, § 3; 75 Del. Laws, c. 191, § 4; 75 Del. Laws, c. 227, §§ 2, 3; 76 Del. Laws, c. 280, § 34; 78 Del. Laws, c. 18, § 1; 78 Del. Laws, c. 78, § 24; 78 Del. Laws, c. 179, § 275; 81 Del. Laws, c. 323, § 3; 81 Del. Laws, c. 392, §§ 7, 10; 82 Del. Laws, c. 141, § 24; 83 Del. Laws, c. 237, § 8; 84 Del. Laws, c. 218, § 1; 84 Del. Laws, c. 470, § 1; 84 Del. Laws, c. 475, § 1.)

§ 5202. Payment of premium; maximum state share; proration ratio.

(a) (1) The maximum state share for a regular officer or employee and for an eligible spouse and child dependents who are not eligible for Medicare is as follows:

a. Ninety-six percent of the premium for the basic individual, individual and spouse, individual and child, or family health care insurance plan.

b. Ninety-five percent of the premium for a consumer-directed health plan for individual, individual and spouse, individual and child, or family.

c. Ninety-three and one-half percent of the premium for an HMO plan for individual, individual and spouse, individual and child, or family.

d. Eighty-six and three-quarter percent of the premium for a comprehensive PPO plan for individual, individual and spouse, individual and child, or family.

e. Beginning January 1, 2006, employees identified under Title 14 who are receiving a short-term disability benefit for a period greater than 90 days under § 5253(b) of this title and have exhausted all of their paid leave, the maximum state share is an amount equivalent to that provided under paragraphs (a)(1)a. through (a)(1)d. of this section.

(2) The maximum state share for an eligible pensioner who is not eligible for Medicare is the maximum state share under paragraph (a)(1) of this section.

(3) The maximum state share for an eligible pensioner who is eligible for Medicare is 95% of the premium if paragraph (a)(4) of this section does not apply.

(4) The maximum state share for an eligible pensioner who is eligible for Medicare is 100% of the premium for any of the following:

a. An eligible pensioner receiving a disability pension.

b. An eligible pensioner who is a primary survivor receiving a survivor's pension under § 8372(b) of Title 11 due to the death in the line of duty of the employee.

c. An eligible pensioner who was first employed before July 1, 1991.

d. An eligible pensioner who retired on or before July 1, 2012.

(b) (1) For purposes of this section:

a. 1. "Prorated state share" means the dollar amount that the State pays for a plan on behalf of a regular officer or employee or an eligible pensioner.

2. The "prorated state share" is the product of multiplying the proration ratio with the maximum state share.

b. 1. "Proration ratio" means the percentage applied to the maximum state share.

2. The "proration ratio" for eligible pensioners is based on when the eligible pensioner was first employed and the number of years the eligible pensioner had been employed as a regular officer or employee at the time of retirement.

(2) The proration ratio is 100% for all of the following:

a. A regular officer or employee and for an eligible spouse and child dependents.

b. An eligible pensioner receiving a disability pension.

c. An eligible pensioner who is a primary survivor receiving a survivor's pension under § 8372(b) of Title 11 due to the death in the line of duty of the employee.

d. An eligible pensioner who was first employed before July 1, 1991.

(3) For eligible pensioners not included under paragraph (b)(2) of this section:

a. For eligible pensioners who were first employed by the State on or after July 1, 1991, and before January 1, 2007, the proration ratio is as follows:

1. Less than 10 years, 0%.

2. At least 10 but less than 15 years, 50%.

3. At least 15 but less than 20 years, 75%.

4. Twenty or more years, 100%.

b. For eligible pensioners who were first employed by the State on or after January 1, 2007, and before January 1, 2025, the proration ratio is as follows:

1. Less than 15 years, 0%.

2. At least 15 but less than 17.5 years, 50%.

3. At least 17.5 but less than 20 years, 75%.

4. Twenty or more years, 100%.

c. For eligible pensioners who were first employed on or after January 1, 2025, and who are subject to mandatory retirement, the proration ratio is as follows:

1. Less than 15 years, 0%.

2. At least 15 but less than 17.5 years, 50%.

3. At least 17.5 but less than 20 years, 75%.

4. Twenty or more years, 100%.

d. For eligible pensioners who were first employed on or after January 1, 2025, and who are not subject to mandatory retirement, the proration ratio is as follows:

1. Less than 15 years, 0%.

2. At least 15 but less than 20 years, 50%.

3. At least 20 but less than 25 years, 75%.

4. Twenty-five or more years, 100%.

(c) If the employee or pensioner is covered in any way by a group insurance program issued by the same insurer, duplicate coverage shall not be procured by the State; however, it shall be at the employee's or pensioner's option as to whether to be covered by the state group insurance plan or by a program of the spouse. If covered by a program of the spouse, the employee or pensioner shall obtain no monetary credit or rebate from the State.

(d) For the purposes of this chapter, eligible employees who were each first employed as a regular officer or employee by the State on or before December 31, 2011, and legally married on or before December 31, 2011, may each qualify as a regular officer, employee, or eligible pensioner of the State. In the case where 2 members of a family qualify, the options are as follows:

(1) The 2 employees, or each eligible pensioner, and all eligible dependents may elect to enroll under 1 family contract.

(2) Each employee, or each eligible pensioner, may elect to enroll under a separate contract. Eligible dependents may be enrolled under either contract, but no dependent shall be enrolled more than once under the state health insurance program.

(3) The provisions of this paragraph shall continue to apply to a surviving spouse for employee only or employee and children contracts after the death of 1 of the spouses covered pursuant to this paragraph has occurred, as long as the surviving spouse is entitled to a survivor's pension pursuant to § 5528 of this title.

(4) Effective July 1, 2012, to December 31, 2017, if the 2 employees enroll under an employee and spouse or family contract, there shall be a $25 per month charge to the employee who enrolls for the coverage. If the employees choose to enroll in separate plans, employee only and employee and children contracts, either the employee cost share premium or a $25 per month charge shall apply to both contracts, whichever is less. If employee and spouse are eligible pensioners where 1 or both retire on or after July 1, 2012, and before July 1, 2017, only 1 $25 per month charge shall apply when separate contracts are required for a Medicare Supplement Plan.

(5) Effective January 1, 2018, if the 2 employees or non-Medicare pensioners enroll under an employee and spouse or family contract, the employee or non-Medicare pensioner who enrolls for the coverage shall be charged 50% of the employee or non-Medicare pensioner cost share premium per month, or $25 per month, whichever is greater. If the employees or non-Medicare pensioners choose to enroll in separate plans, employee only and employee and children contracts, each employee or non-Medicare pensioner shall be charged 50% of the employee or non-Medicare cost share premium per month, or $25 per month, whichever is greater for the plans chosen.

a. If both spouses are eligible pensioners and 1 is not yet Medicare eligible, the non-Medicare pensioner will enroll under a pensioner only or pensioner and children contract and the Medicare pensioner will enroll in the Medicare Supplement Plan. The non-Medicare pensioner shall be charged 50% of the cost share premium, or $25 per month, whichever is greater.

b. If 1 spouse is a regular officer or employee and 1 spouse is a Medicare eligible pensioner, the regular officer or employee who enrolls for employee and spouse or family coverage shall be charged 50% of the employee cost share premium. If the employee and Medicare eligible spouse choose to enroll in separate plans, each employee and Medicare eligible pensioner shall be charged 50% of the employee and Medicare Supplement Plan cost share premium per month, or $25 per month, whichever is greater for the plans chosen.

c. If both spouses are Medicare eligible and 1 or both retired on or after July 1, 2017, only one 50% cost share premium or $25 per month, whichever is greater, shall apply when separate contracts are required for a Medicare Supplement Plan.

d. If both spouses are Medicare eligible and both retired after July 1, 2012, and before July 1, 2017, each Medicare eligible pensioner shall be charged $25 per month premium when separate contracts are required for a Medicare Supplement Plan.

(6) In no case shall there be a monetary credit or return to the spouse for that spouse's basic credits.

(e) If a regular officer or employee is required to pay any portion of the cost of the health-care insurance for regular officer's or employee's own self, spouse or dependents, the regular officer or employee may enter into a written agreement with the State whereby that regular officer or employee agrees to reduce the regular officer's or employee's own salary in an amount equal to the portion of the health-care insurance that the regular officer or employee is required to pay.

(f) Subsection (e) of this section shall not be effective until implementation has been approved by the State Treasurer, Secretary of Finance, Director of the Office of Management and Budget and Controller General.

(g) Salary reductions voluntarily taken pursuant to subsection (e) of this section shall not affect the compensation used in the calculation of pension benefits under any state pension plan and shall be made on a pretax basis, provided that employees who had designated employee deductions on a posttax basis as of July 1, 2000, shall continue to have the right to make those deductions on a posttax basis as long as the employee remains in a benefit program or the employee makes a change to pretax employee benefit deductions.

(h) A survivor who is receiving a deceased pensioner's retirement benefits in accordance with the State Employees' Pension Plan under Chapters 53 and 55 of this title, the State Police Pension Plan under subchapter II and subchapter III of Chapter 83 of Title 11, the Pension Plan for State Judiciary under Chapter 56 of this title shall only be entitled to coverage for the survivor and any "eligible child dependent" as defined in § 5201 of this title.

(29 Del. C. 1953, § 5202; 57 Del. Laws, c. 319; 62 Del. Laws, c. 158, §§ 3, 4; 62 Del. Laws, c. 294, § 1; 63 Del. Laws, c. 79, § 1; 63 Del. Laws, c. 155, § 1; 65 Del. Laws, c. 87, § 80; 66 Del. Laws, c. 85, § 93; 67 Del. Laws, c. 324, § 1; 68 Del. Laws, c. 84, §§ 65, 66; 68 Del. Laws, c. 178, §§ 1-3; 69 Del. Laws, c. 291, § 34; 70 Del. Laws, c. 61, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 94, § 75; 75 Del. Laws, c. 88, §§ 20(6), 21(13), 26(2); 75 Del. Laws, c. 114, §§ 1, 2; 75 Del. Laws, c. 227, § 4; 76 Del. Laws, c. 280, § 22; 78 Del. Laws, c. 14, §§ 1-5; 78 Del. Laws, c. 78, § 25; 78 Del. Laws, c. 254, § 1; 81 Del. Laws, c. 58, § 24; 81 Del. Laws, c. 323, § 3; 83 Del. Laws, c. 325, § 116; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 279, § 1; 84 Del. Laws, c. 470, § 2.)

§ 5203. Specifications of the coverage.

(a) The basic health care insurance plan for state employees shall be equivalent to the "minimum creditable coverage" as defined by applicable federal law and include coverage for contraceptive methods under § 5203A of this title.

(b) (1) The plan shall be for all of the following:

a. Regular employees and eligible pensioners under 65 years of age.

b. Employees and eligible pensioners 65 years of age or over who are not entitled to services, rights, or benefits under the federal Medicare Program, 42 U.S.C. § 1395 et seq.

c. For eligible pensioners entitled to services, rights, or benefits under the federal Medicare Program, a plan that is supplemental to Medicare parts A and B as follows:

1. For eligible pensioners first employed before January 1, 2025, a plan that is comparable to the Special Medicfill Medicare Supplement plan offered under this section on October 1, 2024.

2. For eligible pensioners first employed on or after January 1, 2025, 1 or more Medicare supplement plans that are not high deductible plans.

(2) In addition to a plan under paragraph (b)(1)c. of this section, the coverage may include a plan under Medicare part C for eligible pensioners entitled to services, rights, or benefits under the federal Medicare Program if all of the following apply to the plan:

a. The plan is only for eligible pensioners first employed on or after January 1, 2025.

b. Each eligible pensioner can choose whether to enroll in a plan under paragraph (b)(1)c. of this section or the plan under this paragraph (b)(2).

(c) (1) The basic plan must provide coverage for chronic care management and primary care and coverage at a reimbursement rate that is not less than the Medicare reimbursement for comparable physician services.

(2) Coverage for chronic care management must not be subject to patient deductibles, copayments, or fees.

(3) If a comparable Medicare reimbursement rate is not available, a plan shall reimburse for services at the rates generally available under Medicare for services such as office visits and prolonged preventive services, which may be further delineated by regulation.

(d) The plan may not place any annual or lifetime numerical limitations on physical therapy or chiropractic care visits for the purpose of treating back pain.

(29 Del. C. 1953, § 5203; 57 Del. Laws, c. 319; 57 Del. Laws, c. 350; 69 Del. Laws, c. 64, § 66; 72 Del. Laws, c. 204, § 4; 78 Del. Laws, c. 14, §§ 6, 7; 81 Del. Laws, c. 323, § 3; 81 Del. Laws, c. 392, §§ 8, 10; 81 Del. Laws, c. 430, §§ 4, 7; 82 Del. Laws, c. 141, § 24; 83 Del. Laws, c. 237, § 8; 84 Del. Laws, c. 279, § 2; 84 Del. Laws, c. 475, § 2.)

§ 5203A. Insurance coverage for contraceptive methods.

(a) The plan shall provide coverage for contraceptive methods that includes all of the following:

(1) All FDA-approved contraceptive drugs, devices, and other products as follows:

a. If the FDA has approved 1 or more therapeutic equivalents of a contraceptive drug, device, or product, the plan is not required to include all such therapeutically equivalent versions in its formulary as long as at least 1 is included and covered without cost-sharing and in accordance with this section.

b. If there is a therapeutic equivalent of a drug, device, or other product for an FDA-approved contraceptive method, the plan may provide coverage for more than 1 drug, device, or other product and may impose cost-sharing requirements as long as at least 1 drug, device, or other product for that method is available without cost-sharing. If, however, an individual's attending provider recommends a particular FDA-approved contraceptive based on a medical determination with respect to that individual, regardless of whether the contraceptive has a therapeutic equivalent, the plan shall provide coverage for the prescribed contraceptive drug, device, or product without cost-sharing.

c. The plan is not required to provide coverage for male condoms.

(2) FDA-approved emergency contraception available over-the-counter, whether with a prescription or dispensed consistent with the requirements of Chapter 25 of Title 24.

(3) A prescription for contraceptives intended to last for no more than a 12-month period which may be dispensed all at once or over the course of the 12-month period, regardless of whether the covered individual was enrolled in the plan or policy under this chapter at the time the prescription contraceptive was first dispensed.

(4) Voluntary female sterilization procedures.

(5) Patient education and counseling on contraception.

(6) Follow-up services related to the drugs, devices, products, and procedures covered under this subsection, including management of side effects, counseling for continued adherence, and device insertion and removal.

(7) Immediate postpartum insertion of long-acting reversible contraception.

(b) (1) Coverage provided under this section is not subject to any deductible, coinsurance, copayment, or any other cost-sharing requirement, except under paragraph (a)(1) of this section or as otherwise required under federal law. Coverage offered under this section may not impose unreasonable restrictions or delays in the coverage, except that reasonable medical management techniques may be applied to coverage within a method category, as defined by the FDA, but not across types of methods.

(2) Coverage provided to a regular officer or employee or eligible pensioner under this section shall be the same for the covered individual's covered spouse and covered dependents.

(c) This section does not preclude coverage for contraceptive drugs, devices, products, and procedures as prescribed by a provider for reasons other than contraceptive purposes, including decreasing the risk of ovarian cancer, eliminating symptoms of menopause, or providing contraception that is necessary to preserve the life or health of the covered individual.

(d) The plan is not required under this section to cover experimental or investigational treatments.

(81 Del. Laws, c. 323, § 3; 70 Del. Laws, c. 186, § 1.)

§ 5204. Selection of the group insurance carrier.

(a) The health-care insurance coverage shall be provided through a carrier incorporated under the laws of this State or legally authorized to transact business within this State, having adequate servicing facilities to carry out the terms of the contract.

(b) The health-care insurance coverage shall be provided by a carrier offering, at the employee's or pensioner's own expense, optional supplemental or extended benefits coverage to each regular employee or eligible pensioner and similar hospital, surgical/medical and supplemental or extended coverage for such employee's or pensioner's spouse and dependents.

(29 Del. C. 1953, § 5204; 57 Del. Laws, c. 319; 68 Del. Laws, c. 84, § 24; 69 Del. Laws, c. 64, § 67; 72 Del. Laws, c. 204, § 5.)

§ 5205. Duties of State Insurance Commissioner [Repealed].

Repealed by 69 Del. Laws, c. 64, § 68, effective July 1, 1993.

§ 5206. Duties of State Treasurer.

Upon written authorization the State Treasurer shall withhold from the employee's salary or eligible pensioner's benefits such sums as are necessary for the payment of premium or subscription charges for the optional supplemental or extended benefits coverage and for spouse or dependent coverage.

(29 Del. C. 1953, § 5206; 57 Del. Laws, c. 319; 62 Del. Laws, c. 158, § 2; 72 Del. Laws, c. 94, § 76; 72 Del. Laws, c. 204, § 6.)

§ 5207. Temporary employees.

Any person not a "regular officer or employee" but employed by a state agency and who works the regularly scheduled full-time hours of the employing agency or at least 30 or more hours per week or 130 hours per month (with allowable interruptions) shall be eligible for the health care insurance established under this chapter provided such person authorize in writing a payroll deduction from such person's salary of the amount of the premium for said insurance.

(64 Del. Laws, c. 145, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5208. Employees of labor organizations.

Any labor organization representing the state employees may elect to participate in the health-care insurance plans provided by the provisions of this chapter for their regularly scheduled full-time regular employees who work in the State. The full cost of such coverages shall be remitted to the State by the labor organization no later than the first day of each calendar month for which coverage is being provided. The benefits provided to such employees and the cost of coverage shall be the same as provided to state employees covered by this chapter. Any labor organization wanting to participate in the state Group Health Insurance Program shall be governed by all provisions, rules and regulations of this chapter.

(69 Del. Laws, c. 291, § 36.)

§ 5209. Employees of Delaware authorities or commissions.

(a) Any Delaware authority or commission may elect to participate in the health-care insurance plans provided by the provisions of this chapter for regularly scheduled full-time employees. The full cost of such coverage shall be remitted to the State by the authority or commission no later than the first day of each calendar month for which coverage is being provided. the benefits provided to such employees and the cost of coverage shall be the same as provided to state employees covered by this chapter. Any Delaware authority or commission participating in the State Group Health Insurance program shall be governed by all provisions, rules and regulations of this chapter and the State Employee Benefits Committee.

(b) Any regularly scheduled full-time employee of the Delaware Stadium Corporation, the Delaware Riverfront Corporation, a Public/Private Partnership as defined in § 8702A of this title, or the Fort DuPont Redevelopment and Preservation Corporation may elect to participate in the health insurance plans provided by the State Group Health Insurance Program. The full cost of such coverage shall be remitted to the State no later than the first day of each calendar month for which coverage is being provided. The benefits provided to such employees and the cost of coverage shall be the same as provided to state employees covered by this chapter. Any Delaware Stadium Corporation, Public/Private Partnership as defined in § 8702A of this title, or Fort DuPont Redevelopment and Preservation Corporation employee participating in the State Group Health Insurance Program shall be governed by all provisions, rules and regulations of this chapter and the State Employee Benefits Committee.

(c) All per diem and contractual employees of the Delaware General Assembly who have been continuously employed for 5 or more years may elect to participate in the health-insurance plans provided by the State Group Health Insurance Program. The full cost of such coverage shall be remitted to the State by such employees no later than the first of each calendar month for which coverage is being provided. The benefits provided to such employees and the cost of coverage shall be the same as provided to state employees covered by this chapter. Any such employees participating in the State Group Health Insurance Program shall be governed by all provisions, rules and regulations of this chapter and the State Employee Benefits Committee.

(d) Any volunteer fire or volunteer ambulance company in Delaware may elect to participate in the health-care insurance plans provided by the provisions of this chapter for paid employees. The full cost of such coverage shall be remitted to the State by the volunteer fire or volunteer ambulance company participating no later than the first day of each calendar month for which coverage is being provided. The benefits provided to such paid employees and the cost of coverage shall be the same as provided to state employees covered by this chapter. Any volunteer fire or volunteer ambulance company in Delaware participating in the State Group Health Insurance Program shall be governed by all provisions, rules and regulations of this chapter and the State Employee Benefits Committee.

(e) Any county, soil and water conservation districts or municipality and the Municipal Services Commission for the City of New Castle may elect to participate in the health-care insurance plans provided by this chapter for any of the following:

(1) Regularly scheduled full-time employees;

(2) Anyone receiving or who is eligible to receive retirement benefits in accordance with the Delaware County and Municipal Police/Firefighter Pension Plan with Chapter 88 of Title 11 or the county and municipal pension plan under Chapter 55A of this title.

The full cost of such coverage shall be remitted to the State by the county, soil and water conservation districts or municipality and the Municipal Services Commission for the City of New Castle no later than the first day of each calendar month for which coverage is being provided. The benefits provided to such employees and the cost of coverage shall be the same as provided to the state employees covered by this chapter. Any employee participating in the State Group Health Insurance Program through this subsection shall be governed by all provisions, rules and regulations of this chapter and the State Employee Benefits Committee. For the purposes of this subsection, a "full-time employee" is an employee who works at least 30 hours or more per week or 130 hours per month (with allowable interruptions). Retirees receiving benefits may authorize the State Pension Office to deduct their share of cost from their monthly pension. Participation by any county, soil and water conservation districts or municipality and the Municipal Services Commission for the City of New Castle shall be subject to approval of the State Employee Benefits Committee.

(f) Anyone receiving retirement benefits in accordance with the Delaware and Municipal Police/Firefighter Pension Plan under Chapter 88 of Title 11 or the county and municipal pension plan under Chapter 55A of this title, may elect to participate in the health insurance plans provided by the State Group Health Insurance Program. The retiree shall authorize the State Pension Office to deduct the full cost of coverage from the retiree's monthly pension.

(g) The State Employee Benefits Committee shall be authorized to recover costs from any Delaware authority or commission, the Delaware Stadium Corporation, the Delaware Riverfront Corporation, the Fort DuPont Redevelopment and Preservation Corporation, any

volunteer fire company, any county soil and water conservation district, and any municipality which elects for its employees to participate in the health-care insurance plans provided by this chapter, based on the number of participating employees. Further, the State Employee Benefits Committee shall be authorized to recover costs from any nonstate organization which is permitted to and elects to participate in the health-care insurance plans provided by this chapter, based on the number of participating employees. The revenue derived from such cost recovery shall be used exclusively to support the administration of the State Group Health Insurance Program.

(70 Del. Laws, c. 118, § 33; 70 Del. Laws, c. 425, §§ 35, 36; 71 Del. Laws, c. 132, § 39; 71 Del. Laws, c. 354, § 41; 71 Del. Laws, c. 372, § 1; 72 Del. Laws, c. 94, § 40; 72 Del. Laws, c. 204, § 15; 72 Del. Laws, c. 258, § 30; 73 Del. Laws, c. 74, § 81; 73 Del. Laws, c. 233, § 1; 74 Del. Laws, c. 226, § 1; 80 Del. Laws, c. 298, § 22; 81 Del. Laws, c. 49, § 3.)

§ 5210. Authority and duties of the State Employee Benefits Committee [For application of this section, see 85 Del. Laws, c. 176, § 4].

The State Employee Benefits Committee established by § 9602 of this title shall have the following powers, duties and functions under this chapter:

(1) Control and management of the State employees group health insurance program provided for in this chapter.

(2) Authority to establish the State employees group health insurance program on an insured or self-insured basis.

(3) Selection of the carriers or third-party administrators deemed to offer the best plan to satisfy the interests of the State and its employees and pensioners in carrying out the intent of this chapter.

(4) Authority to adopt rules and regulations for the general administration of the Delaware state employees group health insurance program (program), which must include all of the following for program participants:

a. Beginning January 1, 1993, a spousal coordination of benefits policy that applies to the spouse of a program participant when the spouse is eligible for health-care coverage through the spouse's own employer.

b. Beginning July 1, 2011, the spousal coordination of benefits policy under paragraph (4)a. of this section also applies to a retired spouse of a program participant when the spouse is collecting a retirement benefit through the spouse's own employment and is eligible for retiree health-care coverage through that retirement benefit.

c. Beginning July 1, 2027, a pensioner coordination of benefits policy for eligible pensioners who were first employed on or after January 1, 2015, that applies to an eligible pensioner if the eligible pensioner is eligible for health-care coverage through their employer and that health-care coverage is not through a plan under this chapter. The policy under this paragraph (4)c. must be comparable to the spousal coordination of benefits policy under paragraph (4)a. of this section.

(5) Authority to make and enter into any and all contracts with any agency of the State, or any outside agency, for the purpose of assisting in the general administration of this chapter.

(6) Whenever the balance of the fund equity of the Employees' Health Insurance Fund exceeds the amount determined by the State Employee Benefits Committee to be sufficient to meet anticipated claims plus a reasonable reserve, the State Employee Benefits Committee, in its sole discretion, may transfer the excess balance or any part of it to the OPEB Fund, established pursuant to Chapter 52B of this title, to provide a source for the future payment of retiree health benefits or the Disability Insurance Program, pursuant to Chapter 52A of this title.

(7) Ensure that carriers administering plans for group health insurance under this chapter comply with all requirements and provisions concerning pre-authorization set forth in Chapter 33, subchapter II, and Chapter 35, subchapter V of Title 18.

(72 Del. Laws, c. 204, § 7; 76 Del. Laws, c. 70, § 10; 84 Del. Laws, c. 471, § 1; 85 Del. Laws, c. 176, § 3.)

§ 5211. Coverage for treatment of pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections and pediatric acute onset neuropsychiatric syndrome.

The plan shall provide coverage for treatment of pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections and pediatric acute onset neuropsychiatric syndrome, including the use of intravenous immunoglobulin therapy.

(81 Del. Laws, c. 400, § 3.)

§ 5212. Cost sharing in prescription insulin drugs.

(a) For purposes of this section, "prescription insulin drug" means a drug containing insulin that is dispensed under Chapter 47 of Title 16 for the treatment of diabetes.

(b) The plan must provide coverage for prescription insulin drugs that does all of the following:

(1) Caps the total amount that a covered individual is required to pay for covered prescription insulin drugs at no more than $100 per month for each enrolled individual, regardless of the amount or types of insulin needed to fill the covered individual's prescriptions. The $100 per month cap includes deductible payments and cost-sharing amounts charged once a deductible is met.

(2) Includes at least 1 formulation of each of the following types of prescription insulin drugs on the lowest tier of the drug formulary developed and maintained by the carrier:

a. Rapid-acting.

b. Short-acting.

c. Intermediate-acting.

d. Long-acting.

(3) For purposes of paragraph (b)(2) of this section, the "lowest tier of the drug formulary" means either of the following:

a. If the prescription insulin drug is a generic drug, the lowest tier for generic drugs.

b. If the prescription insulin drug is a brand-name drug, the lowest tier for brand-name drugs.

(c) The cap on the amount a covered individual is required to pay under paragraph (b)(1) of this section applies to an enrolled individual who is in compliance with all coordination of benefits policies of the plan, including spousal coordination of benefits.

(82 Del. Laws, c. 250, § 3.)

§ 5213. Coverage for epinephrine autoinjectors.

(a) For purposes of this section, "epinephrine autoinjector" means a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.

(b) The plan shall provide coverage for medically-necessary epinephrine autoinjectors by including at least 1 formulation of epinephrine autoinjectors on the lowest tier of the drug formulary developed and maintained by the carrier.

(83 Del. Laws, c. 42, § 3; 84 Del. Laws, c. 36, § 3.)

§ 5214. Coverage for insulin pumps.

(a) For purposes of this section, "insulin pump" means a small, portable medical device that is approved by the U.S. Food and Drug Administration to provide continuous subcutaneous insulin infusion.

(b) The plan shall provide coverage for a medically-necessary insulin pump at no cost to a covered individual, including deductible payments and cost-sharing amounts charged once a deductible is met.

(83 Del. Laws, c. 241, § 3.)

§ 5215. Annual behavioral health well check.

(a) As used in this section "Behavioral health well check" means a predeductible annual visit with a licensed mental health clinician with at minimum a masters level degree. The well check must include but is not limited to a review of medical history, evaluation of adverse childhood experiences, use of a group of developmentally-appropriate mental health screening tools, and may include anticipatory behavioral health guidance congruent with stage of life using the diagnosis of "annual behavioral health well check."

(b) The plan shall provide coverage of an annual behavioral health well check, which, except as provided in subsection (d) of this section, shall be reimbursed through the following common procedural terminology (CPT) codes at the same rate that such CPT codes are reimbursed for the provision of other medical care, provided that reimbursement may be adjusted for payment of claims that are billed by a nonphysician clinician so long as the methodology to determine such adjustments is comparable to and applied no more stringently than the methodology for adjustments made for reimbursement of claims billed by nonphysician clinicians for other medical care, in accordance with 45 CFR § 146.136(c)(4):

(1) 99381.

(2) 99382.

(3) 99383.

(4) 99384.

(5) 99385.

(6) 99386.

(7) 99387.

(8) 99391.

(9) 99392.

(10) 99393.

(11) 99394.

(12) 99395.

(13) 99396.

(14) 99397.

(c) (1) The State Employee Benefits Committee shall administratively update this list of codes if the CPT codes listed in subsection (b) of this section are altered, amended, changed, deleted, or supplemented.

(2) Reimbursement of any of the CPT codes listed in subsection (b) of this section or updated under paragraph (c)(1) of this section for the purpose of covering an annual behavioral health well check may not be denied because such CPT code was already reimbursed for the purpose of covering a service other than an annual behavioral health well check.

(3) Reimbursement of any of the CPT codes listed in subsection (b) of this section or updated under paragraph (c)(1) of this section for the purpose of covering a service other than an annual behavioral health well check may not be denied because such CPT code was already reimbursed for the purpose of covering an annual behavioral health well check.

(d) An annual behavioral health well check may be reimbursed through a value-based arrangement, a capitated arrangement, a bundled payment arrangement, or any other alternative payment arrangement that is not a traditional fee-for-service arrangement, provided that a carrier must have documentation demonstrating that within such payment arrangement the annual behavioral health well check is valued commensurate to the value established under subsection (b) of this section.

(e) An annual behavioral health well check may be incorporated into and reimbursed within any type of integrated primary care service delivery method including, but not limited to, the psychiatric collaborative care model, the primary care behavioral health model or behavioral health consultant model, any model that involves co-location of mental health professionals within general medical settings, or any other integrated care model that focuses on the delivery of primary care.

(f) Nothing in this section prevents the operation of policy provisions such as copayments, coinsurance, allowable charge limitations, coordination of benefits, or provisions restricting coverage to services rendered by licensed, certified, or carrier-approved providers or facilities.

(83 Del. Laws, c. 388, § 4.)

§ 5216. Cost sharing in diabetes equipment and supplies.

(a) For purposes of this section, "diabetes equipment and supplies" means blood glucose meters and strips, urine testing strips, syringes, continuous glucose monitors and supplies, and insulin pump supplies.

(b) The plan for regular employees and eligible pensioners who are not entitled to services, rights, or benefits under the federal Medicare program shall provide coverage for diabetes equipment or supplies as follows:

(1) A covered individual shall pay under the health plan no more than $35 per month for each enrolled individual, regardless of the amount or types of diabetes equipment or supplies needed. The $35 per month cap includes deductible payments and cost-sharing amounts charged once a deductible is met.

(2) Cost-sharing shall not be imposed under the covered individual's drug coverage.

(c) The cap on the amount a covered individual is required to pay under subsection (b) of this section applies to an enrolled individual who is in compliance with all coordination of benefits policies of the plan, including spousal coordination of benefits.

(83 Del. Laws, c. 521, § 3.)

§ 5217. Supplemental and diagnostic breast examinations [For application of this section, see 84 Del. Laws, c. 121, § 5].

(a) As used in this section:

(1) "Breast magnetic resonance imaging" or "breast MRI" means a diagnostic tool, including standard and abbreviated breast MRI, that uses radio waves and magnets to produce detailed images of structures within the breast. A breast MRI may be used as a screening tool when clinically indicated, including after indeterminant results from a mammogram that requires additional evaluation and for those at high risk for breast cancer.

(2) "Breast ultrasound" means a noninvasive diagnostic tool that uses high-frequency sound waves and their echoes to produce detailed images of structures within the breast. A breast ultrasound may be used as a screening tool when clinically indicated, including after indeterminant results from a mammogram that requires additional evaluation and for those at high risk for breast cancer.

(3) "Cost-sharing requirement" means a deductible, coinsurance, or copayment and any maximum limitation on the application of such a deductible, coinsurance, copayment, or similar out-of-pocket expense.

(4) "Diagnostic breast examination" means a medically-necessary and clinically-appropriate examination of the breast, including such examination using breast MRI, breast ultrasound, or mammogram, that is used for either of the following:

a. To evaluate an abnormality seen or suspected from a screening examination for breast cancer.

b. To evaluate an abnormality detected by another means of examination.

(5) "Mammogram" means a diagnostic or screening mammography exam using a low-dose X-ray to produce an image of the breast.

(6) "Supplemental breast screening examination" means a medically-necessary and clinically-appropriate examination of the breast, including such examination using breast MRI, breast ultrasound, or mammogram, that is used for either of the following:

a. To screen for breast cancer when there is no abnormality seen or suspected in the breast.

b. Based on personal or family medical history or additional factors that may increase the individual's risk of breast cancer.

(b) The plan shall provide coverage for diagnostic breast examinations and supplemental breast screening examinations. The terms of such coverage, including cost-sharing requirements, shall be no less favorable than the cost-sharing requirements applicable to screening mammography for breast cancer.

(84 Del. Laws, c. 121, § 3.)

§ 5218. Coverage for allergenic protein dietary supplements [For application of this section, see 84 Del. Laws, c. 376, § 5].

(a) For purposes of this section:

(1) "Dietary supplement" means as defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321.

(2) "Early egg allergen introduction dietary supplement" means a dietary supplement that is prescribed to an infant by a health-care practitioner and contains sufficient infant-safe, well-cooked egg protein to reduce the risk of food allergies.

(3) "Early peanut allergen introduction dietary supplement" means a dietary supplement that is prescribed to an infant by a health-care practitioner and contains sufficient infant-safe peanut protein to reduce the risk of food allergies.

(4) "Health-care practitioner" means an individual licensed and authorized to write medical orders for an individual under Title 24.

(5) "Infant" means a child who has not attained the age of 1 year.

(b) (1) The plan shall provide coverage for at least 1 of each of the following:

a. An early egg allergen introduction dietary supplement.

b. An early peanut allergen introduction dietary supplement.

(2) The coverage required under paragraph (b)(1) of this section shall be provided at no cost to a covered individual, including deductible payments and cost-sharing amounts charged once a deductible is met.

(84 Del. Laws, c. 376, § 3.)

§ 5219. Services related to the termination of pregnancy.

The plan shall provide coverage for services related to the termination of pregnancy. Such coverage may not be subject to any deductible, coinsurance, copayment, or any other cost-sharing requirement and must cover the full scope of services permissible under the law.

(84 Del. Laws, c. 402, § 5.)

§ 5220. Pharmacist services reimbursement.

(a) The plan must provide reimbursement to a pharmacist for a service or procedure at a rate not less than that provided to other nonphysician practitioners if the service or procedure is all of the following:

(1) Within the scope of practice of a pharmacist.

(2) Would otherwise be covered under the policy, plan, or contract if the service or procedure is provided by any health-care service provider or practitioner, including a physician, advance practice registered nurse, or physician assistant.

(b) Whenever a service is performed by a licensed pharmacist and reimbursed by the plan, the licensed pharmacist must be granted such rights of participation, plan admission, and registration as may be granted by the plan to any health-care service provider or practitioner, including a physician, advance practice registered nurse, or physician assistant performing such a service.

(84 Del. Laws, c. 421, § 4.)

§ 5221. Mammogram coverage.

The plan shall provide coverage for annual mammograms for the purpose of early detection for a woman 40 years of age or older, with or without referral from the woman's health-care provider.

(84 Del. Laws, c. 483, § 3.)

§ 5222. Ovarian cancer screening and monitoring tests [For application of this section, see 84 Del. Laws, c. 488, § 3].

(a) For purposes of this section:

(1) "At risk for ovarian cancer" means any of the following:

a. Having a family history of any of the following:

1. One or more first- or second-degree relatives with ovarian cancer.

2. Clusters of women relatives with breast cancer.

3. Nonpolyposis colorectal cancer.

4. Breast cancer in a male relative.

b. Testing positive for any of the following genetic mutations:

1. Brca1 or brca2.

2. Lynch Syndrome.

c. Having a personal history of any of the following:

1. Ovarian cancer.

2. Endometriosis.

3. Unexplained infertility.

4. Uterine fibroids.

5. Polycystic ovarian syndrome.

(2) “Monitoring tests” and “screening tests” mean tests and examinations for ovarian cancer using any of the following methods that are recommended by a patient’s physician:

a. Tumor marker tests supported by national clinical guidelines, national standards of care, or peer reviewed medical literature.

b. Transvaginal ultrasound.

c. Pelvic examination.

d. Other screening tests supported by national clinical guidelines, national standards of care, or peer reviewed medical literature.

(b) The plan shall provide coverage for all of the following:

(1) Monitoring tests for ovarian cancer after a woman is treated for ovarian cancer.

(2) Annual screening tests for women at risk for ovarian cancer.

(c) Coverage required by subsection (b) of this section must be at no cost to a covered individual, including deductible payments and cost-sharing amounts charged once a deductible is met.

(84 Del. Laws, c. 488, § 1.)

§ 5223. Coverage for removal of excess skin and subcutaneous tissue [For application of this section, see 85 Del. Laws, c. 88, § 5].

(a) For purposes of this section:

(1) “Medically necessary” means as defined in § 3581 of Title 18.

(2) “Panniculectomy” means an operative procedure used to contour the abdominal wall by removing significant excess skin and subcutaneous adipose tissue.

(b) The plan must provide coverage for medically necessary removal of excess skin and subcutaneous tissue, including a panniculectomy.

(85 Del. Laws, c. 88, § 3.)

Part V
Public Officers and Employees

Chapter 52A
Disability Insurance Program

§ 5251. Definitions.

As used in this chapter:

(1) "Carrier" means the disability insurance company selected pursuant to § 5254 of this title.

(2) "Committee" means the State Employee Benefits Committee as established by § 9602 of this title.

(3) "Creditable compensation" means the base rate of compensation that the employee received on the last day of employment before the employee developed a disability as determined by the Committee.

(4) "Disability benefit" means income replacement payments payable to a participating employee under a short-term or long-term disability benefit program pursuant to this chapter.

(5) "Employee" means an eligible "employee" as defined in § 5501 of this title who elects to participates in the Program as specified in § 5519 of this title. This shall include any employee who is collecting benefits pursuant to § 8352(4) of Title 11.

(6) "Employment" means any occupation for which the employee is reasonably suited by training or experience.

(7) "Program" means the Disability Insurance Program created pursuant to this chapter providing short-term and long-term disability benefits for eligible employees electing to participate in the Program.

(75 Del. Laws, c. 191, § 1; 76 Del. Laws, c. 321, § 1; 78 Del. Laws, c. 179, § 276; 79 Del. Laws, c. 174, § 1; 84 Del. Laws, c. 233, § 57.)

§ 5252. Payment of premium or subscription charges.

The State shall pay all premium or subscription charges for the full cost of providing coverage for the Disability Insurance Program.

(75 Del. Laws, c. 191, § 1.)

§ 5253. Specifications of the coverage.

(a) Participating employees shall be eligible to utilize earned sick leave for absences due to accident, illness, or injury, or parental leave, if eligible upon the birth of a child, for periods before disability benefits commence under this chapter, such that the participating employee receives 100% of creditable compensation for such periods, not to exceed the employee's sick leave balance.

(b) *Short-term disability benefit.* — (1) An employee who is determined by the Committee, in its sole discretion, to be mentally or physically unable to perform the essential functions of the employee's position as defined in rules and regulations adopted by the Committee, with reasonable accommodation as required by federal law, shall be entitled to receive short-term or long-term benefits pursuant to this chapter. An employee who receives short-term or long-term disability benefits pursuant to this chapter may be required, in the sole discretion of the Committee, to participate in rehabilitation or retraining services, or a combination thereof, under a program established by the Committee. Short-term disability benefits for participating employees shall commence upon the expiration of a 30-calendar-day elimination period. Such elimination period shall begin on the first day following the onset of physical or mental incapacity as determined by the Committee, in its sole discretion. If an employee returns to work for 1 day or less during the 30-calendar-day elimination period but cannot continue to work thereafter, the period worked shall not be considered to have interrupted the 30-calendar-day elimination period. The elimination period must commence and conclude within normal working periods for employees who work less than 12 months per calendar year.

(2) Except as provided in paragraph (b)(4) of this section, short-term disability benefits pursuant to this chapter shall be payable at the rate of 75% of the participating employee's creditable compensation prior to the onset of the disability during the period that an employee has a disability, as determined by the Committee.

(3) Creditable compensation during periods an employee receives short-term disability benefits shall include general salary increases awarded or reductions in salary instituted during the period of short-term disability coverage.

(4) An employee may utilize annual, sick, parental, compensatory, or donated leave to supplement short-term disability benefits to equal 100% of pre-disability creditable compensation for the maximum period of 182 calendar days.

(5) If a participating employee returns to the employee's position on a full-time basis, as defined by the Committee, for 15 consecutive calendar days or longer, any succeeding period of disability for which the employee shall become eligible shall constitute a new period of short-term disability with a corresponding 30-calendar-day elimination period.

(6) Employees enrolled in and receiving short-term disability (STD) compensation shall receive a maximum of 100% of base pay. If the employee is otherwise eligible for holiday pay or a paid leave other than identified in paragraph (b)(4) of this section, the employee will be granted 100% pay on the day in question without a residual. All leave supplements will be calculated on a pay period basis.

(7) Except those who qualify for parental leave upon the birth of a child, once an employee exhausts their elimination period, the employee will be deemed to have applied for benefits under this section and shall not be eligible to utilize paid leave in lieu of application for short-term disability.

(8) When an employee is on approved STD per subsection (b) of this section and does not supplement the 75% STD payment with 25% leave for a period of greater than 30 calendar days, the employee will accrue leave on a pro-rata basis.

(c) *Long-term disability benefit.* — (1) Long-term disability benefits for participating employees shall commence upon the expiration of a 182-calendar-day waiting period. The waiting period shall commence on the first day following the onset of the disability as determined by the Committee, in its sole discretion. If an employee returns to work for 14 or fewer consecutive calendar days during such 182-calendar-day waiting period and cannot thereafter continue to work, the periods worked shall not be deemed to have interrupted the 182-calendar-day waiting period.

(2) Long-term disability benefits for an eligible employee shall be paid in an amount equal to 60% of the participating employee's creditable compensation prior to the onset of the disability. In no event shall the employee be entitled to utilize earned sick leave to supplement long-term disability benefits.

(3) Long-term disability benefits shall not include general salary increases during the period of long-term disability. Long-term disability benefits may be increased annually by an amount approved by the Committee.

(4) Any employee who applies for long-term benefits pursuant to this chapter must apply to the Social Security Administration for disability benefits. Long-term disability benefits provided under this chapter shall be reduced by any disability benefits received from the Social Security Administration.

(5) Upon the exhaustion of the maximum short-term disability benefit period, any employee, except those entitled to hazardous duty pay as defined in § 5933(c) of this title, shall no longer be an employee of the State or any of its political subdivisions provided the employee has exhausted their Family Medical Leave Act of 1993 (FMLA) [29 U.S.C. § 2601 et seq.] entitlement and/or is not FMLA eligible. Employees entitled to hazardous duty pay as defined in § 5933(c) of this title who exhaust the maximum short-term disability benefit period shall no longer be an employee of the State or any of its political subdivisions at the end of their entitlement to hazardous duty pay or parental leave provided the employee has exhausted their FMLA entitlement and/or is not FMLA eligible.

(6) Prior to the commencement of long-term disability benefits, the employee shall be eligible to make a written election to escrow for a period of 6 months any unused annual and sick leave based on the rules in place by the employing organization. Any employee who does not make a written election to escrow unused annual and sick leave will receive a payoff of unused annual and sick leave under § 5253(c)(5) of this title. Any employee approved for long-term disability benefits and who made a written election to escrow unused annual and sick leave who returns to state employment in a full-time benefit eligible position within the 6-month escrow period and works on a full-time basis for at least 30 calendar days will retain their annual and sick leave balances. Any employee making a written election to escrow unused annual and sick leave who does not return to state employment in a full-time benefit eligible position for at least 30 calendar days within the 6-month escrow period will receive a payoff of unused annual and sick leave at the end of the 6-month escrow period based on the rules in place by the employing organization.

(d) Eligibility for participation in the program shall terminate upon the earliest to occur of an employee's:

(1) Ability to return to employment;

(2) Death; or

(3) The date the employee is no longer covered by the Delaware State Employees' Pension Plan pursuant to Chapter 55 of this title; or

(4) Normal service retirement at age 65.

If the employee develops a disability after age 60, the maximum duration of benefits will be subject to the following:

Age when disability developed or occurred	Benefit duration
61	48
62	42
63	36
64	30
65	24
66	21
67	18
68	15
69+	12

(75 Del. Laws, c. 191, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 227, §§ 5, 7, 9; 75 Del. Laws, c. 351, §§ 2-5, 7, 8; 76 Del. Laws, c. 81, § 33; 76 Del. Laws, c. 324, §§ 1, 4; 77 Del. Laws, c. 84, §§ 57-59; 77 Del. Laws, c. 327, § 99; 77 Del. Laws, c. 328, § 30; 78 Del. Laws, c. 179, §§ 277-279; 81 Del. Laws, c. 285, § 4.)

§ 5254. Selection of the group disability insurance carrier.

Disability insurance coverage pursuant to this chapter may be provided and/or administered by an insurance carrier licensed under the laws of this State. The carrier shall be selected by a vote of the Committee, and legally authorized to transact business within this State, and having adequate servicing facilities to carry out the terms of the contract as awarded by Committee.

(75 Del. Laws, c. 191, § 1.)

§ 5255. Disability program design and administration.

The carrier selected pursuant to § 5254 of this title may determine the eligibility of a participating employee to receive short-term and/or long-term disability benefits. Such carrier shall also provide short-term and long-term disability benefits to eligible employees, and shall administer both the short and long-term disability programs established pursuant to this chapter. The Committee may adopt rules and regulations regarding proper administration of the disability program. Such rules shall include, but not be limited to, standards relating to the determination of disability; appeal procedures, requirements for medical or psychological examinations; the adjustment or termination of payments based on the mental or physical condition of the employee, and/or education, training, and experience of the employee. The disability program administrator's performance shall be evaluated on an annual basis by the Committee.

(75 Del. Laws, c. 191, § 1.)

§ 5256. Authority and duties of the State Employee Benefits Committee.

The State Employee Benefits Committee established by § 9602 of this title shall have the following powers, duties and functions under this chapter:

(1) Control and management of the State Employees' Disability Insurance Program as provided by this chapter.

(2) Authority to establish the state employees' short-term disability insurance program on a self-insured basis and a long-term disability insurance program on an insured basis.

(3) Selection, in its sole discretion, of the carriers or third-party administrators deemed to offer the programs which will best satisfy the interests of the State and its employees in carrying out the intent of this chapter.

(4) Authority to adopt rules and regulations for the general administration of the Disability Insurance Program established pursuant to this chapter.

(5) Authority to make and enter into any and all contracts with any agency of the State, or any outside agency, for the purpose of assisting in the general administration of this chapter.

(6) The Committee may require any employee to furnish such information as may be required for the determination of benefits under this chapter, or to authorize the Committee to procure such information. The Committee may withhold payment of any benefit under this chapter whenever the determination of such benefit is dependent upon such information and the employee does not cooperate in the furnishing or procuring thereof.

(75 Del. Laws, c. 191, § 1; 75 Del. Laws, c. 351, § 9.)

§ 5257. Return to work.

(a) Once an employee has been determined to have the ability to return to employment by the Committee, the employee will receive the following assistance:

(1) Merit employees may be placed in any vacant merit position, for which they qualify, by the Secretary of the Department of Human Resources.

(2) Nonmerit state employees, and employees from nonstate employers will be placed by that employer into a vacant position within their respective agency for which the employee qualifies.

(b) Once an individual has been determined to have the ability to return to employment by the committee, the individual will receive the following assistance:

(1) Former merit employees enrolled in and previously deemed eligible for the Long-Term Disability Program may, when available and appropriate, be placed by the Department of Human Resources in any merit position, for which they qualify without a certification list, as long as the paygrade does not exceed their paygrade at the time of their acceptance into and eligibility for the Short-Term Disability Program. Exceptions to the paygrade limitation may be made for vacancies for which a documented shortage of qualified applicants exists.

(2) Former nonmerit employees enrolled in and previously deemed eligible for the Long-Term Disability Program will be placed by their previous employer into a vacant position within their respective agency for which they qualify.

(75 Del. Laws, c. 227, § 1; 75 Del. Laws, c. 351, § 10; 81 Del. Laws, c. 66, § 26.)

§ 5258. Appeals.

The carrier shall notify a participating employee of its determination of the employee's eligibility for short-term disability benefits in writing by certified mail, return receipt requested, within 10 days of the carrier's determination. Within 90 days of the postmark date of

the carrier's written notice of its determination, an aggrieved participating employee may appeal any denial of disability benefits by filing a written petition setting forth with particularity the grounds for appeal with the carrier. The carrier shall have the authority to reverse all or any part of its initial decision to deny benefits and shall notify the employee, the employing organization and Division of Statewide Benefits in writing by certified mail, return receipt requested within 10 days of the carrier's determination.

Within 20 days of the postmark date of the carrier's determination of appeal an aggrieved participating employee may file a second-level appeal of denial of disability benefits by filing a written petition setting forth with particularity the grounds for second appeal, with the Appeals Administrator, who shall conduct an informal review, and who shall have the authority to reverse all or any part of the decision of the carrier to deny benefits. The Appeals Administrator or designee, shall issue a final written decision and shall mail it to the employee by certified mail, return receipt requested, within 30 days of speaking with the employee. The Committee shall designate an officer of the Division of Statewide Benefits to act as the Appeals Administrator.

If the Appeals Administrator affirms the carrier's decision to deny disability benefits or any part thereof, an aggrieved employee may appeal to the Committee within 20 days of the postmark date of the notice of the determination from the Appeals Administrator by filing a written petition with the Committee setting forth with particularity the grounds for appeal. The Committee may designate an appropriate officer of the Department of Human Resources as a hearing officer to hear evidence presented by the participating employee or, in its sole discretion, it may decide to hear the appeal directly. The Committee or hearing officer, as the case may be, shall determine whether the determination to deny benefits complies with the applicable disability plan adopted by the Committee. The hearing officer and/or Committee shall have all of the following powers in respect to the conduct at the hearing:

(1) To issue subpoenas and administer oaths in any preceding. Any subpoena process or order or any notice or paper requiring service shall be sent by certified mail, return receipt requested;

(2) To examine persons as witnesses, take evidence, require the production of documents, and do all other things pursuant to law which are necessary to determine the appeal. In proceedings before the Committee or its hearing officer, if any person neglects to produce any pertinent document, neglects or refuses to appear after having been subpoenaed, refuses to testify or be examined, disobeys or resists any lawful order or process, or intentionally obstructs the hearing, the Committee shall certify facts under the signature of its chairperson or the hearing officer to any judge of the Superior Court, which judge shall there upon hear evidence as to the acts complained of. The judge shall, if the judge deems the evidence so warrants, issue an order requiring such persons to testify or produce documents or otherwise comply with the requirements of the Committee, as the case may require. Refusal to comply with the order of the Court shall constitute contempt of Court;

(3) Where the Committee assigns the matter to the hearing officer, the hearing officer shall decide the matter and prepare a report containing the findings of fact, and conclusions of law, within 60 days of the hearing, and shall transmit the report, with the full record of the hearing, to the Committee.

(4) The Committee may accept or modify the hearing officer's final report, and shall notify the parties of its action by certified mail, return receipt requested within 60 days.

(5) If the Committee elects to hear the matter directly and not to assign it to the hearing officer, it shall issue its final decision containing findings of fact and conclusions of law, within 60 days of the hearing, and shall notify the parties of its action by certified mail, return receipt requested.

(6) The Committee's final action may be appealed to the Superior Court within 30 days after it is mailed to the parties by the Committee. The appeal shall be on the record.

(75 Del. Laws, c. 227, § 11; 75 Del. Laws, c. 351, § 6; 76 Del. Laws, c. 324, § 2; 77 Del. Laws, c. 84, § 60; 81 Del. Laws, c. 66, § 27.)

§ 5259. COVID-19 emergency provision [Repealed].

(82 Del. Laws, c. 266, § 1; repealed by 82 Del. Laws, c. 266, § 1, effective Dec. 30, 2020.)

Part V
Public Officers and Employees
Chapter 52B
Other Post-Employment Benefits Fund

§ 5280. Definitions.

(a) "Board" means the Board of Pension Trustees established by § 8308 of this title.

(b) "OPEB Fund" means the Other Post-Employment Benefits Fund established by § 5281 of this title.

(76 Del. Laws, c. 70, § 1.)

§ 5281. Establishment of fund.

(a) There shall be established an OPEB Fund, a trust fund, separate and distinct from the funds established under §§ 5541 and 5601 of this title and § 8393 of Title 11, to which state appropriations and other employer contributions shall be deposited, and to which earnings on investments, refunds and reimbursements shall be deposited upon receipt, and from which the State's premiums as defined in § 5202(b) of this title shall be paid, and any fees and expenses authorized by the Board shall be paid. No money shall be disbursed from this fund except for the purpose of payment of the State's premiums for post-retirement health insurance for employees retired under Chapters 55 and 56 of this title and Chapter 83 of Title 11.

(b) The amounts remaining in the trust, if any, after all premiums, fees, and expenses have been paid for any year shall be retained in such trust for future payments until all state liabilities for post-retirement health insurance premium benefits have been satisfied.

(c) This chapter is replacing § 5550 of this title in its entirety.

(d) The trust shall be an irrevocable trust exempt from federal income tax under § 115 of the Internal Revenue Code [26 U.S.C. § 115] and subject to the financial reporting, disclosure and actuarial requirements of Government Accounting Standards Board Statements 43 and 45 or any subsequent Government Accounting Standards Board updates or statements that may be applicable.

(76 Del. Laws, c. 70, § 1.)

§ 5282. Management of the OPEB Fund.

(a) The Board shall serve as the Board of Trustees for the OPEB Fund, shall adopt a trust agreement for the OPEB Fund (and may amend the trust agreement from time to time), shall take all actions necessary and appropriate to establish and maintain the OPEB Fund, and shall have control and management of the OPEB Fund and may utilize its powers pursuant to this chapter and § 8308 of this title in the administration of the OPEB Fund.

(b) The Board shall take the actions necessary and appropriate to establish and maintain the OPEB Fund as a trust that is exempt from taxation under Internal Revenue Code § 115 [26 U.S.C. § 115]. The trust shall be maintained and administered by the Board to provide payments for retiree health insurance for medical care in compliance with Internal Revenue Code § 105 [26 U.S.C. § 105] and with this chapter.

(c) The State shall indemnify a board member in the additional duties contained in this chapter pertaining to the administration and management of the OPEB Fund or to sit on a committee of the Board who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that the board member is or was a board member against expenses (including attorneys' fees if the Attorney General determines that the Attorney General may not provide representation), judgments, fines and amounts paid in settlement actually and reasonably incurred by that board member in connection with such action, suit or proceeding, if the board member acted in good faith and in a manner the board member reasonably believed to be in the best interest of the State and with respect to any criminal action or proceeding had no reasonable cause to believe that board member's own conduct was unlawful. Expenses incurred in defending a civil, administrative or investigative action, suit or proceeding shall be paid by the State in advance of final disposition of such action, suit or proceeding if:

(1) Initially authorized by a majority vote of the Board exclusive of the member or members to be indemnified unless more than a majority of the Board shall also be parties to the same action, suit or proceeding, in which instance, such authorization shall be by the Governor of the State; and

(2) Such board member agrees to repay such amount if it is ultimately determined by the Board or the Governor, as the case may be, pursuant to paragraph (c)(1) of this section that such member is not entitled to indemnification under this section.

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

§ 5283. Actuarial valuations.

(a) The actuary shall prepare an actuarial valuation of the assets and liabilities of the OPEB Fund as of June 30, each year. On the basis of reasonable actuarial assumptions and tables approved by the Board, the actuary shall determine:

(1) The State's annual required contribution for payment of the State's premiums for post retirement health insurance for employees under Chapters 55 and 56 of this title and Chapter 83 of Title 11;

(2) Any unfunded actuarial accrued liability.

(b) It is not anticipated that distributions will be made from this fund until the State's annual required contribution, as determined in subsection (a) of this section, has been appropriated in a given fiscal year.

(76 Del. Laws, c. 70, § 1.)

Part V
Public Officers and Employees

Chapter 52C
Supplemental Insurance Program

§ 5290. Definitions.

As used in this chapter:

(1) “Carrier” means the supplemental income benefits carrier selected pursuant to § 5292 of this title.

(2) “Claims loss ratio” means claims payable as a percentage of premium income, or ratio of incurred losses and loss adjustment expenses to net premiums earned.

(3) “Committee” means the State Employee Benefits Committee as established by § 9602 of this title.

(4) “Employee” means an eligible “employee” as defined in §§ 5501 and 5201 of this title who elects to participate in the supplemental insurance program as specified in § 5293 of this title.

(5) “Income indemnity” means restoration to the participating employee of a loss by payment.

(6) “Premium” means the price of insurance protection for a specified risk for a specified period of time.

(7) “Supplemental insurance program” means voluntary insurance benefits designed to supplement existing major medical coverage where the payments are predetermined and paid regardless of other available coverage.

(79 Del. Laws, c. 391, § 1; 81 Del. Laws, c. 323, § 3; 84 Del. Laws, c. 233, § 58.)

§ 5291. Payment of premium or subscription charges.

The participating employee shall pay all premium or subscription charges for the full cost of the supplemental insurance coverage policy, with no premium cost to the State.

(79 Del. Laws, c. 391, § 1.)

§ 5292. Selection of the supplemental income benefits carrier.

The carrier shall be licensed in Delaware, selected by a proper vote of the Committee, and have adequate servicing facilities to carry out the terms of the contract as awarded by the Committee. The selected carrier shall maintain a claims loss ratio of not less than 60%.

(79 Del. Laws, c. 391, § 1.)

§ 5293. Supplemental insurance program and design.

(a) The type of offered insurance shall be supplemental individual health insurance that is guaranteed renewable. This elective supplemental insurance program will entitle participating employees to receive income indemnity. Accident, cancer, and critical care and recovery, are to be required benefits of the offered supplemental policies. The Committee will determine whether premiums are to be deducted pretax or after-tax. The group monthly electronic invoice file with payment deduction details, associated reconciliation of premiums paid, and claims administration and payment due will be administered by the carrier and at their expense. The open enrollment for supplemental benefits policies will coincide with the open enrollment for state employee benefits beginning in 2015.

(b) The Committee shall annually review the supplemental individual health insurance program participation. Should the Committee determine that the volume of employee participation demonstrates a lack of interest or desire in accessing this program, the Committee may on or after July 1, 2020, in its discretion vote to restructure, modify, or terminate the program.

(79 Del. Laws, c. 391, § 1.)

Part V
Public Officers and Employees
Chapter 53
Early Retirement Option for State Employees
Subchapter I
General Provisions

§ 5301. Early retirement option.

(a) This chapter provides a 1-time early retirement option to state employees covered under Chapter 55 of this title who were employees as defined in Chapter 55 of this title between December 1, 1990, and February 1, 1991.

(b) Elected officials shall not be eligible for this early retirement option for the pension they are entitled to receive under § 5527(d) of this title.

(c) Except as provided hereinafter, employees who meet the eligibility requirements as contained in §§ 5306 and 5307 of this title must make their election to retire under this option on the following schedule:

(1) Eligible employees of the State Department of Education, a school district which is part of the state school system, the University of Delaware, Delaware State University or Delaware Technical and Community College must make their elections between March 15, 1991 and April 19, 1991.

(2) All other eligible employees must make their elections between February 1, 1991 and March 15, 1991; however, all members of the Delaware National Guard or members of the U.S. Armed Forces Reserves who have been called to active duty must make their elections within 45 days of the date they are no longer on active duty.

(3) These elections must be made in a form approved by the Board of Pension Trustees and shall be irrevocable.

(4) If it is determined by the State Pension Administrator that an employee is or was unable to make this election in a timely manner due to circumstances beyond the employee's control, the Administrator may extend the time period for making the election beyond the periods specified in this subsection.

(5) In the event an eligible employee, prior to February 15, 1991, requests a computation of such employee's prospective pension benefit by the State Pension Administrator, the election required in paragraphs (d)(1) and (d)(2) of this section need not be made until 10 days after the State Pension Administrator has provided the employee, in writing, the amount of the pension benefit said employee will be entitled to receive.

(d) Employees who elect the early retirement option must terminate their employment on the following schedule:

(1) Except as provided hereinafter, employees who elect the option under paragraph (c)(1) of this section must terminate their employment on June 30, 1991 and their pensions will be effective July 1, 1991. Payment for unused sick and vacation pay for these employees will not be disbursed until after June 30, 1991.

(2) Except as provided hereinafter, employees who elect the option under paragraph (c)(2) of this section must terminate their employment on May 31, 1991 and their pensions will be effective June 1, 1991. Payment for unused sick and vacation pay for these employees will not be disbursed until after June 30, 1991.

(3) Employees of the State Pension Office who meet the eligibility requirements under §§ 5306 and 5307 of this title and who elect the early retirement option will be eligible to retire under the option not earlier than December 31, 1991 nor later than December 31, 1992 unless an earlier date is approved by the State Pension Administrator.

(4) Employees who elect the early retirement option and who are deemed to be essential to the normal operation of state government shall have their termination date extended up to 12 months provided such extension is approved unanimously in writing, by a committee, herein referred to as the "Early Retirement Option Delayed Retirement Committee," comprised of the Director of State Personnel, the Director of the Office of Management and Budget and the Controller General.

(e) Employees who elect the early retirement option under this chapter shall be considered to have also been eligible, for purposes of computing their pensions under § 5527 of this title, to receive a service or disability pension under the provisions of Chapter 55 of this title which were in effect immediately prior to the effective date of the 1976 Pension Act.

(f) No employee whose pension under Chapter 55 of this title is effective prior to January 1, 1991, shall be eligible for the early retirement option contained in this chapter.

(g) Notwithstanding provisions of this chapter to the contrary, employees who retire under the early retirement option contained in this chapter may contract with the State for personal services, as an independent contractor, for a period not to exceed 12 months provided such contractual arrangement is approved unanimously, in writing, by the "Early Retirement Option Delayed Retirement Committee" established by this chapter.

(h) The Director of State Personnel shall submit to the Controller General, Director of the Office of Management and Budget and the Secretary of Finance by December 1, 1991, a report containing the specific disposition of each former employee electing retirement under the provisions of this chapter and the disposition of each position so vacated.

The content of said report shall be comprised of the state employment status of each individual electing retirement under the provisions of this chapter, the position number of the position so vacated, the disposition of the position (deleted, transferred, reclassified, etc.), the actual budgetary savings associated with the vacated position, the original funding source for the vacated position and the actual budgetary savings net of the full retirement cost associated with the retired individual. The accounting period for the preceding actual statistics will be the prior fiscal year.

Further, the report shall, for each affected position for the current fiscal year, estimate the budgetary savings net of the full retirement cost regardless of funding source.

(68 Del. Laws, c. 8, § 1; 68 Del. Laws, c. 290, § 29; 69 Del. Laws, c. 67, § 2; 73 Del. Laws, c. 65, § 32; 75 Del. Laws, c. 88, § 21(13).)

§ 5302. Definitions.

(a) "Credited service" shall mean, for any individual, service as defined in § 5501(e) of this title, except that the provisions contained in § 5501(e)(5), (8)-(11) of this title, requiring that the payment for service purchased under these subsections be made prior to the issuance of his or her pension check, may be waived by the State Pension Administrator for any individual for a period not to exceed 2 months if such waiver is deemed by the Pension Administrator to be necessary to carry out the provisions of this chapter. This subsection shall be in effect retroactively as of February 1, 1991.

(b) "Employee" shall mean an individual who meets the definition of an employee as defined in § 5501(f) of this title which is in effect on February 1, 1991.

(c) For the purposes of this chapter, those individuals who must terminate employment on May 31, 1991, in accordance with § 5301(d)(2) of this title, will receive credited service for the month of June 1991 in determining their eligibility for the early retirement option provided by this chapter but that service will not be used in determining the amount of their pension benefits.

(d) The definitions contained in § 5501 (a)-(c), (f)-(i) of this title, which are in effect on February 1, 1991, shall apply to this chapter.

(68 Del. Laws, c. 8, § 1; 68 Del. Laws, c. 290, §§ 58, 59; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 174, § 1.)

§ 5303. Employment of pensioners.

(a) (1) An individual shall not receive a service or disability pension under this chapter for any month during which such individual is an employee as defined in § 5302(b) of this title, nor may an individual receiving a service pension under this chapter be an employee as defined in § 5302(b) of this title for a period of 5 years from the date of retirement under this chapter, unless such individual is:

a. An official elected by popular vote at a regular state election;

b. An official appointed by the Governor; or

c. A temporary, casual, seasonal or substitute employee as defined by the Board of Pension Trustees.

(2) An individual who has retired under this chapter or Chapter 55 of this title and who has been rehired by the Pension Office to work on the implementation of the Early Retirement Program shall not be subject to the earnings limitation as contained in paragraph (a)(1)c. of this section or § 5502(a)(3) of this title until December 31, 1992.

(b) An individual who has retired under this chapter shall not contract with the State for personal services, as an independent contractor, for a period of 5 years from the effective date of retirement, unless such individual qualifies for 1 of the exceptions contained in paragraphs (a)(1) and (a)(2) of this section.

(68 Del. Laws, c. 8, § 1; 68 Del. Laws, c. 431, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 119, § 2; 73 Del. Laws, c. 430, § 1.)

§ 5304. Attachment and assignment of benefits.

Except for orders of the Delaware Family Court for a sum certain payable on a periodic basis, the benefits provided by this chapter shall not be subject to attachment or execution and shall be payable only to the beneficiary designated and shall not be subject to assignment or transfer.

(68 Del. Laws, c. 8, § 1; 71 Del. Laws, c. 337, § 4.)

§ 5305. University of Delaware.

For persons employed by the University of Delaware, the provisions contained in § 5505 of this title, which are in effect on February 1, 1991, shall apply to this chapter.

(68 Del. Laws, c. 8, § 1.)

Subchapter II

Eligibility Provisions

§ 5306. Eligibility for service pension.

In addition to the provisions of subchapter I of this chapter, an employee shall be eligible for the early retirement option provided by this chapter beginning with the month after the employee has terminated employment, if:

(1) The employee has 15 years of credited service under this chapter as of June 30, 1991, exclusive of service credited under § 5501(e)(4), (5) and (12) of this title, and shall have attained age 50 on or before June 30, 1991; or

(2) The employee has 25 years of credited service under this chapter as of June 30, 1991, exclusive of service credited under § 5501(e)(4), (5) and (12) of this title, regardless of age.

(68 Del. Laws, c. 8, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 174, § 1.)

§ 5307. Eligibility for disability pension.

In addition to the provisions of subchapter I of this chapter, an employee shall be eligible for the early retirement option provided by this chapter beginning with the month after the employee has terminated employment, if:

(1) The employee has 15 years of credited service under this chapter as of June 30, 1991, exclusive of service credited under § 5501(e)(4), (5) and (12) of this title, and shall have attained age 50 on or before June 30, 1991; or

(2) The employee has 25 years of credited service under this chapter as of June 30, 1991, exclusive of service credited under § 5501(e)(4), (5) and (12) of this title, regardless of age.

(3) In addition to meeting the credited service and age requirements contained in paragraphs (1) and (2) of this section, an employee must meet the requirements for a disability pension contained in § 5524 of this title, and the employee's termination from employment shall be governed by § 5524(b) of this title.

(68 Del. Laws, c. 8, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 174, § 1.)

§ 5308. Payment of service pension.

Service pension payments shall be made to a retired employee for each month beginning with the month in which the retired employee becomes eligible to receive such pension and ending with the month in which the retired employee dies.

(68 Del. Laws, c. 8, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5309. Payment of disability pension.

(a) Disability pension payments shall be made to a retired employee for each month beginning with the month in which the retired employee becomes eligible to receive such pension and ending with the month in which the retired employee ceases to be eligible or dies.

(b) Any disability pensioner who has not attained age 60 shall report to the Board by April 30 each year, in a form prescribed by the Board, the pensioner's total earnings from any gainful occupation or business in the preceding calendar year. One twelfth of the excess of such earnings over $^1/_2$ of the annual rate of compensation received by the pensioner before he or she became disabled shall be deducted from the pensioner's disability pension during each of the 12 months beginning in July of the year following the calendar year for which earnings are reported. If any person received a disability pension for less than 12 months in the calendar year for which earnings are reported, the deduction, if any, shall be determined on a pro rata basis.

(c) Termination of a disability pension on account of recovery from disability shall not prejudice the right of the pensioner to qualify subsequently for a service pension or another disability pension.

(68 Del. Laws, c. 8, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5310. Amount of service or disability pension.

(a) The amount of the monthly service or disability pension payable to a former employee shall be computed in accordance with the provisions of § 5527(a)-(f) of this title except that 5 years shall be added to the former employee's credited service for purposes of calculating the amount of the monthly pension.

(b) The amount of monthly pension payable to a former employee for the first 3 months of retirement shall be double the amount calculated in subsection (a) of this section, but in no case shall such amount exceed 100% of the former employee's final compensation in the last month of actual employment. Thereafter, the monthly pension payable shall be the amount calculated pursuant to subsection (a) of this section.

(c) Individuals eligible for the early retirement option and whose pensions are effective prior to the dates specified in § 5301(d) of this title shall have their pensions computed in accordance with the provisions of § 5527(a)-(f) of this title without taking into consideration subsections (a) and (b) of this section until such time as they would have terminated in accordance with § 5301(d) of this title. Then, beginning with the month that their pensions would have been effective had they terminated in accordance with § 5301(d) of this title, their pensions shall be adjusted in accordance with subsections (a) and (b) of this section.

(68 Del. Laws, c. 8, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5311. Survivor's pension.

For persons eligible for a survivor's pension, the provisions contained in § 5528 of this title, which are in effect on February 1, 1991, shall apply to this chapter, except that an individual who has elected the early retirement option and whose death occurs prior to the date specified in § 5301(d) of this title, shall have his or her pension computed in accordance with the provisions of § 5310(c) of this

title, and the eligible survivor or survivors shall receive a survivor's pension equal to $^3/_4$ of the service pension for which the employee would have been eligible.

(68 Del. Laws, c. 8, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5312. Application for benefits.

The Board may require any employee, former employee or eligible survivor to furnish such information as may be required for the determination of benefits under this chapter, or to authorize the Board to procure such information including, but not limited to, information regarding benefits pursuant to the federal Social Security Act [42 U.S.C. § 301 et seq.]. The Board may withhold payment of any pension under this chapter whenever the determination of such pension is dependent upon such information and the employee, former employee or eligible survivor does not cooperate in the furnishing or procuring thereof.

(68 Del. Laws, c. 8, § 1.)

§ 5313. Adjustment of benefits.

Any pension that has been determined to have been incorrectly calculated after an individual begins receiving such pension shall be adjusted as follows:

(1) If an individual's pension is determined to be less than he or she is entitled to receive, it will be adjusted retroactively to the effective date of the pension.

(2) If an individual's pension is determined to be more than he or she is entitled to receive, it will be adjusted prospectively only.

(3) In no case shall a pension awarded under this chapter which has been in effect for 1 year be subject to reduction.

(68 Del. Laws, c. 8, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5314. Board of Pension Trustees.

The Board of Pension Trustees, established by § 8308 of this title, shall be responsible for the general administration of this chapter in accordance with Chapter 83 of this title.

(68 Del. Laws, c. 8, § 1.)

§ 5315. Actuarial valuations and appropriations.

(a) The state appropriations to fund the benefits provided by this chapter shall be deposited monthly into the State Employees' Retirement Fund established by § 5541 of this title.

(b) The State's appropriation to the Fund for the Fiscal Year 1991-92, and for each fiscal year thereafter, shall be the percentage of covered payroll approved by the Board on the basis of the actuarial valuation as of June 30, 1991, and shall be the payment required to amortize the added unfunded accrued liability over 24 years from July 1, 1991. The amortization payment shall be an amount computed as a level percentage of the prospective total covered payroll to be determined on the basis of a growth rate of 4% per year, compounded annually.

(68 Del. Laws, c. 8, § 1.)

§ 5316. Group life insurance.

(a) Upon the death of an individual receiving a pension under this chapter a benefit will be provided in the same manner as benefits provided under § 5546 of this title to the designated beneficiary or in the absence of a designated beneficiary the amount of this benefit shall be paid to the deceased pensioner's estate.

(b) The benefit granted under this section shall not be construed as a contractual obligation of the State or of the Pension Fund and may be revised or terminated by an act of the General Assembly.

(68 Del. Laws, c. 8, § 1; 68 Del. Laws, c. 290, § 60; 69 Del. Laws, c. 451, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 169, § 1; 73 Del. Laws, c. 146, § 4.)

§§ 5321, 5322. [Repealed].

Part V
Public Officers and Employees

Chapter 54
Uniform Facsimile Signatures of Public Officials Act

§ 5401. Definitions.

As used in this chapter:

(1) “Authorized officer” means any official of this State or any of its departments, agencies or other instrumentalities or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted.

(2) “Facsimile signature” means a reproduction by engraving, imprinting, stamping or other means of the manual signature of an authorized officer.

(3) “Instrument of payment” means a check, draft, warrant or order for the payment, delivery or transfer of funds.

(4) “Public security” means a bond, note, certificate of indebtedness or other obligation for the payment of money issued by this State or by any of its departments, agencies or other instrumentalities or by any of its political subdivisions.

(29 Del. C. 1953, § 5801; 58 Del. Laws, c. 57.)

§ 5402. Facsimile signature.

(a) Any authorized officer, after filing with the Secretary of State a manual signature certified by the authorized officer under oath, may execute or cause to be executed with a facsimile signature in lieu of a manual signature:

(1) Any public security, provided that at least 1 signature required or permitted to be placed thereon shall be manually subscribed; and

(2) Any instrument of payment.

(b) Upon compliance with this chapter by the authorized officer, a facsimile signature has the same legal effect as a manual signature.

(29 Del. C. 1953, § 5802; 58 Del. Laws, c. 57; 70 Del. Laws, c. 186, § 1.)

§ 5403. Use of facsimile seal.

When the seal of this State or any of its departments, agencies or other instrumentalities or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

(29 Del. C. 1953, § 5803; 58 Del. Laws, c. 57.)

§ 5404. Violation and penalty.

Any person who with intent to defraud uses on a public security or an instrument of payment:

(1) A facsimile signature, or any reproduction of it, of any authorized officer; or

(2) Any facsimile seal, or any reproduction of it, of this State or any of its departments, agencies or other instrumentalities or of any of its political subdivisions

is guilty of a felony and shall suffer such criminal sanctions and penalties as are appropriate in this State for conviction of the crime of forgery.

(29 Del. C. 1953, § 5804; 58 Del. Laws, c. 57.)

§ 5405. Uniformity of interpretation.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(29 Del. C. 1953, § 5805; 58 Del. Laws, c. 57.)

§ 5406. Short title.

This chapter may be cited as the “Uniform Facsimile Signature of Public Officials Act.”

(29 Del. C. 1953, § 5806; 58 Del. Laws, c. 57.)

Part V
Public Officers and Employees
Chapter 55
State Employees' Pension Plan
Subchapter I
General Provisions

§ 5501. Definitions.

(a) "Approved medical leave" means a leave of absence from covered state employment, without pay, for a definite period of time, authorized by the head of the employee's department or agency, and necessitated by the employee's mental and/or physical condition. Approved medical leaves shall not exceed 1 year unless extended by the Board of Pension Trustees.

(b) "Board" means the Board of Pension Trustees established by § 8308 of this title.

(c) "Compensation" means for any individual all salary, wages and fees, including overtime payments and special payments for extra duties, payable to such individual for service credited under paragraphs (e)(1), (2) and (3) of this section and the value of any maintenance provided for the individual as part of such payments. For any post-2011 employee "compensation" means all salary, wages and fees, including special payments for extra duties, excluding overtime payments payable to such individual for service credited under paragraphs (e)(1), (2) and (3) of this section and the value of any maintenance provided for the individual as part of such payments. For those individuals who purchase credited service under paragraph (e)(12) of this section "compensation" shall include the salary, wages and fees that such individuals would have received had they remained in such employment for the term of the approved leave.

(d) "Correction officer" shall mean an employee employed by the Department of Correction in a position responsible for supervising correctional officers in secured facilities and/or classified with a correctional officer job title.

(e) "Credited service" shall mean, for any individual:

(1) Service as an employee, excluding any period during which an employee is on an approved leave unless service credit for such period or periods of leave is purchased pursuant to paragraphs (e)(9), (10), (11) and (12) of this section.

(2) Service before June, 1970, which was deemed to be "covered employment" as defined in this section as in effect on May 31, 1970.

(3) (i) Service for which credit was allowed pursuant to § 5522 of this title as in effect on May 31, 1970, and service before June, 1970, for which credit was allowed pursuant to § 5525(a) and (b) of this title as in effect on May 31, 1970; provided, however, that the provisions of § 5525(c) of this title as in effect on May 31, 1970, shall remain in effect and (ii) service as a justice of the peace or as a constable for Justices of the Peace Courts, regardless of whether such person was paid by salary or by fee; provided, however, that if a justice of the peace or a constable for Justices of the Peace Courts is eligible for a pension under a county or municipal pension system of this State, any such service used to establish eligibility under such county or municipal pension system shall only be used in determining such an employee's eligibility under this chapter and shall not be used to determine the pension to be paid under this chapter to such an employee and (iii) service of any individual who became an employee under this chapter on July 1, 1969, in accordance with Volume 57, Laws of Delaware, Chapter 228, provided that, notwithstanding any provision of this chapter to the contrary, the pension of any such individual shall be the greater of the pension determined under this chapter or under the statutory pension system of the county in which any such individual was employed on June 30, 1969, as such statutory pension system was in effect on June 30, 1969, with the amount of any such pension to be determined by using any such individual's total period of service up to retirement.

(4) Who first became an employee before July 1, 1976, full-time active duty, not in excess of 5 years, in the armed services of the United States during time of war or national emergency, provided that the individual became an employee within 5 years after completion of the individual's tour of duty, or within 5 years after the completion of a course of professional or vocational training, if such course was begun within 5 years after completion of the individual's tour of duty, except that the aforesaid 5-year period within which the individual must become an employee shall not apply to full-time officers and members of the National Guard of the State who were active members of the State Employees' Pension Plan on June 1, 1970.

(5) Who first became an employee before July 1, 1976, service in professional educational employment, not in excess of 4 years, performed for another state, a municipality in another state, the federal government or an accredited private school or college anywhere in the world, provided that the individual who rendered such service (i) subsequently becomes an employee as a schoolteacher, professional administrative or supervisory employee or school nurse employed in a public school, the State Department of Education, the University of Delaware, Delaware State University or Delaware Technical and Community College and (ii) on or before the date of issuance of the first pension benefit check, pays into the fund an amount equal to 5% of the final average compensation for each month so credited except that individuals who retire prior to December 31, 1981, and who elect not to buy-in under subsection (f) of this section shall pay into the Fund an amount equal to 5% of the prior final average compensation for each month so credited; provided, however, that an individual shall not be permitted to obtain credited service under this section for out-of-state professional educational employment for any month during which such individual received a pension under this chapter.

(6) If an individual ceases to be an employee before the individual has acquired 5 years of credited service, the individual's service credits to the date of termination shall be cancelled but shall be restored if: (i) The cessation of employment is due to absence on

account of military service, disability or approved leave, under such rules as the Board may adopt, and the individual again becomes an employee within 4 months after such absence, or (ii) the individual again becomes an employee within 4 months after such cessation of employment, or (iii) the individual subsequently acquires 5 years of credited service, or (iv) the individual has been involuntarily terminated for reason other than cause and is rehired within 2 years of the involuntary termination, or (v) the individual has joined another state pension plan which provides for a unified state service pension, or (vi) the individual is subsequently employed in the rehabilitation aide program of the Division of Vocational Rehabilitation of the Department of Labor, provided that if the individual has withdrawn such contributions the individual repays them with interest at a rate determined by the Board.

(7) Any former or present State Fire Marshal, Deputy State Fire Marshal or any successor or substitute therefor who shall have been a volunteer and uncompensated State Fire Marshal or Deputy State Fire Marshal shall receive full credit for the time served as such volunteer and uncompensated State Fire Marshal or Deputy State Fire Marshal in computing the number of years' service required to receive pension benefits provided in this chapter.

(8) Any employee may elect to purchase (i) up to 5 years of credited service for full-time active duty in the armed services of the United States, and/or (ii) up to 5 years of credited service for full-time employment performed for another state, a political subdivision of another state or other service with this State for which the employee will not receive pensionable credit in another Delaware state pension plan, a county or municipality of this State, the federal government or an accredited private school or college anywhere in the world, provided that the individual pays into the Fund, on or before the date of issuance of the individual's first benefit check, a single lump-sum payment equal to the actuarial value of the pension benefits to be derived from such service credits computed on the basis of actuarial assumptions approved by the Board and the individual's attained age and final average compensation. An individual may not accrue a total of more than 10 years of credited service under this paragraph and under paragraphs (e)(4) and (5) of this section, and any credited service purchased under this paragraph shall not be used to determine eligibility for benefits under this chapter.

(9) Approved medical leave if the employee pays into the Fund prior to the issuance of the employee's first pension check contributions determined by multiplying the rates in effect at the time of payment for employee contributions and state appropriations times the average of the 36 months of creditable compensation used to calculate the individual's pension benefit times the months or fractions thereof so credited. Any credited service purchased for medical leave shall not be used to determine eligibility for benefits under this chapter. For an employee who first became employed before July 1, 1976, the maximum amount of employee contributions and state appropriations used in this calculation will be 5% of the final average compensation.

(10) Approved sabbatical leave other than that provided by § 1325 of Title 14 if the employee pays into the Fund, prior to the issuance of the employee's first pension check, contributions equal to the sum of the employee contributions and state appropriations which would have been made to the Fund during such periods of sabbatical leave, with the amount of such contributions to be determined in accordance with rules and regulations adopted by the Board.

(11) Approved leave, other than approved medical and sabbatical leaves, provided that the employee pays into the Fund, prior to the issuance of the employee's first pension check, contributions determined by multiplying the rates in effect at the time of payment for employee contributions and state appropriations times the average of the 36 months of creditable compensation used to calculate the individual's pension benefit times the months or fractions thereof so credited. Any credited service purchased under this paragraph shall not be used to determine eligibility for benefits under this chapter.

(12) Approved leave granted to an employee without pay, for a definite period of time, inclusive of approved extensions, authorized by the head of the employee's department or agency to assume an elected position in an employee organization as defined in Chapter 40 of Title 14, Chapter 13 of Title 19 and Chapter 16 of Title 19; provided, that within 15 days following the end of each month that such an employee is on such leave, the employee pays contributions equal to the sum of the employee contributions and employer appropriations that would have been made to the Fund based on the salary that would have been paid to the employee had the employee continued to be employed in the capacity in which such employee was employed immediately prior to such leave by an entity described in paragraph (a)(1) of this section during such approved leave of absence.

(13) In determining an employee's eligibility under this chapter, such an employee shall be considered to have been in covered employment during a period of documented interruption not to exceed 2 months and not otherwise provided for in this chapter. The term "documented interruption" shall be defined in the rules and regulations of the Board of Pension Trustees but shall not include interruptions due to termination of employment. Time so credited under this subsection for eligibility shall not be used for the computation of retirement benefits. This subsection shall apply to employees who retire on or after January 1, 1979.

(14) "Equalized state service" shall mean:

a. Years of service as an "employee" as defined in § 5551(5) of this title, multiplied by 30/30, provided that the individual is not accruing nor collecting benefits under Chapter 55A of this title. It shall not include service for which the employee has received the withdrawal benefit provided by § 5580 of this title, or the refund provided by § 5573(b) of this title, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

b. Years of service as an "employee" as defined in § 8351(5) of Title 11, multiplied by 30/25, provided that the individual is not accruing or collecting benefits under subchapter III of Chapter 83 of Title 11. It shall not include service for which the employee has received the withdrawal benefit provided by § 8374 of Title 11, or the refund provided by § 8364(d) of Title 11, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

c. Years of service as an "employee" as defined in § 8801(5) of Title 11, multiplied by 30/25, provided that the individual is not accruing or collecting benefits under Chapter 88 of Title 11. It shall not include service for which the employee has received the withdrawal benefit provided by § 8824 of Title 11, or the refund provided by § 8814(d) of Title 11, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

d. Years of service as a "member" as defined in § 5600 of this title, provided that the individual is not accruing nor collecting benefits under Chapter 56 of this title. It shall not include service for which the employee has received the withdrawal benefit provided by § 5612(b) of this title, or the refund provided by § 5608(b) of this title, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

(15) Service with the Delaware Solid Waste Authority as established by Chapter 64 of Title 7.

(16) Service prior to October 1, 1987, with the county Prothonotary offices provided that the individual was employed by that office immediately prior to October 1, 1987, and further provided that the past service cost associated with such service is paid into the Fund, by the respective counties, on a schedule approved by the Board of Pension Trustees.

(17) Service commencing July 1, 1995, with the Office of Disciplinary Counsel, which office is established by rule of the Delaware Supreme Court.

(18) Service with the county Register in Chancery Office, provided that the individual was employed by that office immediately prior to January 1, 2002, and further provided that the past service cost associated with said service is paid into the Fund by the respective counties or individuals on a schedule approved by the Board of Pension Trustees.

(19) Service with the Jobs for Delaware Graduates (JDG) program a teacher or administrator of the program; provided however, that the individual pays into the Fund, on or before the date of issuance of the individual's first benefit check, a single lump-sum payment equal to the actuarial value of the pension benefits to be derived from such service credit computed on the basis of actuarial assumptions approved by the Board and the individual's attained age and final average compensation. Any credited service purchased under this paragraph shall not be used to determine eligibility for benefits under this chapter. No individual shall purchase more than 1 year of state-credited service for each year of JDG service, up to a maximum total of 5 years provided further, that each year of state-credited service may not result in pension credit for another Delaware Pension Plan.

(20) Service for accrued sick leave, not in excess of 1 year, provided that the employee on or before the date of issuance of the first benefit check, pays into the fund an amount equal to 5% of the final average compensation for each month credited. Periods of accrued sick leave beyond 90 days or the balance for which the employee received payment may be converted to creditable service; 1 month of credited service will be granted for each 21 days of accrued sick leave beyond 90 days or the balance for which the employee received payment. Educational employees will receive credited service based on the contract establishing the employee's school year. Any credited service purchased under this paragraph shall not be used to determine eligibility for benefits under this chapter.

(21) Service for the period of time that an employee was collecting disability benefits pursuant to Chapter 52A of this title.

(f) "Employee" shall mean an individual who:

(1) Is employed by:

a. The State, including elected or appointed officials; or

b. The State Department of Education, a school district which is part of the state school system, the University of Delaware, Delaware State University or Delaware Technical and Community College; or

c. A state agency that is supported wholly or in part by funds granted to the State by the federal government;

(2) Is employed on a full-time or annual basis or on a regular part-time basis, as the terms "full-time or annual basis" and "regular part-time basis" are defined in rules and regulations adopted by the Board, except that an individual whose initial appointment to a gubernatorial appointed board, council or commission occurs after June 30, 2013, shall not be considered employed on a regular part-time basis;

(3) Receives compensation wholly or in part directly from the State Treasury or from the Treasury through an agency within the State that is wholly or in part supported by the State;

(4) a. Is not a member of any other state or municipal retirement system which is financed in whole or in part by the State unless the state pension plan provides for a unified state service pension and the member is not concurrently accruing or collecting benefits under that system; and

b. Is not a member of a county pension plan with respect to which the employee is accruing credited service and to which the employee and/or the State is making contributions on account of employment with the State;

(5) A person who meets the requirements of this subsection shall be regarded as an "employee" during the period such person is on an approved leave and, for school personnel who do not work on 12-month basis, during the period between the expiration of such leave and the beginning of the next regular school term.

(g) (1) "Final average compensation" shall mean $^{1}/_{36}$ of the compensation paid to an employee during any period of 36 consecutive months or any 36 months comprised of 3 periods of 12 consecutive months in that employee's years of service credited under paragraphs (e)(1), (2), and (3) of this section in which that employee's compensation was highest, or the average monthly compensation paid to

an employee during the period of that employee's service credited under paragraphs (e)(1), (2), and (3) of this section if such period is less than 36 months.

(2) The compensation used in calculating "final average compensation" under paragraph (g)(1) of this section includes the dollar amount of the following awards, granted during an employee's employment:

a. Teachers who receive awards under Chapter 89 of Title 14 for teacher of the year program.

b. Merit System employees who receive awards under the "Delaware Award for Excellence and Commitment in State Service" program.

c. Educational support professionals who receive awards under Chapter 89D of Title 14, the educational support professional of the year program.

(3) Employees that receive a final lagged payment for credited service as defined under § 2712 of this title shall have added to their creditable compensation the amount of lag pay that is received in determining the final average compensation to be used in the computation of their pension.

(h) The clause "for which an individual is eligible under the federal Social Security Act" shall mean the old age insurance benefit or the disability insurance benefit for which an individual is or will be eligible by virtue of age and the individual's wage credits under the federal Social Security Act [42 U.S.C. § 301 et seq.], based on the individual's final average compensation and the provisions of the federal Social Security Act [42 U.S.C. § 301 et seq.] in effect when the individual ceased to be an employee under this chapter and computed in accordance with rules and regulations approved by the Board, regardless of any other factors such as, without limitation, whether the employee has made application for social security benefits or is subsequently employed.

(i) "Post-2011 employee" shall mean an employee, as defined in subsection (f) of this section, who is first employed by the State on or after January 1, 2012.

(j) "Prior final average compensation" shall mean $^{1}/_{36}$ of the compensation paid to an employee during any period of 36 consecutive months or any 36 months comprised of 3 periods of 12 consecutive months in that employee's years of service credited under paragraphs (e)(1) through (3) of this section in which that employee's compensation was highest, or the average monthly compensation paid to an employee during the period of that employee's service credited under paragraphs (e)(1) through (3) of this section if such period is less than 36 months, except that compensation in excess of $24,000 during any calendar year or the sum of any partial calendar years in such period of 36 months shall be excluded and total compensation for such period of 36 months shall not exceed $72,000; provided however, that for an employee who, prior to the issuance of that employee's first pension check, pays to the Fund contributions determined in accordance with the rules and regulations approved by the Board equal to the sum of:

(1) The additional employee contributions which would have been made to the Fund if the maximum limit of $24,000 per annum for computing employee contributions had not been applied;

(2) An amount determined by applying the rate of state appropriations to the Fund in effect on December 31, 1976, to that employee's earnings from January 1, 1966, to December 31, 1976, in excess of $24,000 per annum; and

(3) Interest compounded at the rate of 6% per annum on the sum of paragraphs (j)(1) and (2) of this section from the end of the calendar year accrued to the date paid.

"Prior final average compensation" shall then mean "final average compensation" as defined in subsection (f) of this section.

(k) "Specified peace officer" shall mean:

(1) Probation and parole officers and classifications in the Probation and Parole occupational series up to and including the Probation and Parole Director employed by the Department of Correction;

(2) Capitol police officers;

(3) Department of Natural Resources police officers;

(4) University of Delaware Police;

(5) Delaware State University Police;

(6) State Fire Marshal officers;

(7) Division of Alcohol and Tobacco Enforcement agents and classifications in the Alcohol and Tobacco Enforcement Agents occupational series up to and including the Director of Alcohol and Tobacco Enforcement;

(8) Delaware State Police Drug Diversion Unit agents;

(9) Justice of the Peace Court constables; and

(10) Probation and parole officers in the Serious Juvenile Offender Unit and senior probation officers employed by the Division of Services for Children, Youth, and their Families.

(*l*) "911 operator" means a call taker, dispatcher, manager, supervisor, or chief employed by the Delaware State Police or Delaware Capitol Police and responsible for the answering of 911 emergency line calls or dispatching law-enforcement personnel and equipment, including personnel assigned to the Delaware State Police Headquarters Communication Center. Specific job titles included in the definition of "911 operator" are Manager, State Police Telecommunications; Assistant Manager, State Police Telecommunications; Emergency Communications Center Manager; Headquarters Communications Center Manager; Telecommunications Shift Supervisor; Senior Telecommunications Specialist (ERC); and Telecommunications Specialist (PSAP and HQ Communications).

(m) [Repealed.]

(29 Del. C. 1953, § 5501; 57 Del. Laws, c. 592, § 1; 57 Del. Laws, c. 741, § 38A; 58 Del. Laws, c. 180, § 2A-2E; 58 Del. Laws, c. 527, §§ 1A-1C, 1G, 1H; 59 Del. Laws, c. 211, § 1; 59 Del. Laws, c. 474, § 1; 59 Del. Laws, c. 477, § 1; 60 Del. Laws, c. 483, §§ 2-12; 61 Del. Laws, c. 453, §§ 1-5; 61 Del. Laws, c. 454, §§ 1-4; 62 Del. Laws, c. 116, § 1; 62 Del. Laws, c. 139, §§ 1-7; 62 Del. Laws, c. 361, §§ 2-4; 63 Del. Laws, c. 247, § 1; 64 Del. Laws, c. 393, § 2; 65 Del. Laws, c. 342, §§ 1, 2; 66 Del. Laws, c. 185, § 27; 66 Del. Laws, c. 245, § 2; 66 Del. Laws, c. 370, § 1; 67 Del. Laws, c. 86, § 3; 67 Del. Laws, c. 124, §§ 1, 7; 67 Del. Laws, c. 199, § 1; 67 Del. Laws, c. 413, §§ 1, 2; 68 Del. Laws, c. 447, §§ 1, 2; 69 Del. Laws, c. 67, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 187, § 1; 71 Del. Laws, c. 365, § 2; 71 Del. Laws, c. 476, §§ 1-3; 73 Del. Laws, c. 65, §§ 33, 34; 73 Del. Laws, c. 153, § 1; 73 Del. Laws, c. 415, § 1; 73 Del. Laws, c. 436, § 1; 74 Del. Laws, c. 58, § 1; 75 Del. Laws, c. 191, §§ 3, 5; 75 Del. Laws, c. 227, § 8; 78 Del. Laws, c. 14, §§ 9, 10; 79 Del. Laws, c. 45, § 1; 79 Del. Laws, c. 140, § 1; 79 Del. Laws, c. 174, §§ 1, 5; 80 Del. Laws, c. 132, § 1; 80 Del. Laws, c. 403, § 1; 81 Del. Laws, c. 32, § 1; 81 Del. Laws, c. 58, § 15; 81 Del. Laws, c. 154, § 3; 81 Del. Laws, c. 445, § 1; 82 Del. Laws, c. 23, § 1; 82 Del. Laws, c. 241, § 1; 83 Del. Laws, c. 214, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 446, § 1; 84 Del. Laws, c. 514, § 51; 85 Del. Laws, c. 2, § 3.)

§ 5502. Employment of pensioners.

(a) An individual may not receive a service or disability pension under this chapter for any month during which the individual is an employee unless the individual is any of the following and eligible under paragraph (d)(1) of this section:

(1) An official elected by popular vote at a regular state election.

(2) An official appointed by the Governor.

(3) A temporary, casual, seasonal, or substitute employee as defined by the Board of Pension Trustees.

(4) A substitute teacher employed by a school district or charter school in this State.

(5) A temporary justice of the peace appointed pursuant to § 9211 of Title 10.

(6) A per diem employee of the General Assembly.

(b) Nothing in this section shall prevent the State from employing an individual receiving a pension under this chapter as a registration or election official or as a juror. An individual so employed may receive the compensation provided by law without deduction from the individual's pension.

(c) Nothing in this section shall prevent an employee 55 years of age or older from receiving an elected official service or disability pension.

(d) (1) If an individual is less than 59½ years old, the individual is required to have a a bona fide 3-month separation of service from that individual's effective date of retirement before any employment under subsection (a) of this section.

(2) During calendar years 2023 and 2024, earnings from employment under paragraph (a)(3) or (a)(4) of this section are subject to an annual earnings limit of $50,000. If an individual exceeded this allowable earned income, the individual's state pension benefit from this chapter shall be reduced, with a $1.00 deduction for every $2.00 earned over the annual earnings limit. The deduction will begin in July of the year following the calendar year for which the earnings are reported, in a manner as determined by the Board.

(e) Any individual who contracts with an employer participating in the plan or represents any private enterprise that has a contract with an employer participating in the plan must have a 6-month separation of service from such individual's effective date of retirement if the individual is under age 65. The employer shall report to the Board, in a form prescribed by the Board, a certification of the worker's status for the individual. The certification will be used for a determination of the individual meeting the definition of employee under this chapter.

(29 Del. C. 1953, § 5502; 57 Del. Laws, c. 592, § 1; 57 Del. Laws, c. 741, § 38A; 60 Del. Laws, c. 483, § 13; 62 Del. Laws, c. 70, § 1; 63 Del. Laws, c. 423, § 1; 65 Del. Laws, c. 80, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 119, § 1; 73 Del. Laws, c. 18, § 2; 73 Del. Laws, c. 79, § 2; 73 Del. Laws, c. 198, § 1; 73 Del. Laws, c. 430, § 2; 78 Del. Laws, c. 290, § 28; 79 Del. Laws, c. 78, §§ 28, 29; 79 Del. Laws, c. 245, § 1; 81 Del. Laws, c. 79, § 43; 83 Del. Laws, c. 349, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 54, § 1; 85 Del. Laws, c. 150, § 1.)

§ 5503. Attachment and assignment of benefits.

Except for orders of the Delaware Family Court for a sum certain payable on a periodic basis or for benefits payable under § 5546 of this title, the benefits provided by this chapter shall not be subject to attachment or execution and shall be payable only to the beneficiary designated and shall not be subject to assignment or transfer.

(29 Del. C. 1953, § 5503; 57 Del. Laws, c. 592, § 1; 57 Del. Laws, c. 741, § 38A; 68 Del. Laws, c. 176, § 1; 78 Del. Laws, c. 115, § 1.)

§ 5504. Waiver of benefits.

Any individual entitled to any benefits under this chapter may decline to accept all or any part of such benefits by a waiver signed and filed with the Board. Such waiver may be revoked in writing at any time, but no payment of the benefits waived shall be made covering the period during which such waiver was in effect.

(29 Del. C. 1953, § 5504; 57 Del. Laws, c. 592, § 1; 57 Del. Laws, c. 741, § 38A.)

§ 5505. University of Delaware.

Any sections of this chapter to the contrary notwithstanding:

(1) The term "employee" as used in this chapter shall exclude all designated faculty and designated professional staff of the University of Delaware who are first employed by the University after June 1, 1970.

(2) Faculty and designated professional staff of the University of Delaware who, as of January 1, 1971, have less than 5 years of credited service, exclusive of service credited under § 5501(e)(4) or (5) of this title, and are in a position covered by the Teachers' Insurance and Annuity Association Retirement Plan shall cease to be employees under this chapter on January 1, 1971, and shall have their accumulated contributions with interest refunded upon the filing of an application on or after January 1, 1971, in a form prescribed by the Board.

(3) Faculty and designated professional staff of the University of Delaware who, as of January 1, 1971, have had 5 or more years of credited service, exclusive of service credited under § 5501(e)(4) or (5) of this title, and are in a position covered by the Teachers' Insurance and Annuity Association Retirement Plan may, effective January 1, 1971, elect to either:

a. Continue to be an employee under this chapter and continue to make the contributions required under § 5543 of this title; or

b. Cease to be an employee under this chapter and leave their accumulated contributions in the State Employees' Retirement Fund; or

c. Cease to be an employee under this chapter and have their accumulated contributions with interest refunded upon the filing of an application on or after January 1, 1971, in a form prescribed by the Board.

(4) Faculty and designated professional staff who leave their accumulated contributions in the State Employees' Retirement Fund in accordance with paragraph (3)b. of this section shall become eligible to receive a service pension or acquire a vested right to a service pension in accordance with §§ 5522 and 5523 of this title, respectively, provided that their age and total years of credited service under this chapter plus their years of service with the University of Delaware after January 1, 1971, meet the requirements of § 5522 or § 5523 of this title. The amount of the monthly service pension payable to any such faculty or designated professional staff shall be one sixtieth of their final average compensation as of January 1, 1971, multiplied by the number of years, taken to the nearest twelfth of a year, in the period of credited service under this chapter, subject to a maximum of $1,000.

(5) Faculty and designated professional staff who leave their accumulated contributions in the State Employees' Retirement Fund in accordance with paragraph (3)b. of this section shall become eligible to receive a disability pension or, in the event of death before commencement of service or disability pension payments, a monthly survivor's pension shall be payable to their eligible survivor or survivors only if they are eligible to receive a service pension under § 5522(a)(2) or (3) of this title as of January 1, 1971. All other such faculty and designated professional staff shall not become eligible to receive a disability pension or, in the event of death before commencement of service pension payments, a monthly survivor's pension shall not be payable to their eligible survivor or survivors. In the event any such individual dies after commencement of service or disability pension payments, § 5528(b) of this title shall apply, provided that such individual had 15 years of credited service under this chapter, exclusive of service credited under § 5501(e)(4) or (5) of this title, as of January 1, 1971.

(6) By October 1 of each year beginning with 1970, the University of Delaware shall submit to the Board a list of the faculty and designated professional staff who are not employees under this chapter and are covered by the Teachers' Insurance and Annuity Association Retirement Plan, showing the estimated salaries of such faculty and professional staff for the fiscal year beginning July 1 of the following year. The Board shall apply the normal rate of contribution determined in accordance with § 5544 of this title to the total estimated salaries of such faculty and professional staff and report the resulting amount to the Director of the Office of Management and Budget of the State by November 1 of each year beginning with 1970. The State shall appropriate such amount from the General Fund to the University of Delaware each fiscal year, payments of which shall be made in equal monthly installments beginning with the fiscal year beginning July 1, 1971.

(7) a. The term "employee" as used in this chapter shall exclude all professional staff of the University of Delaware who are first employed by the University after June 1, 1974. All professional staff, who as of January 1, 1975, have less than 5 years of credited service, exclusive of service credited under § 5501(e)(4) or (5) of this title, shall cease to be employees under this chapter on January 1, 1975, and shall have their accumulated contributions with interest refunded upon the filing of an application in a form prescribed by the Board.

b. All professional staff who, as of January 1, 1975, have 5 or more years of credited service, exclusive of service credited under § 5501(e)(4) or (5) of this title, and were not previously permitted to make an election in accordance with paragraph (3) of this section shall, effective January 1, 1975, elect 1 of the 3 options in paragraph (3) of this section; paragraphs (4) and (5) of this section shall apply to any such professional staff who elect to leave their accumulated contributions in the State Employees' Retirement Fund in accordance with paragraph (3)b. of this section, except that January 1, 1975, shall be substituted for January 1, 1971, wherever the latter appears in paragraphs (3) and (4) of this section.

(8) Notwithstanding any other provisions of this section to the contrary, hourly and salaried staff employees who become professional employees may elect to continue to be employees under this chapter and make contributions into and be covered by the State Employees' Retirement Fund.

(29 Del. C. 1953, § 5505; 57 Del. Laws, c. 592, § 1; 57 Del. Laws, c. 724; 57 Del. Laws, c. 741, § 38A; 58 Del. Laws, c. 180, § 2F; 59 Del. Laws, c. 478, § 1; 63 Del. Laws, c. 423, § 4; 65 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(13); 79 Del. Laws, c. 174, § 1.)

Subchapter II

Eligibility Requirements and Benefits

§ 5519. Disability insurance option.

(a) An employee who, as of January 1, 2006, has fewer than 5 years of credited service, will be ineligible for disability pension coverage under § 5524 of this title and shall be covered under the Disability Insurance Program under Chapter 52A of this title.

(b) An employee who, as of January 1, 2006, has 5 or more years of credited service may elect either:

(1) To continue coverage under the disability pension provisions of § 5524 of this title; or,

(2) To elect coverage under the Disability Insurance Program provided in Chapter 52A of this title.

This election must be made in a form approved by the Board, and filed prior to December 15, 2005, in the State Pension Office, and shall be effective January 1, 2006. All elections made pursuant to this subsection shall be irrevocable. Members of the Delaware National Guard or members of the U.S. Armed Forces Reserves who are serving on active duty during the period of election required pursuant to this subsection shall elect a coverage option within 45 days of discharge from active duty.

(c) If it is determined by the State Pension Administrator that an employee is or was unable to make this election in a timely manner due to circumstances beyond the employee's control, the Administrator, in the Administrator's sole and absolute discretion, may extend the time period for making the election beyond the periods specified in this section.

(d) An employee who elected disability pension coverage pursuant to subsection (b) of this section, may elect to either: continue coverage under the disability pension provisions under § 5524 of this title; or elect to be covered under the Disability Insurance Program under Chapter 52A of this title. This election must be made in a form approved by the Committee, filed prior to December 15, 2006, to be effective January 1, 2007, and shall be irrevocable; however, if the date of disability is prior to January 1, 2007, coverage in the Disability Insurance Program will commence on the first day the employee returns to work after January 1, 2007. The employee will be required to submit evidence of insurability satisfactory to the carrier. All members of the Delaware National Guard or members of the U.S. Armed Forces Reserves who have been called to active duty must make their election within 45 days of the date they are no longer on active duty.

(75 Del. Laws, c. 191, § 2; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 227, § 6; 75 Del. Laws, c. 351, § 1.)

§ 5520. Retirement option.

When an employee applies for a pension, he or she shall choose either a unified pension or an ordinary pension.

(67 Del. Laws, c. 86, § 5; 70 Del. Laws, c. 186, § 1.)

§ 5521. Amount of unified service, disability or survivor pension.

The amount of the unified pension payable to an employee, former employee or survivor shall be the sum of:

(1) The amount computed according to this chapter exclusive of service credited under § 5501(e)(14) of this title; plus

(2) The sum of the amounts computed, based on credited service as an employee, according to subchapter II of Chapter 55A of this title; subchapter III of Chapter 83 of Title 11; and Chapter 88 of Title 11; and, the amount computed based on credited service as a member, according to Chapter 56 of this title.

(67 Del. Laws, c. 86, § 5; 71 Del. Laws, c. 365, § 3; 79 Del. Laws, c. 174, § 1.)

§ 5522. Eligibility for service pension.

(a) An employee shall become eligible to receive a service pension, beginning with the month after the employee has terminated employment, if:

(1) The employee has 5 years of credited service, exclusive of service credited under § 5501(e)(4), (5) and (12) of this title, and has attained age 62;

(2) The employee has 15 years of credited service, exclusive of service credited under § 5501(e)(4), (5) and (12) of this title, and has attained age 60;

(3) The employee has 30 years of credited service;

(4) The employee has 25 years of credited service, exclusive of service credited under § 5501(e)(4), (5) and (12) of this title, regardless of age;

(5) The employee has 25 years of credited service, exclusive of service credited under § 5501(e)(4), (5) and (12) of this title, regardless of age, and is a Department of Correction employee or a specified peace officer. The employee must have 20 years of credited service as a correction officer or specified peace officer; or

(6) The employee has 25 years of credited service, exclusive of service credited under § 5501(e)(4), (5), and (12) of this title, regardless of age, and is a 911 operator. The employee must have 25 years of credit service as a 911 operator.

(b) A former employee with a vested right to a service pension shall become eligible to receive such pension, computed in accordance with this chapter beginning with the first month after the former employee's attainment of:

(1) Age 60 if credited service is equal to or greater than 20 years and includes service prior to July 1, 1976; or

(2) Age 62 if credited service is equal to or greater than 5 years.

(c) An employee shall become eligible to receive a reduced service pension, beginning with the month after the employee has terminated employment, if the employee has 15 years of credited service, exclusive of service credited under § 5501(e)(4), (5) and (12) of this title, and has attained age 55; the amount of the service pension payable to such an employee shall be reduced by $^{2}/_{10}$ percent of each month the employee is under age 60.

(d) The amount of the service pension payable to an employee who becomes eligible to receive a service pension pursuant to paragraph (a)(4) of this section shall be reduced by $^{2}/_{10}$ percent for each month of credited service the employee has less than 30 years.

(e) A post-2011 employee shall become eligible to receive a service pension, beginning with the month after the employee has terminated employment, if:

(1) The employee has 10 years of credited service, exclusive of service credited under § 5501(e)(12) of this title, and has attained age 65;

(2) The employee has 20 years of credited service, exclusive of service credited under § 5501(e)(12) of this title, and has attained age 60; or

(3) The employee has 30 years of credited service.

(f) A post-2011 employee shall become eligible to receive a reduced service pension, beginning with the month after the employee has terminated employment, if:

(1) The employee has 15 years of credited service, exclusive of service credited under § 5501(e)(12) of this title, and has attained age 55; the amount of the service pension payable to such an employee shall be reduced by $^{4}/_{10}$ percent of each month the employee is under age 60; or

(2) The employee has 25 years of credited service, exclusive of service credited under § 5501(e)(12) of this title, regardless of age; the amount of the service pension payable to such an employee shall be reduced by $^{4}/_{10}$ percent of each month the employee has less than 30 years.

(g) A former post-2011 employee with a vested right to a service pension shall become eligible to receive such pension, computed in accordance with this chapter beginning with the first month after the former post-2011 employee's attainment of age 65 if credited service is equal to or greater than 10 years.

(29 Del. C. 1953, § 5522; 57 Del. Laws, c. 592, § 1; 57 Del. Laws, c. 702; 58 Del. Laws, c. 180, § 3; 60 Del. Laws, c. 483, §§ 15, 16; 62 Del. Laws, c. 392, §§ 1, 2; 63 Del. Laws, c. 423, § 2; 67 Del. Laws, c. 124, §§ 2, 3; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 524, §§ 7, 10; 72 Del. Laws, c. 253, § 1; 78 Del. Laws, c. 14, § 11; 79 Del. Laws, c. 174, §§ 1, 3, 5; 80 Del. Laws, c. 403, § 2; 81 Del. Laws, c. 154, § 2; 81 Del. Laws, c. 445, § 3; 83 Del. Laws, c. 141, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 514, § 52.)

§ 5523. Vested right to service pension.

(a) An employee who is not a post-2011 employee and who has 5 years of credited service exclusive of service under § 5501(e)(4), (5) and (12) of this title shall have a vested right to a pension. A post-2011 employee who has 10 years of credited service exclusive of service under § 5501(d)(12) of this title shall have a vested right to a pension.

(b) A former employee's vested right shall be forfeited upon an application for a refund of the former employee's accumulated contributions.

(29 Del. C. 1953, § 5523; 57 Del. Laws, c. 592, § 1; 60 Del. Laws, c. 483, § 17; 63 Del. Laws, c. 423, § 3; 66 Del. Laws, c. 370, § 2; 67 Del. Laws, c. 124, § 4; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 524, § 8; 78 Del. Laws, c. 14, § 12; 79 Del. Laws, c. 174, § 1.)

§ 5524. Eligibility for disability pension.

(a) An employee who has 5 years of credited service, exclusive of service credited under § 5501(e)(4), (5) and (12) of this title, and develops a disability shall become eligible to receive a disability pension beginning with the fourth month following the inception of his or her disability. Such individual shall cease to be eligible at the end of the month in which he or she recovers from disability and is again offered employment as an employee, if such recovery and offer of employment occurs before his or her attainment of age 60.

(b) Such an employee shall be kept on the active payroll and receive credited service from the inception of the employee's disability to the end of the third month following and shall receive payments at the same rate of compensation the employee received before the employee developed a disability.

(c) An employee shall be deemed to have developed a disability for the purposes of this section if the employee has a physical or mental disability which prevents the employee from performing the duties of the employee's position.

(d) An employee who previously elected to participate in the disability insurance option pursuant to § 5519(b)(2) of this title and has been deemed to have a disability pursuant to § 5253(c) of this title and whose benefit under the disability insurance option has been

discontinued because of the limits of coverage for mental condition or substance abuse have been exhausted, shall be deemed to have a disability for the purposes of this section and be covered under the disability pension provisions of this section.

(29 Del. C. 1953, § 5524; 57 Del. Laws, c. 592, § 1; 60 Del. Laws, c. 483, § 18; 67 Del. Laws, c. 124, § 5; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 524, § 9; 76 Del. Laws, c. 324, § 3; 78 Del. Laws, c. 179, §§ 280-285; 79 Del. Laws, c. 174, § 1.)

§ 5525. Payment of service pension.

Service pension payments shall be made to a retired employee or former employee for each month beginning with the month in which the retired employee or former employee becomes eligible to receive such pension and ending with the month in which the retired employee or former employee dies.

(29 Del. C. 1953, § 5525; 57 Del. Laws, c. 592, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5526. Payment of disability pension.

(a) Disability pension payments shall be made to a retired employee for each month beginning with the month in which the retired employee becomes eligible to receive such pension and ending with the month in which the retired employee ceases to be eligible or dies.

(b) Any disability pensioner who has not attained age 60 shall report to the Board by April 30 each year, beginning in 1972, in a form prescribed by the Board, the total earnings from any gainful occupation or business in the preceding calendar year. The excess of such earnings over $^1/_2$ of the annual rate of compensation, adjusted annually for any increase in the total "Median Usual Weekly Earnings" as published by the U.S. Department of Labor, received before the pensioner developed a disability shall be deducted from the disability pension during the 12 months beginning in July of the year following the calendar year for which earnings are reported, in a manner determined by the Board. If any person received a disability pension for less than 12 months in the calendar year for which earnings are reported, the deduction, if any, shall be determined on a pro rata basis.

(c) Any disability pensioner who was employed as a "police officer" as defined in § 8401 of Title 11 or employed as an officer of the Capitol Police who has not attained age 60 shall report to the Board by April 30 each year, in a form prescribed by the Board, their total earnings from any gainful occupation or business in the preceding calendar year. The excess of such earnings over the annual rate of compensation, adjusted annually for any increase in the total "Median Usual Weekly Earnings" as published by the U.S. Department of Labor, received at the time of the disability shall be deducted from their disability pension during the 12 months beginning in July of the year following the calendar year for which the earnings are reported, in a manner determined by the Board. If any person received a disability pension for less than 12 months in the calendar year for which earnings are reported, the deduction, if any, shall be determined on a pro-rata basis.

(d) Termination of a disability pension on account of recovery from disability shall not prejudice the right of the pensioner to qualify subsequently for a service pension or another disability pension.

(29 Del. C. 1953, § 5526; 57 Del. Laws, c. 592, § 1; 58 Del. Laws, c. 180, § 2G; 63 Del. Laws, c. 310, §§ 1, 2; 68 Del. Laws, c. 364, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 46, § 1; 78 Del. Laws, c. 179, § 286; 83 Del. Laws, c. 83, § 2.)

§ 5527. Amount of ordinary service or disability pension [For application of this section, see 79 Del. Laws, c. 315, § 10].

(a) (1) The amount of the monthly service or disability pension payable to an employee or former employee shall be the sum of 2.0% of the employee's final average compensation multiplied by the number of years, taken to the nearest twelfth of a year, in the employee's period of credited service prior to January 1, 1997, plus 1.85% of the employee's final average compensation multiplied by the number of years, taken to the nearest twelfth of a year, in the employee's period of credited service after December 31, 1996. If the employee is a 911 operator, then the amount of pension would also include 2.45% of the employee's final average compensation multiplied by years of service above 25 years. The amount payable to a participant who does not make the additional contribution provided in § 5501(j) of this title for years of credited service before 1977 shall be the sum of 2.0% of the employee's final average compensation multiplied by the number of years, taken to the nearest twelfth of a year, in the employee's period of credited service between January 1, 1977, and December 31, 1996, plus 2.0% of the employee's final average compensation multiplied by the number of years, taken to the nearest twelfth of a year, in the employee's period of credited service prior to January 1, 1977, provided that the maximum amount based on the service before 1977 is $1,000, plus 1.85% of the employee's final average compensation multiplied by the number of years, taken to the nearest twelfth of a year, in the employee's period of credited service after December 31, 1996.

(2) If the employee is a correction officer or a specified peace officer then the amount of pension shall also include the following:

a. For years of service before December 31, 2021, 2.45% of the employee's final average compensation multiplied by years of service above 25 years.

b. For years of service on or after January 1, 2022, 2.5% of the employee's final average compensation multiplied by the number of years of service for up to 20 years, plus 3.5% of the employee's final average compensation multiplied by the number of years of service above 20 years.

(b) In the case of an employee or former employee whose credited service under § 5501(e)(1), (2) and (3) of this title includes service before June 1970, the minimum amount payable shall be:

(1) If the employee or former employee has 15 years of such credited service, the lesser of $150 or the employee or former employee final average compensation; or

(2) If the employee or former employee does not have 15 years of such credited service, the minimum amount payable under subsection (c) of this section, subject to the limitation specified in subsection (c) of this section.

(c) In the case of an employee or former employee whose credited service under § 5501(e)(1), (2) and (3) of this title does not include service before June 1970, but does include service prior to July 1, 1976, the minimum amount payable shall be $5.00 multiplied by the number of years, taken to the nearest twelfth of a year, in the employee's or former employee's period of credited service, but not more than 30 such years.

(d) (1) Notwithstanding provisions of this chapter to the contrary, an elected official shall receive a pension computed in accordance with this subsection. The service or disability pension payable to the elected official and the survivor's pension payable to the eligible survivor of such individuals shall be computed on the basis of compensation to the elected official as an elected official irrespective of other credited service, with contribution to be determined based upon compensation as an elected official. The minimum amount of pension payable to an individual elected to be a member of the General Assembly before February 28, 2025, shall be computed by multiplying the elected official's years of service as an elected member of the General Assembly times the highest rate of payment being paid to any retired member of the General Assembly, such rate to be computed by dividing the monthly pension being paid to such retired member by the elected official's years of service as an elected member of the General Assembly. The pension payable to an individual elected to be a member of the General Assembly on or after February 28, 2025, shall be computed under paragraph (a)(1) of this section. An elected official elected prior to January 1, 2012, shall be eligible to receive a pension beginning with the first month after the attainment of age 60, provided that the elected official shall have served at least 5 years at the time of the elected official's termination of service as an elected official, or beginning with the first month after attainment of age 55, provided that the elected official shall have served at least 10 years at the time of the elected official's termination of service as an elected official. An elected official elected on or after January 1, 2012, shall be eligible to receive a pension beginning with the first month after the attainment of age 60, provided that the elected official shall have served at least 20 years at the time of the elected official's termination of service as an elected official, or beginning with the first month after attainment of age 65, provided that the elected official shall have served at least 10 years at the time of the elected official's termination of service as an elected official. For the purposes of this section, a member of the General Assembly who is elected on election day in November and serves through the next election day in November will receive full-service credit for that term. Any pension for credited service other than as an elected official shall be determined under the remainder of this chapter as a separate pension.

(2) a. The minimum amount of pension payable to a statewide elected official shall be computed by multiplying the elected official's years of service as an elected official times the highest rate of payment being paid to any retired member of the General Assembly. The employee must elect to receive the minimum pension provided for in this subsection prior to the issuance of the elected official's first benefit check. This election must be made in a form approved by the Board and shall be irrevocable.

b. A statewide elected official receiving a service or disability pension which was effective prior to July 1, 1996, may elect to receive the minimum provisions of subsection (a) of this section. This election must be made in a form approved by the Board, filed prior to July 31, 1996, to be effective August 1, 1995, for statewide elected officials receiving a service or disability pension on July 1, 1996.

(e) Any section of this chapter to the contrary notwithstanding, the amount of the monthly service or disability pension payable to any regular part-time employee who is not employed on a full-time or annual basis, as the term full-time or annual basis is defined in rules and regulations adopted by the Board, shall be determined in accordance with subsection (a) of this section, provided that no minimum amount shall be payable to any such regular part-time employee. However, for any public school cafeteria employee who entered state service on or before July 1, 1971, and who accrues 15 years of credited service as an employee under § 5501(e)(1) of this title by the date of the employee's retirement eligibility, shall receive, beginning at age 62, a minimum amount which, when combined with the social security benefit, shall not be less than $ 200 per month.

(f) Notwithstanding provisions of this chapter to the contrary, the minimum amount of monthly service, including vested, or disability pension payable to any full-time or regular part-time employee shall be $1.00 multiplied by each year of service taken to the nearest $^{1}/_{12}$ of a year. In the case of a regular part-time cafeteria worker also eligible for a minimum pension under subsection (e) of this section, the minimum shall be the greater of subsection (e) or this subsection. The minimums specified in this subsection shall not apply to members of boards or commissions.

(g) (1) Notwithstanding provisions of this chapter to the contrary, an employee may elect to have the employee's service or disability pension computed under this chapter reduced by 2% thereby providing a survivor's pension equal to $^{2}/_{3}$ of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(2) Notwithstanding provisions of this section to the contrary, an employee may elect to have the employee's service or disability pension, computed under this section, reduced by 3% thereby providing a survivor's pension equal to 75% of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(3) Notwithstanding the provisions of this section to the contrary, an individual receiving a service or disability pension which was effective prior to July 1, 1989, or an individual with a vested right to a service pension may elect to have the employee's service or disability pension reduced by 3%, thereby providing a survivor's pension equal to 75% of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to December 15, 1989, to be effective January 1, 1990, for individuals receiving a service or disability pension on July 1, 1989, or, in the case of an individual with a vested right to a service pension, filed prior to the issuance of the employee's first pension check.

(4) Notwithstanding provisions of this chapter to the contrary, an employee may elect to have the employee's service or disability pension computed under this chapter reduced by 6% thereby providing a survivor's pension equal to 100% of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(29 Del. C. 1953, § 5527; 57 Del. Laws, c. 592, § 1; 58 Del. Laws, c. 180, §§ 2H, 2I; 58 Del. Laws, c. 527, § 1F; 60 Del. Laws, c. 214, § 1; 60 Del. Laws, c. 483, §§ 19-22; 61 Del. Laws, c. 409, § 96; 61 Del. Laws, c. 454, §§ 5-9, 12; 61 Del. Laws, c. 455, § 8; 61 Del. Laws, c. 519, § 29; 63 Del. Laws, c. 199, § 1; 63 Del. Laws, c. 244, § 1; 66 Del. Laws, c. 172, § 1; 66 Del. Laws, c. 422, § 1; 67 Del. Laws, c. 47, §§ 66, 69; 67 Del. Laws, c. 86, § 13; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 425, § 75; 70 Del. Laws, c. 524, §§ 1-3; 72 Del. Laws, c. 438, § 1; 73 Del. Laws, c. 146, § 1; 78 Del. Laws, c. 14, §§ 10, 13; 79 Del. Laws, c. 174, §§ 1, 4, 5; 79 Del. Laws, c. 315, § 1; 80 Del. Laws, c. 403, § 3; 83 Del. Laws, c. 141, § 2; 83 Del. Laws, c. 214, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 514, § 53; 85 Del. Laws, c. 121, § 1; 85 Del. Laws, c. 123, § 1.)

§ 5528. Ordinary survivor's pension [For application of this section, see 79 Del. Laws, c. 315, § 10].

(a) (1) Upon the death of an employee who has 5 years of credited service, exclusive of service credited under § 5501(e)(4), (5) and (12) of this title, a monthly survivor's pension shall be payable to his or her eligible survivor or survivors equal to ¾ of the service pension the employee would have been eligible to receive had he or she elected the option provided under § 5527(g) of this title.

(2) A survivor's pension shall begin with the month following the month in which the employee dies. If payable to a widow or widower, it shall cease with the month in which the survivor dies. If payable to a parent, it shall cease with the month in which the parent dies. If payable to a child, it shall cease with the month in which the child dies or fails to meet the conditions of eligibility in paragraph (d)(2) of this section.

(b) (1) Upon the death of an individual receiving a service or disability pension at the time of his or her death, a monthly survivor's pension shall be payable to his or her eligible survivor or survivors equal to the greater of:

a. Fifty percent of such service or disability pension;

b. If such pension was computed under the provisions of § 5527(g)(1) of this title, $^{2}/_{3}$ of such service or disability pension;

c. If such pension was computed under the provisions of § 5527(g)(2) or (3) of this title, 75% of such service or disability pension; or

d. If such pension was computed under the provisions of § 5527(g)(4) of this title, 100% of such service or disability pension.

(2) A survivor's pension shall begin with the month following the month in which the pensioner dies. If payable to a widow or widower, it shall cease with the month in which the survivor dies. If payable to a parent, it shall cease with the month in which the parent dies. If payable to a child, it shall cease with the month in which the child dies or fails to meet the conditions of eligibility in paragraph (d)(2) of this section.

(c) Upon the death of a former employee with a vested right to a pension, a monthly survivor's pension equal to $^{1}/_{2}$ of the former employee's entitlement shall be payable to his or her eligible survivor or survivors beginning with the month that the former employee would have been eligible to receive such pension. If payable to a widow or widower, it shall cease with the month in which the survivor dies. If payable to a parent, it shall cease with the month in which the parent dies. If payable to a child, it shall cease with the month in which the child dies or fails to meet the conditions of eligibility in paragraph (d)(2) of this section.

(d) For the purpose of this section, the eligible survivors of any employee covered under this chapter on or after the effective date of the 1976 Pension Act shall be as follows, provided that an employee may change the priority of eligible survivors specified for herein by designating his or her priority of eligible survivors on a form prescribed by the Board and filed with the Board at the time of the employee's death:

(1) The widow or widower; or

(2) If there is no eligible widow or eligible widower, a child (or, with the survivor's pension divided among them in equal shares, all such children if there are more than 1), provided the child is unmarried and either:

a. Has not attained age 18;

b. Has attained age 18 but not age 22 and is attending school on a full-time basis; or

c. Has attained age 18 and has a permanent disability as the result of a disability which began before the child attained age 18; or

(3) If there is no eligible widow, eligible widower or eligible child, a dependent parent (or, with the survivor's pension divided between them in equal shares, both such parents if there are 2).

(e) The amount payable to a widow or widower who has not attained age 50 at the time the survivor's pension begins shall be actuarially reduced, in accordance with actuarial tables approved by the Board, for each month the survivor is under age 50 at such time. However,

the actuarial reduction for any such widow or widower shall not apply for the period during which such widow or widower has in his or her care a son or daughter who is unmarried and either:

(1) Has not attained age 18;

(2) Has attained age 18 but not age 22 and is attending school on a full-time basis; or

(3) Has attained age 18 and has a permanent disability as the result of a disability which began before the child attained age 18.

(f) A parent shall be deemed to have been dependent on the deceased employee, former employee or pensioner if such individual was receiving at least one half of his or her support from such deceased person at the time of death.

(29 Del. C. 1953, § 5528; 57 Del. Laws, c. 57; 57 Del. Laws, c. 592, § 1; 58 Del. Laws, c. 180, § 2J; 60 Del. Laws, c. 203, §§ 1, 2; 60 Del. Laws, c. 483, §§ 23-26; 61 Del. Laws, c. 454, §§ 10, 11; 64 Del. Laws, c. 417, § 1; 65 Del. Laws, c. 73, §§ 1-5; 66 Del. Laws, c. 159, § 1; 66 Del. Laws, c. 422, §§ 2, 3; 67 Del. Laws, c. 86, § 15; 67 Del. Laws, c. 124, § 6; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 524, §§ 4, 5; 78 Del. Laws, c. 179, §§ 287, 288; 79 Del. Laws, c. 174, § 1; 79 Del. Laws, c. 315, § 2.)

§ 5529. Death benefit.

Upon the death of an employee, former employee or pensioner or if a survivor's pension is payable upon such death, when such pension ceases to be payable, there shall be paid to the designated beneficiary or, in the absence of a designated beneficiary, to the estate of the employee, former employee or pensioner a lump sum equal to the excess, if any, of the accumulated employee contributions with interest over the aggregate of all pension payments made.

(29 Del. C. 1953, § 5529; 57 Del. Laws, c. 592, § 1.)

§ 5530. Withdrawal benefit.

Upon the withdrawal from service of an employee who is not eligible for a service or disability pension, the accumulated contributions with interest shall be paid to the employee.

(29 Del. C. 1953, § 5530; 57 Del. Laws, c. 592, § 1; 61 Del. Laws, c. 453, § 6; 65 Del. Laws, c. 342, § 3; 70 Del. Laws, c. 186, § 1.)

§ 5531. Application for benefits.

(a) A service pension, disability pension, survivor's pension, death benefit or withdrawal benefit shall be paid only upon the filing of an application in a form prescribed by the Board. A monthly benefit shall not be payable for any month earlier than the second month preceding the date on which the application for such benefit is filed. Said 2-month look-back restriction shall not apply to applications pursuant to § 5524 of this title.

(b) The Board may require any employee, former employee or eligible survivor to furnish such information as may be required for the determination of benefits under this chapter, or to authorize the Board to procure such information including, but not limited to, information regarding benefits pursuant to the federal Social Security Act [42 U.S.C. § 301 et seq.]. The Board may withhold payment of any pension under this chapter whenever the determination of such pension is dependent upon such information and the employee, former employee or eligible survivor does not cooperate in the furnishing or procuring thereof.

(c) A service pension, disability pension, or survivor's pension applied for under this act may be paid into a Miller Trust Bank account, pursuant to the creation of an irrevocable income assignment trust ("Miller Trust"), established on behalf of an eligible pensioner or survivor covered under this chapter who is a person with disabilities, so long as the Miller Trust is established consistent with the laws of the State of Delaware, the laws of the United States and in accordance with the rules and regulations of the local and federal agencies responsible for administering assistance programs for persons with disabilities.

(29 Del. C. 1953, § 5531; 57 Del. Laws, c. 592, § 1; 60 Del. Laws, c. 483, § 27; 65 Del. Laws, c. 342, § 4; 75 Del. Laws, c. 135, § 1; 77 Del. Laws, c. 408, § 1.)

§ 5532. Increases in pensions.

(a) Any monthly service or disability pension which became effective on or before January 1, 1993, and is payable on the date this subsection is enacted into law and any survivor pension based on a former service or disability pension that was effective on or prior to January 1, 1993, and is payable on the date this subsection is enacted into law shall be increased effective January 1, 1994, by 1% plus an additional 2% for pensions effective prior to January 1, 1991, up to a maximum of 3% plus .15% for each full month of retirement preceding January 1, 1981, up to a maximum of 9%. These increases shall continue to be paid through June 30, 1994, and every fiscal year thereafter provided that funds are appropriated in accordance with § 5544 of this title.

(b) Any monthly service or disability pension which became effective on or before December 1, 1990, and is payable on July 21, 1994, and any survivor pension based on a former service or disability pension that was effective on or prior to December 1, 1990, and is payable on the date this subsection is enacted into law shall be increased effective April 1, 1995, by 2% plus .10% for each full month of retirement preceding January 1, 1981, up to a maximum of 15%. These increases shall continue to be paid through June 30, 1995, and every fiscal year thereafter provided that funds are appropriated in accordance with § 5544 of this title.

(c) Any monthly service or disability pension which became effective on or before July 1, 1995, and is payable on July 18, 1996, and any survivor pension based on a former service or disability pension that was effective on or before July 1, 1995, and is payable

on July 18, 1996, shall be increased effective July 1, 1996, by 2% plus 1% for pensions that were effective prior to January 1, 1980. These increases shall continue to be paid through June 30, 1997, and every fiscal year thereafter; provided that funds are appropriated in accordance with § 5544 of this title.

(d) Any monthly service or disability pension which became effective on or after July 1, 1976, and is payable on July 18, 1996, and any survivor pension based on a former service or disability pension which became effective on or after July 1, 1976 and is payable on the date this subsection is enacted into law shall also be increased effective July 1, 1996, by the amount of difference between the pensioner's computed benefit under § 5527(a) of this title, as effective July 1, 1996, less the benefit previously awarded under § 5527(a)(1) and (2) of this title [repealed].

(e) Any monthly service or disability pension which became effective on or before July 1, 1996, and is payable on July 9, 1997, and any survivor pension based on a former service or disability pension that was effective on or before July 1, 1996, and is payable on July 9, 1997, shall be increased effective July 1, 1997, in accordance with the following schedule:

Year Pension Became Effective	Percent Increase
Prior to 1974	9%
1974	8%
1975	7%
1976	6%
1977	5%
1978	4%
After 1978	2%

These increases shall continue to be paid through June 30, 1998, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(f) Any monthly service, disability and survivor pension based on a former service or disability pension that was effective on or before July 1, 1997, but after December 31, 1985, and is payable on the effective date of this subsection shall be increased effective July 1, 1998, by 2%. Any monthly service, disability, or survivor pension based on a former service or disability pension that was effective prior to January 1, 1986, shall be increased effective July 1, 1998, by 3% or $20 per month, whichever is greater. These increases shall continue to be paid through June 30, 1999, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(g) Any monthly service, disability and survivor pension based on a former service or disability pension that was effective on or before July 1, 1998, but after December 31, 1979, and is payable on July 9, 1999, shall be increased effective July 1, 1999 by 2%. Any monthly service, disability or survivor pension based on a former service or disability pension that was effective prior to January 1, 1980. Shall be increased effective July 1, 1999 by 3% or $25 per month, whichever is greater. These increases shall continue to be paid through June 30, 2000, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(h) Any monthly service, disability and survivor pension based on a former service or disability pension that was effective on or before June 30, 2000, but after December 31, 1979, and is payable on July 21, 2000, shall be increased effective July 1, 2000, by 2%. Any monthly service, disability, or survivor pension based on a former service or disability pension that was effective prior to January 1, 1980, shall be increased effective July 1, 2000, by 3% or $25 per month, whichever is greater. These increases shall continue to be paid through June 30, 2001, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(i) (1) Any monthly service, disability and survivor pension based on a former service or disability pension that was effective prior to July 1, 2001, and is payable on July 1, 2001, shall be increased effective July 1, 2001, by 1.5%. These increases shall continue to be paid through June 30, 2002, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(2) Any monthly service, disability and survivor pension based on a former service or disability pension that was effective prior to July 1, 2001, and is payable on July 1, 2001, shall be increased effective July 1, 2001, by 0.5%. These increases shall continue to be paid through June 30, 2002, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(j) Any monthly service, disability and survivor pension based on a former service or disability pension that was effective on or before June 30, 2001, but after December 31, 1975, and is payable on September 1, 2003, shall be increased effective September 1, 2003, by 2% or $25 per month, whichever is greater. Any monthly service, disability and survivor pension based on a former service or disability pension that was effective before January 1, 1976, and is payable on September 1, 2003, shall be increased effective September 1, 2003, by 2% or $35 per month, whichever is greater. These increases shall continue to be paid through June 30, 2004, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(k) (1) Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective on or before June 30, 2001, but after December 31, 1975, and is payable on July 1, 2004, shall be increased effective July 1, 2004, by 2%.

Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective before January 1, 1976, and is payable on July 1, 2004, shall be increased effective July 1, 2004, by 2% or $35 per month, whichever is greater. These increases shall continue to be paid through June 30, 2005, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(2) Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective on or before June 30, 2003, but after June 30, 2001, and is payable on July 1, 2004, shall be increased effective July 1, 2004, by 2%. These increases shall continue to be paid through June 30, 2005, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(3) Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective on or before May 31, 2004, but after June 30, 2003, and is payable on July 1, 2004, shall be increased effective July 1, 2004, by 2%. These increases shall continue to be paid through June 30, 2005, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(*l*) Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective on or before June 30, 2004, but after December 31, 1980, and is payable on July 1, 2005, shall be increased effective July 1, 2005, by 2%. Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective before January 1, 1981, and is payable on July 1, 2005, shall be increased effective July 1, 2005, by 2% plus $50 per month. These increases shall continue to be paid through June 30, 2006, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(m) Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective on or before June 30, 2005, but after December 31, 1980, and is payable on July 1, 2006, shall be increased effective July 1, 2006, by 2%. Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective before January 1, 1981, and is payable on July 1, 2006, shall be increased effective July 1, 2006, by 2% or $25 per month, whichever is greater. These increases shall continue to be paid through June 30, 2007, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(n) Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective on or before June 30, 2010, and is payable on January 1, 2012, shall be increased effective January 1, 2012, by 2%. These increases shall continue to be paid through June 30, 2012, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(o) Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective on or before June 30, 2011, and is payable on July 1, 2012, shall be increased effective July 1, 2012, by 1%. These increases shall continue to be paid through June 30, 2013, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(p) Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective on or before June 30, 2013, and is payable on January 1, 2015, shall be increased effective January 1, 2015, by 1%. These increases shall continue to be paid through June 30, 2015, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(q) Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective on or before June 30, 1991, and is payable on July 1, 2021, shall be increased effective July 1, 2021, by 3%. Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective on or before June 30, 2001, but after June 30, 1991, and is payable on July 1, 2021, shall be increased effective July 1, 2021, by 2%. Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective on or before June 30, 2016, but after July 1, 2001, and is payable on July 1, 2021, shall be increased effective July 1, 2021, by 1%. These increases shall continue to be paid through June 30, 2022, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(r) Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective on or before June 30, 1992, and is payable on July 1, 2022, shall be increased effective July 1, 2022, by 3%. Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective on or before June 30, 2017, but after June 30, 1992, and is payable on July 1, 2022, shall be increased effective July 1, 2022, by 2%. These increases shall continue to be paid through June 30, 2023, and every fiscal year thereafter provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(s) Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective on or before June 30, 2004, and is payable on July 1, 2024, shall be increased effective July 1, 2024, by 2%. Any monthly service, disability, and survivor pension based on a former service or disability pension that was effective on or before June 30, 2019, but after June 30, 2004, and is payable on July 1, 2024, shall be increased effective July 1, 2024, by 1%. These increases shall continue to be paid through June 30, 2025, and every fiscal year thereafter, provided that funds are appropriated by the General Assembly in accordance with § 5544 of this title.

(29 Del. C. 1953, § 5532; 57 Del. Laws, c. 592, § 1; 60 Del. Laws, c. 483, §§ 28, 29; 61 Del. Laws, c. 36, § 1; 61 Del. Laws, c. 455, § 3; 62 Del. Laws, c. 6, § 1; 62 Del. Laws, c. 103, § 1; 64 Del. Laws, c. 249, § 1; 65 Del. Laws, c. 489, § 1; 66 Del. Laws, c. 363, § 1; 67 Del. Laws, c. 422, § 1; 69 Del. Laws, c. 105, § 1; 69 Del. Laws, c. 174, § 1; 69 Del. Laws, c. 450, §§ 1,2; 70 Del.

Laws, c. 525, §§ 1, 3; 71 Del. Laws, c. 165, § 1; 71 Del. Laws, c. 397, § 1; 72 Del. Laws, c. 152, § 1; 72 Del. Laws, c. 438, §§ 2, 4; 72 Del. Laws, c. 447, § 1; 73 Del. Laws, c. 146, § 2; 74 Del. Laws, c. 183, § 1; 74 Del. Laws, c. 398, § 1; 75 Del. Laws, c. 136, § 1; 75 Del. Laws, c. 403, § 1; 78 Del. Laws, c. 116, § 1; 78 Del. Laws, c. 289, § 1; 79 Del. Laws, c. 343, § 1; 83 Del. Laws, c. 54, § 32(a); 83 Del. Laws, c. 326, § 16(a); 84 Del. Laws, c. 296, § 19(a).)

§ 5533. Adjustment of benefits.

(a) On and after July 1, 1972, no pension which has been in effect for 3 years shall be subject to adjustment.

(b) The amount of any pension which became effective before 1971 shall be the greater of:

(1) The monthly pension paid in December, 1970;

(2) The correct amount determined as a result of audits made between May, 1971, and June, 1972, inclusive of any increases provided before 1972.

(c) Any pension overpayments discovered as a result of audits made between May, 1971, and June, 1972, shall not be subject to recovery.

(d) If the final average compensation of an employee has been reduced because of a leave of absence resulting from presidential determinations to augment active forces, such employee shall have their final average compensation adjusted by their amount of military compensation. This adjustment will be no greater then what the employee would have received had they remained in employment for the period of leave. The employee will contribute 3% of the amount that was adjusted. Any remaining cost associated with the adjustment will be transferred from the Special Pension Fund authorized by 61 Del. Laws, c. 455.

(e) Any reduction in a state employee's salary, mandated as part of the Fiscal Year 2010 Annual Appropriations Act [77 Del. Laws, c. 84] and implemented during Fiscal Year 2010, shall not be used when computing an employee's final average compensation. Rather, the state employee's base salary as of June 30, 2009, shall be used in calculating the employee's final average compensation as defined in § 5501(g) of this title.

(29 Del. C. 1953, § 5533; 58 Del. Laws, c. 527, § 1E; 59 Del. Laws, c. 457, § 1; 74 Del. Laws, c. 189, § 1; 77 Del. Laws, c. 84, § 85; 79 Del. Laws, c. 174, § 1.)

§ 5534. Corrections officers [Repealed].

Repealed by 63 Del. Laws, c. 452, § 1, effective July 23, 1982.

Subchapter III

Financing and Administration

§ 5541. Establishment of Fund.

There shall be established a State Employees' Retirement Fund, hereinafter referred to as "Fund," to which state appropriations and other employer contributions shall be deposited monthly and to which employee contributions shall be deposited upon deduction from the employee's paycheck and to which earnings on investments, any other contributions, gifts, donations, grants, refunds and reimbursements shall be deposited upon receipt and from which benefits shall be paid and fees and expenses authorized by the Board shall be paid. Subject to Internal Revenue Code § 401(a)(24) [26 U.S.C. § 401(a)(24)], the assets of the Fund will be commingled in the Delaware Public Employees' Retirement System as provided for by § 8308 of this title. The assets of the Fund are held in trust and may not be used for or diverted to any purpose other than for the exclusive benefit of the employees and their beneficiaries.

(29 Del. C. 1953, § 5541; 57 Del. Laws, c. 592, § 1; 58 Del. Laws, c. 180, § 2K; 71 Del. Laws, c. 121, § 3; 76 Del. Laws, c. 279, § 5.)

§ 5542. Board of Pension Trustees.

The Board of Pension Trustees, established by § 8308 of this title, shall be responsible for the general administration of this chapter in accordance with Chapter 83 of this title.

(29 Del. C. 1953, § 5542; 57 Del. Laws, c. 592, § 1; 58 Del. Laws, c. 180, § 2L.)

§ 5543. Employee contributions.

(a) (1) Effective January 1, 1998, employee contributions to the Fund shall be 3% of total annual compensation in excess of $6,000 provided, however, that post-2011 employees will pay an employee contribution rate of 5% of total annual compensation in excess of $6,000. In no event shall total compensation during any calendar year in excess of $6,000 be exempt from contributions.

(2) The employee contribution for a correction officer or specified peace officer shall be 7% of annual compensation.

(3) The employee contribution rate for a 911 operator is 5% of annual compensation in excess of $6,000; provided, however, that a 911 operator who is also a post-2011 employee must pay an employee contribution rate of 7% of annual compensation in excess of $6,000.

(b) Any section of this chapter to the contrary notwithstanding, any individual with 15 years of credited service who commenced receiving a service pension of $250 or less before 1971 shall be paid the accumulated contributions with interest; provided, that the individual would have been entitled to such payment under § 5553 of this title as in effect on May 31, 1970.

(c) Effective July 1, 1997, employee pension contributions made pursuant to this section shall not be subject to adjustment or recovery after the expiration of 3 full calendar years from December 31 of the year in which the contributions were made unless no contributions were paid during that calendar year.

(d) An employee can purchase service credit or repay a withdrawal benefit using a rollover distribution from:

(1) A direct rollover of an eligible rollover distribution from:

a. A qualified plan described in § 401(a) [26 U.S.C. § 401(a)] of the United States Internal Revenue Code;

b. An annuity contract described in § 403(b) [26 U.S.C. § 403(b)] of the United States Internal Revenue Code; or

c. An eligible plan under § 457(b) [26 U.S.C. § 457(b)] of the United States Internal Revenue Code.

(2) A participant contribution of an eligible rollover distribution from:

a. A qualified plan described in § 401(a) [26 U.S.C. § 401(a)] of the United States Internal Revenue Code;

b. An annuity contract described in § 403(b) [26 U.S.C. § 403(b)] of the United States Internal Revenue Code; or

c. An eligible plan under § 457(b) [26 U.S.C. § 457(b)] of the United States Internal Revenue Code.

(3) A participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in § 408 [26 U.S.C. § 408] of the United States Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income.

(29 Del. C. 1953, § 5543; 57 Del. Laws, c. 592, § 1; 58 Del. Laws, c. 527, § 1D; 59 Del. Laws, c. 335, § 1; 60 Del. Laws, c. 483, § 31; 60 Del. Laws, c. 593, § 3; 61 Del. Laws, c. 454, § 13; 63 Del. Laws, c. 452, § 2; 65 Del. Laws, c. 522, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 524, § 6; 71 Del. Laws, c. 165, § 4; 71 Del. Laws, c. 354, § 37; 73 Del. Laws, c. 419, § 1; 78 Del. Laws, c. 14, § 14; 79 Del. Laws, c. 174, §§ 2, 5; 80 Del. Laws, c. 403, § 4; 81 Del. Laws, c. 445, § 4; 83 Del. Laws, c. 214, § 2; 84 Del. Laws, c. 514, § 54.)

§ 5544. Actuarial valuations and appropriations.

(a) The actuary shall prepare an actuarial valuation of the assets and liabilities of the funds as of June 30, each year. On the basis of reasonable actuarial assumptions and tables approved by the Board, the actuary shall determine the normal cost required to meet the actuarial cost of current service and the unfunded actuarial accrued liability.

(b) The State's appropriation to the funds for Fiscal Year 2008, and for each fiscal year thereafter, shall be the percentage of covered payroll approved by the Board on the basis of the most recent actuarial valuation, and shall equal the sum of the normal cost plus the payment required to implement the provisions of subsection (c) of this section plus the payment required to amortize the unfunded actuarial accrued liability using an open amortization period of 20 years. For plan amendments effective after Fiscal Year 2007 the unfunded actuarial accrued liability for such amendments shall be amortized over an open amortization period of 20 years. The amortization payment shall be an amount computed as a level percentage of the prospective total covered payroll over the remainder of the amortization period, with such prospective total covered payroll to be determined on the basis of a growth rate, as determined by the Board, compounded annually. Except as provided in subsection (c) of this section, all funds appropriated pursuant to this subsection shall be deposited into the fund established by § 5541 of this title.

(c) (1) In order to provide a fund for post-retirement increases, the State shall include in its annual appropriation payments equal to 2.33% of covered payroll, subject to the limitations under § 5548(a)(2) of this title. Beginning with the Fiscal Year 1994 budget, 0.70% of covered payroll shall be appropriated; in Fiscal Year 1995, 1.11% of covered payroll shall be appropriated; in Fiscal Year 1996, 1.52% of covered payroll shall be appropriated; in Fiscal Year 1997, 1.93% of covered payroll shall be appropriated; in Fiscal Year 1998 and each fiscal year thereafter 2.33% of covered payroll shall be appropriated. Funds appropriated to implement this subsection shall be deposited into the Post Retirement Fund established under § 5548 of this title.

(2) In order to provide for retiree health insurance under Chapter 52 of this title, the State shall include all of the following in its annual appropriations:

a. The sum of the anticipated cost of the State's retiree health insurance under Chapter 52 of this title for that year.

b. At least 1% of the grand total of all General Fund operating budget appropriations for the prior fiscal year to the OPEB Fund established under § 5281 of this title.

c. Prefunding to the OPEB Fund as follows:

1. In Fiscal Year 2026, in an amount equal to 0.50% of the rate of covered payroll of the Fiscal Year 2026 operating budget.

2. Beginning in Fiscal Year 2027, in an amount equal to an additional 0.25% of covered payroll from the rate of covered payroll the prior fiscal year.

(3) The total appropriated under paragraph (c)(2) of this section must not exceed the annual required contribution determined by the Board of Pension Trustees under § 5283 of Title 29.

(4) a. The appropriations under paragraphs (c)(2)a. and (c)(2)c. of this section must be in the annual operating Budget Appropriation Bill under § 6533 of this title.

b. An appropriation under paragraph (c)(2)b. of this section may be in the annual operating Budget Appropriation Bill or a Supplementary Appropriation Bill under § 6339 of this title.

(d) (1) The State's obligation to the State Employees' Pension Trust Fund, the State Judiciary Retirement Fund and the State Police Retirement Fund to implement the provisions of § 5532(a) of this title shall be the payment required to amortize the unfunded accrued liability over 5 years from January 1, 1994.

(2) The State's obligation to the Special Pension Fund authorized by 61 Del. Laws, c. 455, to implement the provisions of § 5532(a) of this title in Fiscal Year 1994, shall be the lump sum actuarial liability of the benefits granted.

(e) (1) The State's obligation to the State Employees' Pension Trust Fund, the State Judiciary Retirement Fund and the State Police Retirement Fund to implement the provisions of § 5532(b) of this title shall be the payment required to amortize the unfunded accrued liability over 5 years from April 1, 1995.

(2) The State's obligation to the Special Pension Fund authorized by 61 Del. Laws, c. 455, to implement the provision of § 5532(b) of this title in Fiscal Year 1995, shall be the lump sum actuarial liability of the benefits granted.

(f) (1) The State's obligation to the State Employees' Pension Trust Fund, the State Judiciary Retirement Fund and the State Police Retirement Fund to implement the provisions of § 5532(c) and (d) of this title shall be the payment required to amortize the unfunded accrued liability over 5 years from July 1, 1996.

(2) The State's obligation to the Special Pension Fund authorized by 61 Del. Laws, c. 455, to implement the provisions of § 5532(c) of this title in Fiscal Year 1997 shall be the lump sum actuarial liability of the benefits granted.

(g) (1) The State's obligation to the State Employees' Pension Trust Fund, the State Judiciary Retirement Fund and the State Police Retirement Fund to implement the provisions of § 5532(e) of this title shall be the payment required to amortize the unfunded accrued liability over 5 years from July 1, 1997.

(2) The State's obligation to the Special Pension Fund authorized by Volume 61, Chapter 455, Laws of Delaware, to implement the provisions of § 5532(c) of this title in Fiscal Year 1998 shall be the lump sum actuarial liability of the benefits granted.

(h) (1) The State's obligation to the State Employees' Pension Plan, the State Judiciary Retirement Fund, and the New State Police Retirement Fund to implement § 5532(f) of this title shall be the payment required to amortize the unfunded accrued liability over 5 years from July 1, 1998.

(2) The State's obligation to the Special Pension Fund authorized by Volume 61, Chapter 455, Laws of Delaware, to implement § 5532(f) of this title in Fiscal Year 1999 shall be the lump sum actuarial liability of the benefits granted.

(i) (1) The State's obligation to the State Employees' Pension Plan, the State Judiciary Retirement Fund, and the New State Police Retirement Fund to implement the provisions of § 5532(g) of this title shall be the payment required to amortize the unfunded accrued liability over 5 years from July 1, 1999.

(2) The State's obligation to the Special Pension Fund authorized by Volume 61, Chapter 455, Laws of Delaware, to implement the provisions of § 5532(g) of this title in Fiscal Year 2000 shall be the lump sum actuarial liability of the benefits granted.

(j) (1) The State's obligation to the State Employees' Pension Plan, the State Judiciary Retirement Fund and the New State Police Retirement Fund to implement the provisions of § 5532(h) of this title shall be the payment required to amortize the unfunded accrued liability over 5 years from July 1, 2000.

(2) The State's obligation to the Special Pension Fund authorized by Volume 61, Chapter 455, Laws of Delaware, to implement the provisions of § 5532(g) of this title in Fiscal Year 2001 shall be the lump sum actuarial liability of the benefits granted.

(k) (1) The State's obligation to the State Employees' Pension Plan, the State Judiciary Retirement Fund and the New State Police Retirement Fund to implement the provisions of § 5532(i)(1) of this title shall be the payment required to amortize the unfunded accrued liability over 5 years from July 1, 2001, pursuant to § 5548 of this title.

(2) The State's obligation to the State Employees' Pension Plan to implement the provisions of § 5532(i)(2) of this title shall be treated as an actuarial loss during the next actuarial valuation process.

(3) The State's obligation to the Special Pension Fund authorized by 61 Del. Laws, c. 455, to implement the provisions of § 5532(i) of this title shall be treated as an actuarial loss during the next actuarial valuation process of the Special Pension Fund.

(*l*) (1) The State's obligation to the State Employees' Pension Plan, the State Judiciary Retirement Fund, and the New State Police Retirement Fund to implement the provisions of § 5532(j) of this title shall be the payment required to amortize the unfunded accrued liability over 5 years from September 1, 2003, pursuant to § 5548 of this title.

(2) The State's obligation to the Special Pension Fund authorized by 61 Del. Laws, c. 455, to implement the provisions of § 5532(j) of this title shall be treated as an actuarial loss during the next actuarial valuation process of the Special Pension Fund.

(m) (1) The State's obligation to the State Employees' Pension Plan, the State Judiciary Retirement Fund, and the New State Police Retirement Fund to implement the provisions of § 5532(k) of this title shall be the payment required to amortize the unfunded accrued liability over 5 years from July 1, 2004, pursuant to § 5548 of this title.

(2) The State's obligation to the Special Pension Fund authorized by Volume 61, Chapter 455, Laws of Delaware, to implement the provisions of § 5532(k) of this title shall be treated as an actuarial loss during the next actuarial valuation process of the Special Pension Fund.

(n) (1) The State's obligation to the State Employees' Pension Plan, the State Judiciary Retirement Fund, and the New State Police Retirement Fund to implement the provisions of § 5532(*l*) of this title shall be the payment required to amortize the unfunded accrued liability over 5 years from July 1, 2005, pursuant to § 5548 of this title.

(2) The State's obligation to the Special Pension Fund authorized by 61 Del. Laws, c. 455, to implement the provisions of § 5532(*l*) of this title shall be treated as an actuarial loss during the next actuarial valuation process of the Special Pension Fund.

(o) (1) The State's obligation to the State Employees' Pension Plan, the State Judiciary Retirement Fund, and the New State Police Retirement Fund to implement the provisions of § 5532(m) of this title shall be the payment required to amortize the unfunded accrued liability over 5 years from July 1, 2006, pursuant to § 5548 of this title.

(2) The State's obligation to the Special Pension Fund authorized by 61 Del. Laws, c. 455, to implement the provisions of § 5532(m) of this title shall be treated as an actuarial loss during the next actuarial valuation process of the Special Pension Fund.

(p) (1) The State's obligation to the State Employees' Pension Plan, the State Judiciary Retirement Fund, and the New State Police Retirement Fund to implement the provisions of § 5532(n) of this title shall be the payment required to amortize the unfunded accrued liability over 5 years from January 1, 2012, pursuant to § 5548 of this title.

(2) The State's obligation to the Special Pension Fund authorized by Volume 61, Chapter 455, Laws of Delaware, to implement the provisions of § 5532(n) of this title shall be treated as an actuarial loss during the next actuarial valuation process of the Special Pension Fund.

(q) (1) The State's obligation to the State Employees' Pension Plan, the State Judiciary Retirement Fund, and the New State Police Retirement Fund to implement the provisions of § 5532(o) of this title shall be the payment required to amortize the unfunded accrued liability over 5 years from July 1, 2012, pursuant to § 5548 of this title.

(2) The State's obligation to the Special Pension Fund authorized by 61 Del. Laws, c. 455, to implement the provisions of § 5532(o) of this title shall be treated as an actuarial loss during the next actuarial valuation process of the Special Pension Fund.

(r) (1) The State's obligation to the State Employees' Pension Plan, the State Judiciary Retirement Fund, and the New State Police Retirement Fund to implement the provisions of § 5532(p) of this title shall be the payment required to amortize the unfunded accrued liability over 5 years from January 1, 2015, pursuant to 5548 of this title.

(2) The State's obligation to the Special Pension Fund authorized by 61 Del. Laws, c. 455, to implement the provisions of § 5532(p) of this title shall be treated as an actuarial loss during the next actuarial valuation process of the Special Pension Fund.

(s) (1) The State's obligation to the State Employees' Pension Plan, the State Judiciary Retirement Fund, and the New State Police Retirement Fund to implement the provisions of § 5532(q) of this title shall be the payment required to amortize the unfunded accrued liability over 5 years from July 1, 2021, pursuant to § 5548 of this title.

(2) The State's obligation to the Special Pension Fund authorized by 61 Del. Laws, c. 455, to implement the provisions of § 5532(q) of this title shall be treated as an actuarial loss during the next actuarial valuation process of the Special Pension Fund.

(t) (1) The State's obligation to the State Employees' Pension Plan, the State Judiciary Retirement Fund, and the New State Police Retirement Fund to implement the provisions of § 5532(r) of this title shall be funded through the appropriation contained in the Fiscal Year 2023 One-Time Supplemental Appropriations Act for "Post Retirement Increase Supplement - FY 23".

(2) The State's obligation to the Special Pension Fund authorized by 61 Del. Laws, c. 455, to implement the provisions of § 5532(r) of this title shall be treated as an actuarial loss during the next actuarial valuation process of the Special Pension Fund.

(u) (1) The State's obligation to the State Employees' Pension Plan, the State Judiciary Retirement Fund, and the New State Police Retirement Fund to implement the provisions of § 5532(s) of this title shall be funded through the appropriation contained in the Fiscal Year 2025 One-Time Supplemental Appropriations Act for "Post Retirement Increase Supplement - FY 25" and through the Post Retirement Fund established in § 5548 of this title.

(2) The State's obligation to the Special Pension Fund authorized by 61 Del. Laws, c. 455, to implement the provisions of § 5532(s) of this title shall be treated as an actuarial loss during the next actuarial valuation process of the Special Pension Fund.

(69 Del. Laws, c. 104, § 2; 69 Del. Laws, c. 105, § 3; 70 Del. Laws, c. 525, § 4; 71 Del. Laws, c. 165, § 3; 71 Del. Laws, c. 397, § 3; 72 Del. Laws, c. 152, § 3; 72 Del. Laws, c. 438, § 2; 72 Del. Laws, c. 447, § 3; 73 Del. Laws, c. 146, § 6; 74 Del. Laws, c. 183, § 3; 74 Del. Laws, c. 398, § 3; 75 Del. Laws, c. 136, § 3; 75 Del. Laws, c. 403, § 3; 76 Del. Laws, c. 70, § 7; 76 Del. Laws, c. 80, § 68; 78 Del. Laws, c. 116, §§ 3, 4; 78 Del. Laws, c. 289, § 2; 79 Del. Laws, c. 343, § 3; 83 Del. Laws, c. 54, § 32(c); 83 Del. Laws, c. 326, § 16(c); 84 Del. Laws, c. 100, § 1; 84 Del. Laws, c. 296, § 19(c); 84 Del. Laws, c. 469, § 1.)

§ 5545. Full actuarial funding.

No laws establishing special pensions, whether they be service pensions, disability pensions, survivor's pensions or otherwise, shall be enacted by the General Assembly unless, at the time of enactment, an appropriation is passed that provides full actuarial funding for such special pensions.

(61 Del. Laws, c. 336, § 1.)

§ 5546. Burial benefits.

(a) Upon the death of an individual receiving a pension under this chapter the sum of $7,000 shall be paid from the Fund to a designated beneficiary or in the absence of a designated beneficiary the amount of this benefit shall be paid to the deceased pensioner's estate.

(b) The benefit granted under this section shall not be construed as a contractual obligation of the State or of the Pension Fund and may be revised or terminated by an act of the General Assembly.

(c) Benefits granted under this section may be assigned to a licensed funeral home to cover the funeral and associated expenses of the deceased pensioner, subject to the signed consent of the beneficiary or his or her legal guardian using a form approved for such use by the Board of Pension Trustees.

(63 Del. Laws, c. 362, § 1; 66 Del. Laws, c. 168, § 1; 68 Del. Laws, c. 150, § 1; 69 Del. Laws, c. 451, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 169, § 2; 73 Del. Laws, c. 146, § 5; 76 Del. Laws, c. 80, § 89; 78 Del. Laws, c. 115, § 2.)

§ 5547. Employer pickup of employee contributions.

(a) Each participating employer, pursuant to the provisions of § 414(h)(2) of the United States Internal Revenue Code [26 U.S.C. § 414 (h)(2)], shall pick up and pay the contributions which would otherwise be payable by the employees under § 5543 of this title. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the employee's compensation.

(b) Employee contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to an employee. A deduction shall be made from each employee's compensation equal to the amount of the employee's contributions picked up by the employer. This deduction, however, shall not reduce the employee's compensation for purposes of computing benefits under the retirement system pursuant to this chapter.

(c) Employee contributions shall be credited to a separate account within the employee's individual account so that the amount contributed prior to the effective date for the pickup of employee contributions may be distinguished from the amounts contributed on or after the effective date.

(d) The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

(68 Del. Laws, c. 358, § 1.)

§ 5548. Establishment of Post Retirement Benefit Fund.

(a) (1) There shall be established a State Post Retirement Benefit Fund, hereinafter referred to as the "Post Retirement Fund," separate and distinct from the funds established under §§ 5541 and 5601 of this title; § 8393 of Title 11, to which state appropriations and other employer contributions shall be deposited monthly, and to which earnings on investments, refunds and reimbursements shall be deposited upon receipt, and from which such post retirement benefits as the General Assembly may hereafter legislate shall be paid and any fees and expenses authorized by the Board shall be paid. No money shall be disbursed from this fund except for the purpose of providing funding for post retirement increases for employees retired under this chapter; Chapter 56 of this title; Chapter 83 of Title 11.

(2) The Board of Pension Trustees shall review the balance in the Post Retirement Fund at the end of each fiscal year and make any recommendations for adjustments in the funding rate for the succeeding fiscal year to ensure that the rate be sufficient to fund post retirement increases authorized under this section.

(b) (1) In the event that the General Assembly shall introduce legislation proposing post retirement increases, the Board of Pension Trustees shall review each such proposal to determine if sufficient funds are projected to be available in the Post Retirement Fund to provide the funding necessary to fund the increase granted by the General Assembly. In addition, any pension increases granted shall not be substantively automatic. If the Board determines that insufficient funds will be available to fund the increase, the Board shall notify the Governor and the General Assembly that an additional appropriation will be required in order to provide the post retirement increase being proposed.

(2) Any monthly service, disability, and survivor pension based on former service or disability pension that was effective 20 years or more prior to the date of the pension increase and is payable upon the date of the increase, shall be increased greater than any pension that was effective less than 20 years prior to the date of the pension increase.

(69 Del. Laws, c. 104, § 1; 83 Del. Laws, c. 504, § 1.)

§ 5549. Payment of benefits.

Benefits shall be due and payable under this chapter only to the extent provided in this chapter, and neither the State nor the State Employees' Pension Plan shall be liable for any amount in excess of such sums.

(71 Del. Laws, c. 132, § 84.)

§ 5550. Establishment of Post Retirement Health Insurance Premium Fund [Repealed].

Repealed by 76 Del. Laws, c. 70, § 6, effective July 1, 2007.

Part V
Public Officers and Employees
Chapter 55A
County and Municipal Pension Plan
Subchapter I
General Provisions

§ 5551. Definitions.

As used in this chapter:

(1) "Approved medical leave" means a leave of absence from employment, without pay, for a definite period of time, authorized by the employer, and necessitated by the employee's mental and/or physical condition. Approved medical leaves shall not exceed 1 year unless extended by the Board of Pension Trustees.

(2) "Board" shall mean the Board of Pension Trustees established by § 8308 of this title.

(3) "Compensation" shall mean all salary, wages and fees, including overtime payments and special payments for extra duties, payable to a member for service credited under paragraph (4)a. of this section and the value of any maintenance provided for the member as part of such payments.

(4) "Credited service" shall mean, for any individual:

a. Service as an employee after the date of affiliation with the Fund by the employer, excluding any period during which an employee is on an approved medical leave or approved sabbatical leave unless service credit for such period or periods of leave is purchased pursuant to paragraph (4)e. or f. of this section.

b. "Equalized state service" shall mean:

1. Years of service as an "employee" as defined in § 5501(f)(1) and (3) of this title, multiplied by 30/30, provided that the individual is not accruing nor collecting benefits under Chapter 55 of this title. It shall not include service for which the employee has received the withdrawal benefit provided by § 5530 of this title, or the refund provided by § 5523(b) of this title, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

2. Years of service as an "employee" as defined in § 8351(5) of Title 11, multiplied by $^{30}/_{25}$, provided that the individual is not accruing nor collecting benefits under subchapter III of Chapter 83 of Title 11. It shall not include service for which the employee has received the withdrawal benefit provided by § 8374 of Title 11, or the refund provided by § 8364(d) of Title 11, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

3. Years of service as an "employee" as defined in § 8801(5) of Title 11, multiplied by $^{30}/_{25}$, provided that the individual is not accruing nor collecting benefits under Chapter 88 of Title 11. It shall not include service for which the employee has received the withdrawal benefit provided by § 8824 of Title 11, or the refund provided by § 8814(d) of Title 11, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

c. *Restored credited service.* — If a member ceases to be an employee before the member has acquired 5 years of credited service, the member's service credits to the date of termination shall be cancelled but shall be restored if:

1. The member's cessation of employment is due to absence on account of military service, disability or approved leave, under such rules as the Board may adopt, and the member again becomes an employee within 4 months after such absence; or

2. The member again becomes an employee within 4 months after such cessation of employment; or

3. The member subsequently acquires 5 years of credited service, provided that if the member has withdrawn the member's contributions the member repays them with interest at a rate determined by the Board.

d. *Purchased service.* — A member may elect to purchase (i) up to 5 years of credited service for full-time active duty in the Armed Services of the United States, and/or (ii) up to 5 years of credited service for full-time employment performed for another state, a political subdivision of another state or other service with the State for which the employee will not receive pensionable credit in another Delaware State Pension Plan, a county or municipality of the State, the federal government or an accredited private school or college, provided that the member pays into the Fund, on or before the date of issuance of the member's first benefit check, a single lump sum payment equal to the actuarial value of the pension benefits to be derived from such service credits computed on the basis of actuarial assumptions approved by the Board and the member's attained age and final average compensation. Any credited service purchased under this paragraph shall not be used to determine eligibility for benefits under this chapter.

e. Approved medical leave if the member subsequently accrues at least 1 year of credited service under paragraph (4)a. of this section and pays into the Fund prior to the issuance of his or her first pension check, contributions determined by multiplying the rates in effect at the time of payment for member contributions and employer contributions times the average of the 60 months of creditable compensation used to calculate the member's pension benefit times the months or fractions thereof so credited. Any credited service purchased for medical leave shall not be used to determine eligibility for benefits under this chapter.

f. Approved sabbatical leave if the member pays into the Fund, prior to the issuance of his or her first pension check, contributions equal to the sum of the employee contributions and employer contributions which would have been made to the Fund during such periods of sabbatical leave, with the amount of such contributions to be determined in accordance with rules and regulations adopted by the Board.

g. Service as an employee before the date of affiliation with the Fund by the member's employer, provided the actuarially-determined past service cost associated with such service is paid into the Fund on a schedule approved by the Board of Pension Trustees.

(5) "Employee" shall mean:

a. An individual who is employed on a full-time or annual basis or on a regular part-time basis, as the terms "full-time or annual basis" and "regular part-time basis" are defined in rules and regulations adopted by the Board, by an employer;

b. An elected or appointed official;

c. A person defined in paragraph (5)a. or b. of this section during the period he or she is on an approved medical or sabbatical leave;

d. A person who is a paid employee of a volunteer fire company or a volunteer ambulance company in Delaware; or

e. A person who is a paid nonstate employee of the Delaware State Housing Authority or of any of its subsidiaries.

(6) "Employer" shall mean a county or municipality, including state governmental subdivisions, Delaware State Housing Authority, volunteer ambulance companies, and volunteer fire companies, in Delaware which has affiliated with the Fund established by Chapter 55 of this title as provided in § 5555 of this title.

(7) "Final average compensation" shall mean $^{1}/_{60}$ of the compensation paid to an employee during any period of 60 consecutive months or any 60 months comprised of 5 periods of 12 consecutive months in his or her years of credited service in which his or her compensation was highest.

(8) The clause "for which he or she is eligible under the Federal Social Security Act" [42 U.S.C. § 301 et seq.] shall mean the old age insurance benefit or the disability insurance benefit for which a member is or will be eligible by virtue of age and his or her wage credits under the Federal Social Security Act, based on his or her final average compensation and the Federal Social Security Act in effect when the member ceased to be an employee under this chapter and computed in accordance with rules and regulations approved by the Board, regardless of any other factors such as, without limitation, whether the member has made application for social security benefits or is subsequently employed.

(9) "Fund" shall mean the Fund established by § 5593 of this title.

(10) "Inactive member" shall mean a member who:

a. Has terminated service;

b. Is not eligible to begin receiving a service or disability pension; and

c. Has neither applied for nor received a refund of the member's contributions.

(11) "Member" shall mean a person who is an employee on or after the date the employer affiliates with the Fund.

(12) "Retired member" shall mean a member who has terminated service, other than an inactive member, who is eligible to receive a service or disability pension under this chapter.

(62 Del. Laws, c. 398, § 1; 63 Del. Laws, c. 306, §§ 1, 2; 65 Del. Laws, c. 157, § 1; 67 Del. Laws, c. 86, §§ 4, 17; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 425, § 37(a), (b); 71 Del. Laws, c. 132, §§ 91, 92; 74 Del. Laws, c. 226, §§ 2, 3; 75 Del. Laws, c. 132, § 6; 79 Del. Laws, c. 140, § 1; 79 Del. Laws, c. 174, § 1.)

§ 5552. Employment of pensioners.

An individual shall not receive a pension under this chapter for any month during which the individual is an employee, unless the individual is:

(1) An official elected by popular vote at a regular or special election; or

(2) An official appointed by the Governor; or

(3) A temporary employee whose earnings from such temporary employment do not exceed the maximum allowed by social security without affecting social security benefits; or

(4) A registration or election official, or a juror.

(62 Del. Laws, c. 398, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5553. Attachment and assignment of benefits.

Except for orders of the Delaware Family Court for a sum certain payable on a periodic basis, the benefits provided by this chapter shall not be subject to attachment or execution and shall be payable only to the beneficiary designated and shall not be subject to assignment or transfer.

(62 Del. Laws, c. 398, § 1; 71 Del. Laws, c. 337, § 3.)

§ 5554. Waiver of benefits.

Any individual entitled to any benefits under this chapter may decline to accept all or any part of such benefits by a waiver signed and filed with the Board. Such waiver may be revoked in writing at any time, but no payment of the benefits waived shall be made covering the period during which such waiver was in effect.

(62 Del. Laws, c. 398, § 1.)

§ 5555. Optional participation of counties and municipalities.

Any county or municipality, including state governmental subdivisions, Delaware State Housing Authority, volunteer ambulance company, and volunteer fire company, may elect to participate in the State Employees' Pension Fund beginning July 1 of any year on or after July 1, 1981. Application to participate shall be by resolution approved by the governing body of the county or municipality, including state governmental subdivisions and the Delaware State Housing Authority, and shall be submitted to the Board in such form as the Board shall determine, not later than 90 days prior to the date participation is to begin, except such time limit may be reduced by the Board. Any such application, upon approval by the Board, shall be irrevocable. Each participating county and municipality, including state governmental subdivisions and the Delaware State Housing Authority, shall provide such information to the Board as it may require for the administration of this chapter.

(62 Del. Laws, c. 398, § 1; 65 Del. Laws, c. 157, § 2; 70 Del. Laws, c. 425, § 37(c); 71 Del. Laws, c. 132, § 93; 74 Del. Laws, c. 226, § 4.)

Subchapter II

Eligibility Requirements and Benefits

§ 5569. Retirement option.

When a member applies for a pension, he or she shall choose either a unified pension or an ordinary pension.

(67 Del. Laws, c. 86, § 6; 70 Del. Laws, c. 186, § 1.)

§ 5570. Amount of unified service, disability or survivor pension.

The amount of unified pension payable to an employee, former employee or survivor shall be the sum of:

(1) The amount computed according to this chapter, exclusive of service credited under § 5551(4)b. of this title; plus

(2) The sum of the amounts computed, based on credited service as an employee, according to subchapter II of Chapter 55 of this title; subchapter III of Chapter 83 of Title 11; and Chapter 88 of Title 11.

(67 Del. Laws, c. 86, § 6.)

§ 5571. Mandatory retirement.

A member shall retire on the member's mandatory retirement date as established by the employer.

(62 Del. Laws, c. 398, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5572. Eligibility for service pension.

(a) A member shall become eligible to receive a service pension, beginning with the month after the member has terminated employment, if:

(1) The member has 5 years of credited service, and has attained age 62; or

(2) The member has 15 years of credited service, and has attained age 60; or

(3) The member has 30 years of credited service.

(b) An inactive member with a vested right to a service pension shall become eligible to receive such pension, computed in accordance with this chapter in effect when he or she ceased to be an employee, beginning with the first month after his or her attainment of age 62.

(c) A member shall become eligible to receive a reduced service pension beginning with the month after he or she has terminated employment, if he or she has 15 years of credited service, and has attained age 55. The amount of the service pension shall be reduced by four-tenths percent for each month the member is under age 60.

(62 Del. Laws, c. 398, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 132, § 5.)

§ 5573. Vested right to service pension.

(a) A member who has 5 years of credited service shall have a vested right to a pension.

(b) An inactive member's vested right shall be forfeited upon an application for a refund of the member's accumulated contributions and cancellation of membership.

(62 Del. Laws, c. 398, § 1; 68 Del. Laws, c. 364, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5574. Eligibility for disability pension.

(a) A member who has 5 years of credited service, develops a disability and is no longer employed shall become eligible to receive a disability pension beginning with the month following the inception of his or her disability. Such member shall cease to be eligible at the end of the month in which he or she recovers from disability, if such recovery occurs before his or her attainment of age 60.

(b) A member shall be deemed to have a disability who is unable to engage in any substantial gainful activity for which the employee is reasonably suited by training or experience by reason of any medically determinable physical or mental disability which can be expected to result in death or to last for a period of not less than 12 months.

(62 Del. Laws, c. 398, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 289-291.)

§ 5575. Payment of service pension.

Service pension payments shall be made to a retired member for each month beginning with the month in which the retired member became eligible to receive such pension and ending with the month in which the retired member dies.

(62 Del. Laws, c. 398, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5576. Payment of disability pension.

(a) Disability pension payments shall be made to a member for each month beginning with the month in which the member becomes eligible to receive such pension and ending with the month in which the member ceases to be eligible or dies.

(b) Any disability pensioner who has not attained age 60 shall report to the Board by April 30 each year in a form prescribed by the Board, the total earnings from any gainful occupation or business in the preceding calendar year. The excess of such earnings over $^1/_2$ of the annual rate of compensation, adjusted annually for any increase in the total "Median Usual Weekly Earnings" as published by the U.S. Department of Labor, received by the pensioner before the pensioner developed a disability shall be deducted from the disability pension during the 12 months beginning in July of the year following the calendar year for which earnings are reported, in a manner determined by the Board. If any person received a disability pension for less than 12 months in the calendar year for which earnings are reported, the deduction, if any, shall be determined on a pro rata basis.

(c) Termination of a disability pension on account of recovery from disability shall not prejudice the right of the retired member to qualify subsequently for a service pension or another disability pension.

(62 Del. Laws, c. 398, § 1; 68 Del. Laws, c. 364, § 3; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 292.)

§ 5577. Amount of monthly service or disability pension [For application of this section, see 79 Del. Laws, c. 315, § 10].

(a) The amount of the monthly service or disability pension payable to a retired member shall be $^1/_{60}$ of the retired member's final average compensation multiplied by the number of years, taken to the nearest twelfth of a year, in the retired member's period of credited service.

(b) Notwithstanding provisions of this chapter to the contrary, a member may elect to have his or her service or disability pension computed under this chapter reduced by 2% thereby providing a survivor's pension equal to $^2/_3$ of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(c) Notwithstanding provisions of this chapter to the contrary, a member may elect to have his or her service or disability pension computed under this chapter reduced by 3% thereby providing a survivor's pension equal to 75% of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(d) Notwithstanding provisions of this chapter to the contrary, a member may elect to have his or her service or disability pension computed under this chapter reduced by 6% thereby providing a survivor's pension equal to 100% of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(62 Del. Laws, c. 398, § 1; 67 Del. Laws, c. 86, § 14; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 132, § 1; 79 Del. Laws, c. 315, § 4.)

§ 5578. Ordinary survivor's pension.

(a) Upon the death of a member in service who has 5 years of credited service, a monthly survivor's pension shall be payable to his or her eligible survivor or survivors equal to $^1/_2$ of the service pension for which the employee would have been eligible if he or she had been 62 years of age.

(b) Upon the death of a retired member, a monthly survivor's pension shall be payable to the retired member's eligible survivor or survivors equal to $^1/_2$ of such service or disability pension.

(c) For the purpose of this section, the eligible survivors of a member or retired member shall be as follows, provided that a member may change the priority of eligible survivors specified for herein by designating his or her priority of eligible survivors on a form prescribed by the Board and filed with the Board at the time of the member's death:

(1) The widow or widower, provided such person had been married to the deceased member for at least 1 year before the date of death; or

(2) If there is no eligible widow or eligible widower, a child (or with the survivor's pension divided among them in equal shares, all such children if there are more than 1), provided the child is unmarried and either:

a. Has not attained age 18;

b. Has attained age 18 but not age 22 and is attending school on a full-time basis; or

c. Has attained age 18 and has a permanent disability as the result of a disability which began before the child attained age 18; or

(3) If there is no eligible widow, eligible widower or eligible child, a dependent parent (or, with the survivor's pension divided between them in equal shares, both such parents if there are 2).

(d) The amount payable to a widow or widower who has not attained age 50 at the time the survivor's pension begins shall be actuarially reduced, in accordance with actuarial tables approved by the Board, for each month the survivor is under age 50 at such time; provided, however, that the actuarial reduction for any such widow or widower shall not apply for the period during which such widow or widower has in his or her care a son or daughter who is unmarried and either:

(1) Has not attained age 18;

(2) Has attained age 18 but not age 22 and is attending school on a full-time basis; or

(3) Has attained age 18 and has a permanent disability as the result of a disability which began before the child attained age 18.

(e) A parent shall be deemed to have been dependent on the member or retired member who was receiving at least $^1/_2$ of his or her support from the member at the time of the member's death.

(f) A survivor's pension shall begin with the month following the month in which the member or retired member dies. If payable to a widow or widower, it shall cease with the month in which the survivor dies or marries. If payable to a parent, it shall cease with the month in which the parent dies. If payable to a child, it shall cease with the month in which the child dies or fails to meet the conditions of eligibility in paragraph (c)(2) of this section.

(62 Del. Laws, c. 398, § 1; 67 Del. Laws, c. 86, § 15; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 132, § 2; 78 Del. Laws, c. 179, § 293.)

§ 5579. Death benefit.

Upon the death of a member, inactive member, retired member or individual receiving a survivor's pension, there shall be paid to the designated beneficiary or beneficiaries or, in the absence of a designated beneficiary, to the estate of the member, inactive member, retired member or survivor, a lump sum equal to the excess, if any, of the accumulated member contributions with interest over the aggregate of all pension payments made.

(62 Del. Laws, c. 398, § 1.)

§ 5580. Withdrawal benefit.

Upon the withdrawal from service of a member who is not eligible for a service or disability pension, the accumulated contributions with interest shall be paid to the member.

(62 Del. Laws, c. 398, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 132, § 7.)

§ 5581. Application for benefits.

(a) A service pension, disability pension, survivor's pension, death benefit or withdrawal benefit shall be paid only upon the filing of an application in a form prescribed by the Board. A monthly benefit shall not be payable for any month earlier than the second month preceding the date on which the application for such benefit is filed. In no event shall a withdrawal benefit be paid to an individual whose application is filed more than 5 years after the date the individual first becomes eligible to receive such benefit.

(b) The Board may require any member, inactive member, retired member or eligible survivor to furnish such information as may be required for the determination of benefits under this chapter, or to authorize the Board to procure such information including, but not limited to, information regarding benefits pursuant to the Federal Social Security Act [42 U.S.C. § 301 et seq.]. The Board may withhold payment of any pension under this chapter whenever the determination of such pension is dependent upon such information and the member, inactive member, retired member or eligible survivor does not cooperate in the furnishing or procuring thereof.

(c) A service pension, disability pension, or survivor's pension applied for under this act may be paid into a Miller Trust Bank account, pursuant to the creation of an irrevocable income assignment trust ("Miller Trust"), established on behalf of an eligible pensioner or survivor covered under this chapter who is a person with disabilities, so long as the Miller Trust is established consistent with the laws of the State of Delaware, the laws of the United States and in accordance with the rules and regulations of the local and federal agencies responsible for administering assistance programs for persons with disabilities.

(62 Del. Laws, c. 398, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 408, § 3.)

§ 5582. Increases in pensions.

Any monthly service pension, disability pension or survivor pension based on a former service or disability pension which is payable on July 7, 2005, shall be increased effective July 1, 2005, by the amount of difference between the pensioner's computed benefit under § 5577 of this title, as effective July 1, 2005, less the benefit previously awarded under § 5577 of this title.

(75 Del. Laws, c. 132, § 4.)

Subchapter III

Financing and Administration

§ 5591. Member contributions.

(a) Effective January 1, 2006, employee contributions to the Fund shall be 3% of total annual compensation in excess of $6,000. In no event shall total compensation during any calendar year in excess of $6,000 be exempt from contributions.

(b) An employee can purchase service credit or repay a withdrawal benefit using a rollover distribution from:

(1) A direct rollover of an eligible rollover distribution from:

a. A qualified plan described in § 401(a) [26 U.S.C. § 401(a)] of the United States Internal Revenue Code;

b. An annuity contract described in § 403(b) [26 U.S.C. § 403(b)] of the United States Internal Revenue Code; or

c. An eligible plan under § 457(b) [26 U.S.C. § 457(b)] of the United States Internal Revenue Code.

(2) A participant contribution of an eligible rollover distribution from:

a. A qualified plan described in § 401(a) [26 U.S.C. § 401(a)] of the United States Internal Revenue Code;

b. An annuity contract described in § 403(b) [26 U.S.C. § 403(b)] of the United States Internal Revenue Code; or

c. An eligible plan under § 457(b) [26 U.S.C. § 457(b)] of the United States Internal Revenue Code.

(3) A participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in § 408 [26 U.S.C. § 408] of the United States Internal Revenue Code that is eligible to be rolled over and would otherwise be includible in gross income."

(62 Del. Laws, c. 398, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 419, §§ 2, 3; 75 Del. Laws, c. 132, § 3.)

§ 5592. Employer contributions.

The contribution of an employer for each fiscal year shall be the percentage of covered payroll approved by the Board on the basis of the most recent actuarial valuation, and shall equal:

(1) The normal cost; plus

(2) Adjustments for actuarial gains and losses or increases in benefits adopted on or subsequent to participation; plus

(3) Administrative costs.

(62 Del. Laws, c. 398, § 1.)

§ 5593. Establishment of Fund.

There shall be established a County and Municipal Employees' Retirement Fund, hereinafter referred to as the "Fund," separate and distinct from the Fund established under Chapter 55 of this title, to which county or municipal appropriations and other employer contributions shall be deposited monthly, and to which member contributions shall be deposited upon deduction from the member's paycheck, and to which earnings on investments, refunds and reimbursements shall be deposited upon receipt, and from which benefits shall be paid and fees and expenses authorized by the Board shall be paid. Subject to Internal Revenue Code § 401(a)(24) [26 U.S.C. § 401(a)(24)], the assets of the Fund will be commingled in the Delaware Public Employees' Retirement System as provided for by § 8308 of this title. The assets of the Fund are held in trust and may not be used for or diverted to any purpose other than for the exclusive benefit of the employees and their beneficiaries.

(67 Del. Laws, c. 86, § 18; 71 Del. Laws, c. 121, § 8; 76 Del. Laws, c. 279, § 8.)

§ 5594. Employer pickup of member contributions.

(a) Each participating employer, pursuant to the provisions of § 414(h)(2) of the United States Internal Revenue Code [26 U.S.C. § 414(h)(2)], shall pick up and pay the contributions which would otherwise be payable by the members under § 5591 of this title. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the member's compensation.

(b) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each member's compensation equal to the amount of the member's contributions picked up by the employer. This deduction, however, shall not reduce the member's compensation for purposes of computing benefits under the retirement system pursuant to this chapter.

(c) Member contributions shall be credited to a separate account within the member's individual account so that the amount contributed prior to the effective date for the pickup of member contributions may be distinguished from the amounts contributed on or after the effective date.

(d) The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

(68 Del. Laws, c. 358, § 2.)

§ 5595. Payment of benefits.

Benefits shall be due and payable under this chapter only to the extent provided in this chapter, and neither the State nor the County and Municipal Employees' Retirement Fund shall be liable for any amount in excess of such sums.

(71 Del. Laws, c. 132, § 89.)

Part V
Public Officers and Employees

Chapter 56
Pensions for State Judicial Officers

§ 5600. Definitions.

For purposes of this chapter:

(1) "Board" means the Board of Pension Trustees established under § 8308 of this title.

(2) "Closed plan" means the eligibility and benefit pensions under this chapter in effect on June 30, 1980.

(3) "Commissioner" means an individual appointed under § 511, § 915, or § 1315 of Title 10.

(4) "Final average compensation" means the member's average annual compensation during the member's highest paid 3 years, comprised of 3 periods of 12 consecutive months, for service as a state judicial officer, or the average annual compensation during the period of the member's service as a state judicial officer if such period is less than 3 years.

(5) "Magistrate in Chancery" means an attorney designated by, and serving at the pleasure of, the Chancellor of the Court of Chancery on a full-time basis.

(6) "Member" means a state judicial officer who accepts the provisions of this chapter.

(7) "Service" means all of the following:

a. Employment as a state judicial officer.

b. Years of service as an "employee" as defined in § 5501(f)(1), (f)(2), and (f)(3) of this title, excluding service as an elected official. It does not include service for which the employee has received the refund provided by § 5523(b) of this title, unless such refund is first repaid with interest at a rate determined by the Board.

c. Employment with the Municipal Court for the City of Wilmington prior to January 1998 if the individual is subsequently employed as a state judicial officer. An individual may receive credit for such previous service upon payment to the Fund, on or before the date of issuance of the individual's first benefit check or not later than March 23, 2003 (whichever is later), of a single lump sum payment equal to the actuarial value of the pension benefits to be derived from such service credits computed on the basis of actuarial assumptions approved by the Board and the individual's attained age and final average compensation.

(8) "State judicial officer" means an individual who is appointed to the Delaware state judiciary.

(9) "State judiciary" means the officers listed in § 2 of Article IV of the Delaware Constitution and any other officer for whom all of the following apply:

a. Is appointed by 1 of the following methods:

1. By the Governor with confirmation by the Senate, as prescribed under Article IV of the Delaware Constitution.

2. As prescribed by §§ 511, 915, and 1315 of Title 10, for a Commissioner.

3. By the Chancellor of the Court of Chancery, for a Magistrate in Chancery.

b. Receives the officer's entire remuneration as a state judicial officer in the form of a salary paid by this State.

c. Is by law during this tenure of office either prohibited from practicing law, or else prohibited from engaging in any other gainful occupation.

(62 Del. Laws, c. 415, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 476, § 4; 74 Del. Laws, c. 8, § 1; 75 Del. Laws, c. 134, § 1; 79 Del. Laws, c. 140, § 1; 79 Del. Laws, c. 174, § 1; 83 Del. Laws, c. 283, § 42; 84 Del. Laws, c. 446, § 1; 85 Del. Laws, c. 2, § 3.)

§ 5601. State Judiciary Retirement Fund; contributions; use; division of benefits into plans.

(a) (1) There shall be established a State Judiciary Retirement Fund, hereinafter referred to as "Fund." Each member who elects or who has elected the provisions of this chapter and:

a. Who was first appointed to the state judiciary before July 1, 1980, and is a member covered by the closed plan, shall contribute $500 to the Fund each year for the first 25 years of service; or

b. Who is a member covered by the revised plan before February 9, 2025, shall contribute to the Fund each year for the first 24 years of service an amount equal to 3% of annual compensation in excess of $6,000 up to the Social Security wage base, and 5% of total compensation in excess of the Social Security wage base. Total compensation during any calendar year in excess of $6,000 may not be exempt from contributions; or

c. Who is a member first covered by the revised plan on or after February 9, 2025, other than an individual who first becomes a member under § 5605(e)(2)b. of this title, shall contribute to the Fund each year for the first 24 years of service an amount equal to 5% of annual compensation in excess of $6,000 up to the Social Security wage base, and 5% of total compensation in excess of the Social Security wage base. Total compensation during any calendar year in excess of $6,000 may not be exempt from contributions.

(2) Effective July 1, 1997, employee pension contributions made under this section are not subject to adjustment or recovery after the expiration of 3 full calendar years from December 31 of the year in which the contributions were made unless no contributions were paid during that calendar year.

(b) The Board of Pension Trustees shall invest and accumulate the contributions made to the Fund and shall pay all pensions under this chapter from the Fund. If at any time there shall be insufficient money in the Fund for the purposes of this chapter, the Secretary of Finance shall transfer funds from the General Fund to make up any such deficiency. Subject to Internal Revenue Code § 401(a)(24) [26 U.S.C. § 401(a)(24)], the assets of the Fund will be commingled in the Delaware Public Employees' Retirement System as provided for by § 8308 of this title. The assets of the Fund are held in trust and may not be used for or diverted to any purpose other than for the exclusive benefit of the employees and their beneficiaries.

(c) The benefit provisions of this chapter are divided into 2 plans, the closed plan and the revised plan. Members of the state judiciary first appointed before July 1, 1980, who do not elect, as provided in § 5605 of this title, to accept the revised plan are members covered by the closed plan even through reappointments to the state judiciary. All other state judicial officers who accept the provisions of this chapter, as provided in § 5605 of this title, are members covered by the revised plan.

(29 Del. C. 1953, § 5602; 50 Del. Laws, c. 119, § 1; 50 Del. Laws, c. 554, § 1; 56 Del. Laws, c. 198, § 1; 57 Del. Laws, c. 741, §§ 39B, 39C; 60 Del. Laws, c. 649, § 1; 62 Del. Laws, c. 415, §§ 2, 3; 71 Del. Laws, c. 121, §§ 6, 7; 71 Del. Laws, c. 165, § 5; 71 Del. Laws, c. 354, § 38; 76 Del. Laws, c. 279, § 6; 84 Del. Laws, c. 446, § 2; 85 Del. Laws, c. 2, §§ 1, 3.)

§ 5602. Closed plan — Requirements for pension benefits; benefits to surviving widow or widower.

(a) Each member covered by the closed plan shall, upon the member's involuntary retirement from the state judiciary after serving at least 12 years as a judge, including all years of judicial service in Delaware of the retiring judge both prior and subsequent to the member becoming a member of the state judiciary and both prior and subsequent to the member filing a declaration of acceptance of the provisions of this chapter in accordance with § 5605 of this title, receive an annual pension from the State, payable to the member in equal monthly installments, commencing when the member has attained the age of 65 years, or commencing upon involuntary retirement in case the member has reached the age of 65 years prior to such retirement, and continuing during the remainder of the member's lifetime.

(b) Each member covered by the closed plan shall, upon the member's retirement from the state judiciary, whether voluntary or involuntary, after serving at least 24 years as a judge or who is involuntarily retired after having served 22 years as a judge, including all years of judicial service in Delaware of the retiring judge both prior and subsequent to the member becoming a member of the state judiciary and both prior and subsequent to the member filing a declaration of acceptance of this chapter in accordance with § 5605 of this title, or after having reached the age of 65 years and having served at least 12 years as a judge, receive an annual pension from the State, payable to the member in equal monthly installments, commencing upon the date of retirement and continuing during the remainder of the member's lifetime.

(c) If a member of the state judiciary shall develop a permanent physical or mental disability, while in office, the member shall, from and after the ascertainment of such disability in the manner hereafter set forth, receive an annual pension from the State, payable in equal monthly installments during the remainder of the member's lifetime. A member of the state judiciary may be deemed to have a permanent physical or mental disability and unable to perform the duties of the member's office after the Board of Pension Trustees have considered a certificate to that effect signed by the Chief Justice of the Supreme Court or, if the Chief Justice shall be the subject of such certificate, by the senior Justice of the Supreme Court and by 3 persons duly licensed to practice medicine or surgery in this State and who have been actively engaged in such practice in this State for at least 10 years immediately preceding the signing of such certificate; said 3 persons to be previously designated by the Trustees.

(d) Whenever a member covered by the closed plan shall die while in office or shall die after retirement on a pension payable under this chapter or shall die during a period of involuntary retirement after having served at least 12 years as a judge but before having reached the age of 65, an annual pension shall be paid in the following contingencies:

(1) If such judge is survived by a widow or widower but not by a dependent child, there shall be paid to such widow or widower an annual pension as long as the widow or widower lives and remains unmarried; or

(2) If such judge is survived by a widow or widower and a dependent child or children, there shall be paid to such widow or widower an annual pension as long as the widow or widower lives and remains unmarried, but if the widow or widower should die or remarry before the last of the said dependent children shall become independent as provided in this section or shall die, whichever first occurs, the said annual pension which would have been payable to the widow or widower but for the widow's or widower's death or remarriage shall be divided into as many shares as there are dependent children then surviving and a said share shall be paid to or on behalf of each child annually until the child becomes independent or dies, whichever first occurs; or

(3) If such judge leaves no surviving widow or widower but leaves a surviving dependent child or children, the annual pension which would otherwise be paid to a surviving widow or widower shall be divided into as many shares as there are dependent children then surviving, and a said share shall be paid to or on behalf of each child annually until the said child becomes independent or dies, whichever first occurs.

As used in this section, the term "dependent child" means an unmarried child, including stepchild or an adopted child, who is under the age of 18 years.

(e) For the purpose of computing service under this chapter, a judge shall be deemed to commence serving as a judge on the date the judge's commission is issued by the Governor.

(f) [Repealed.]

(29 Del. C. 1953, § 5603; 50 Del. Laws, c. 119, § 1; 50 Del. Laws, c. 533, § 1; 50 Del. Laws, c. 554, § 2; 53 Del. Laws, c. 242, § 1; 55 Del. Laws, c. 428, § 1; 56 Del. Laws, c. 198, § 2; 57 Del. Laws, c. 741, §§ 39B, 39C; 58 Del. Laws, c. 527, § 4; 62 Del. Laws, c. 415, §§ 7-10; 64 Del. Laws, c. 154, § 1; 64 Del. Laws, c. 309, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 66, § 1; 78 Del. Laws, c. 179, §§ 294-296.)

§ 5603. Closed plan — Amount of pensions; method of determining.

For members covered by the closed plan:

(1) The amount of the annual pension shall be determined by first arriving at the retiring member's average annual compensation during the member's highest paid 3 years comprised of 3 periods of 12 consecutive months for the member's services as a judge or, in the event a judge becomes entitled to a pension prior to having served 3 years as a judge, then the average annual compensation during the member's entire term for the member's services as a judge and multiplying the average annual compensation so computed by 3% and then multiplying the product thus obtained by the total number of years of service as a judge (including fractions of years), including all years of service of the retiring judge both prior and subsequent to becoming a member of the state judiciary and both prior and subsequent to filing a declaration of acceptance of the provisions of this chapter in accordance with § 5605 of this title.

(2) a. Anything to the contrary in this subsection notwithstanding, the maximum pension which a retired judge shall receive is $^{3}/_{4}$ of the average annual compensation during the retired judge's highest paid 3 years comprised of 3 periods of 12 consecutive months. Anything to the contrary in this subsection notwithstanding, the minimum pension which a retired judge shall receive is $^{1}/_{2}$ of the retired judge's average annual compensation during the judge's highest paid 3 years comprised of 3 periods of 12 consecutive months, or, in the event a judge retires before the judge has served 3 years as a judge, then one half the average annual compensation during such retired judge's entire term of service.

b. Anything to the contrary in this section notwithstanding, the pension of a retired judge who has served more than 25 years and who retires between January 1, 1988, and December 31, 1989, shall be three fourths of his or her average annual compensation to be computed based on a period equal to the retired judge's highest paid 60 consecutive months reduced by 1 month for each month of service as a judge in excess of 25 years up to a maximum reduction of 24 months. In no case shall a retired judge's average annual compensation as calculated under this paragraph be based on a period of less than 36 months.

(3) The amount of the annual pension paid to any widow or dependent children of a deceased member of the state judiciary shall be an amount equal to $^{2}/_{3}$ of the annual pension such member of the state judiciary, if the member dies while in office, would have been entitled to receive if the member had retired for disability on the day of the member's death or shall be an amount equal to $^{2}/_{3}$ of the pension of the deceased member of the state judiciary if the member died after having retired on pension. The amount of an annual pension paid to any widow or dependent children of a deceased member of the state judiciary who shall die during a period of involuntary retirement after having served at least 12 years as a judge, but before having reached age 65, shall be an amount equal to $^{2}/_{3}$ of the annual pension such member of the state judiciary would have been entitled to receive if the member had lived to the age of 65. Such pensions shall be paid in equal monthly installments.

(29 Del. C. 1953, § 5604; 50 Del. Laws, c. 119, § 1; 50 Del. Laws, c. 533, § 2; 53 Del. Laws, c. 242, § 2; 56 Del. Laws, c. 198, § 3; 62 Del. Laws, c. 415, § 11; 66 Del. Laws, c. 156, §§ 1, 2; 66 Del. Laws, c. 346, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 476, §§ 5, 6; 77 Del. Laws, c. 66, § 2.)

§ 5604. Definition of involuntary retirement.

Retirement from the state judiciary is deemed to be involuntary if 1 of the following applies:

(1) For a state judicial officer other than a Magistrate in Chancery, on expiration of the state judicial officer's term of office, the state judicial officer is not reappointed and confirmed, unless the state judicial officer declines reappointment.

(2) For a Magistrate in Chancery, the Magistrate in Chancery fails to continue to serve at the pleasure of the Chancellor, unless the Magistrate in Chancery declines to continue to serve at the pleasure of the Chancellor.

(29 Del. C. 1953, § 5605; 50 Del. Laws, c. 119, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 446, § 3; 85 Del. Laws, c. 2, § 3.)

§ 5605. Acceptance of provisions; result.

(a) (1) Each new state judicial officer may accept the provisions of this chapter by 1 of the following:

a. Written declaration to that effect within 30 days following the member becoming a state judicial officer.

b. Through the authorization by the member to permit deductions for the contributions provided in § 5601 of this title.

(2) a. The declaration of acceptance under paragraph (a)(1)a. of this section must be filed with the Secretary of State. If the member accepts the provisions of this chapter through authorization of deductions for contributions under paragraph (a)(1)b. of this section, the member shall thereafter file a written declaration with the Secretary of State.

b. On filing of a declaration of acceptance by a state judicial officer or on authorization of deductions for contributions, whichever first occurs, the benefits of this chapter are available to the state judicial officer.

c. A declaration of acceptance, or authorization of deductions for the contributions provided in § 5601 of this title, by a member first appointed on or after July 1, 1980, covers the member under the revised plan.

(b) A member first appointed before July 1, 1980, may elect to be covered by the revised plan by filing a declaration of acceptance with the Secretary of State. Except as provided under subsection (e) of this section, a member first appointed on or after July 1, 1980, is required to participate in the revised plan as a condition of employment and is not required to file a written declaration or authorization of deductions.

(c) Any declaration of acceptance of this chapter or authorization of deductions for the contributions provided in § 5601 of this title as provided in subsection (a) of this section constitutes an authorization and direction by the state judicial officer making the declaration or authorization that if a certificate of permanent physical or mental disability of the state judicial officer is filed under § 5602(c) or § 5612(c) of this title, the certificate constitutes, without any further act by the state judicial officer, a resignation by the state judicial officer, effective immediately after the filing of the certificate.

(d) A declaration of acceptance filed or authorization of deductions for contributions made under this section is irrevocable.

(e) (1) A Justice of the Peace, Commissioner, or Magistrate in Chancery who first qualifies for the State Judicial Pension plan on February 9, 2025, may, under § 4 of Article XV of the Delaware Constitution, decline participation in the State Judicial Pension Plan and remain in the State Employee's Pension Plan.

(2) a. A Justice of the Peace, Commissioner, or Magistrate in Chancery who exercises the right under paragraph (e)(1) of this section to decline participation in the State Judicial Pension Plan must do so in writing to the Board by a date and in a manner determined by the Pension Administrator.

b. A Justice of the Peace, Commissioner, or Magistrate in Chancery who first qualifies for the State Judicial Pension plan on February 9, 2025, and who opts to participate in the State Judicial Pension Plan or does not decline participation under paragraph (e)(2)a. of this section shall contribute to the Fund each year for the first 24 years of service after joining the State Judicial Pension Plan at the rate applicable to the Justice of the Peace's, Commissioner's, or Magistrate in Chancery's prior participation in the State Employee's Pension Plan.

c. A member of the state judiciary first covered by the State Judicial Pension Plan under paragraph (e)(2)b. of this section who is subsequently appointed to a different position within the state judiciary shall thereafter contribute for the remaining 24 years of service an amount equal to 5% of annual compensation in excess of $6,000 up to the Social Security wage base, and 5% of total compensation in excess of the Social Security wage base.

(3) The exercise of the right under paragraph (e)(1) of this section is irrevocable.

(4) A Justice of the Peace, Commissioner, or Magistrate in Chancery who first qualifies for the State Judicial Pension Plan on February 9, 2025, and is covered by the State Judicial Pension Plan is entitled to a payout for accrued annual leave in incremental payments over a 5-year period, with the first payout to be completed by February 9, 2026. If termination of state service occurs before receiving the full accrued payout, the outstanding amount must be paid on termination.

(29 Del. C. 1953, § 5606; 50 Del. Laws, c. 119, § 1; 50 Del. Laws, c. 533, § 3; 62 Del. Laws, c. 415, §§ 12-14; 63 Del. Laws, c. 330, § 1; 64 Del. Laws, c. 202, § 1; 66 Del. Laws, c. 123, §§ 1-3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 365, § 4; 74 Del. Laws, c. 8, § 2; 78 Del. Laws, c. 179, § 297; 82 Del. Laws, c. 87, § 7; 84 Del. Laws, c. 446, § 4; 85 Del. Laws, c. 2, §§ 2, 3.)

§ 5606. Application for benefits.

(a) A service pension, disability pension, survivor's pension, death benefit or withdrawal benefit shall be paid only upon the filing of an application in a form prescribed by the Board. A monthly benefit shall not be payable for any month earlier than second month preceding the date on which the application for such benefit is filed.

(b) The Board may require any member or eligible survivor to furnish such information as may be required for the determination of benefits under this chapter, or to authorize the Board to procure such information including, but not limited to, information regarding benefits pursuant to the Federal Social Security Act [42 U.S.C. § 301 et seq.]. The Board may withhold payment of any pension under this chapter whenever the determination of such pension is dependent upon such information and the member or eligible survivor does not cooperate in the furnishing or procuring thereof.

(c) Upon receipt of any form pursuant to subsection (a) of this section, the Board shall consider the retirement and if they find that benefits are due under this chapter they shall notify the State Treasurer who shall make payments of benefits under this chapter out of the State Judiciary Retirement Fund or out of funds transferred for the purpose from the General Fund, as provided in § 5601 of this title.

(d) A service pension, disability pension, or survivor's pension applied for under this act may be paid into a Miller Trust Bank account, pursuant to the creation of an irrevocable income assignment trust ("Miller Trust"), established on behalf of an eligible pensioner or survivor covered under this chapter who is a person with disabilities, so long as the Miller Trust is established consistent with the laws of the State of Delaware, the laws of the United States and in accordance with the rules and regulations of the local and federal agencies responsible for administering assistance programs for persons with disabilities.

(29 Del. C. 1953, § 5607; 50 Del. Laws, c. 119, § 1; 50 Del. Laws, c. 554, §§ 3, 4; 57 Del. Laws, c. 741, §§ 39B, 39C; 62 Del. Laws, c. 415, § 15; 77 Del. Laws, c. 408, § 2; 85 Del. Laws, c. 2, § 3.)

§ 5607. Termination of pension benefits.

Any state pension benefits available to a person immediately terminate on the person's appointment to and acceptance of a position as a state judicial officer.

(29 Del. C. 1953, § 5608; 50 Del. Laws, c. 119, § 1; 55 Del. Laws, c. 428, § 2; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 66, § 3; 84 Del. Laws, c. 446, § 5; 85 Del. Laws, c. 2, § 3.)

§ 5608. Death benefit; withdrawal benefit.

(a) Upon the death of a member, or if a survivor's pension is payable upon such death, when such pension ceases to be payable, there shall be paid to the designated beneficiary or, in the absence of a designated beneficiary, to the estate of the member, a lump sum equal to the excess, if any, of the accumulated member contributions over the aggregate of all pension payments made. Such contributions shall exclude interest for members covered by the closed plan, and include interest for members covered by the revised plan.

(b) Upon the withdrawal from service of a member who is not eligible for a service or disability pension, his or her accumulated contributions without interest if covered by the closed plan, or with interest if covered by the revised plan, shall be paid to him or her.

(29 Del. C. 1953, § 5609; 50 Del. Laws, c. 119, § 1; 62 Del. Laws, c. 415, § 16; 70 Del. Laws, c. 186, § 1.)

§ 5609. Relationship of judicial pensions to other pensions; social security.

(a) (1) A state judicial officer, while in service as a state judicial officer, may not receive any other pension that meets all of the following:

a. Is payable by this State under any law of this State.

b. For which the state judicial officer would otherwise be eligible because of the state judicial officer's prior service as an employee, officer, or elected or appointed official.

(2) On the state judicial officer's retirement or death, the state judicial officer or the person entitled to survivor's benefits provided under this chapter is entitled to receive the pension benefits provided under this chapter as well as any other pension benefits for which the state judicial officer or the person entitled to survivor's benefits is eligible under any other pension plan payable by this State.

(b) [Repealed.]

(c) Nothing contained in this chapter prevents a state judicial officer from participating on the same basis as other state employees in the social security program except that federal Social Security payments to which a state judicial officer may become entitled may not be deducted from any pension payments made under this chapter.

(29 Del. C. 1953, § 5610; 50 Del. Laws, c. 554, § 5; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 365, § 1; 84 Del. Laws, c. 446, § 6; 85 Del. Laws, c. 2, § 3.)

§ 5610. Assignment of retired state judicial officers to active duty.

(a) (1) Any judge retired from a statutorily created court and receiving a judicial pension may be designated by the Chief Justice of the Supreme Court to perform such judicial duties in any court where such retired judge could serve if such retired judge still held the judicial position from which the judge retired; provided, however, that such retired judge assents to such designation and provided further that such retired judge is not actively engaged in the practice of law.

(2) Any justice, judge, chancellor or vice chancellor who is retired and receiving a judicial pension may be designated by the Chief Justice of the Supreme Court pursuant to a constitutional or statutory authority to sit temporarily in the court from which the justice, judge, chancellor or vice chancellor retired or in any other court to which the justice, judge, chancellor or vice chancellor could be designated under the Constitution and statutes of this State if the justice, judge, chancellor or vice chancellor still held the judicial position from which the justice, judge, chancellor or vice chancellor retired and if the retired justice, judge, chancellor or vice chancellor assents to such designation, and is not actively engaged in the practice of law. However, no former justice, judge, chancellor or vice chancellor shall be designated to sit in the Supreme Court except temporarily to fill up the number of that Court to the required quorum.

(b) Any retired justice, judge, chancellor or vice chancellor accepting an active duty designation pursuant to the constitutional or statutory authorization shall be compensated on a per diem basis on the formula representing $^{1}/_{365}$ of the annual salary for such a retired justice, judge, chancellor or vice chancellor, but in no event shall the total compensation received on a per diem basis when added to the retirement pay exceed the then current annual salary of the judicial position from which such justice, judge, chancellor or vice chancellor has retired. In addition, each retired justice, judge, chancellor or vice chancellor so serving shall receive reimbursement for expenses for travel or secretarial services necessarily incurred for the performance of such active duty.

(c) A Justice of the Peace or Commissioner who is retired and receiving a judicial pension can be designated to serve temporarily as provided under the following:

(1) Section 9211 of Title 10, for a Justice of the Peace.

(2) Section 513 of Title 10, for a Superior Court Commissioner.

(3) Section 916 of Title 10, for a Family Court Commissioner.

(4) Section 1316A of Title 10, for a Court of Common Pleas Commissioner.

(29 Del. C. 1953, § 5611; 56 Del. Laws, c. 198, § 4; 63 Del. Laws, c. 241, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 94, § 53; 83 Del. Laws, c. 337, § 1; 84 Del. Laws, c. 446, § 7; 85 Del. Laws, c. 2, § 3.)

§ 5611. Adjustment of benefits under closed plan.

(a) On and after July 1, 1972, no pension provided under the closed plan which has been in effect for 3 years shall be subject to adjustment. This provision shall not apply to adjustments of pensions required to implement subsection (b) of this section.

(b) Effective September 1, 1972, the amount of any pension in effect on July 1, 1969, shall be the greater of: (1) The monthly pension rate paid in July, 1969, or (2) the recalculated amount determined as a result of audits made between May, 1971, and June 30, 1972, inclusive of any increases provided between July 1, 1969, and June 30, 1972, provided that the minimum pension payable for any month after July, 1969, shall be the monthly pension rate paid in July, 1969.

(c) Any pension overpayments discovered as a result of audits made between May, 1971, and June 30, 1972, shall not be subject to recovery.

(29 Del. C. 1953, § 5612; 58 Del. Laws, c. 527, § 4; 62 Del. Laws, c. 415, § 17.)

§ 5612. Revised plan — Eligibility; annual pension for permanent disability.

(a) A member covered by the revised plan is eligible to receive a pension if the member meets 1 of the following:

(1) Has completed 12 years of service as a state judicial officer and has attained age 62.

(2) Has completed 24 years of service.

(3) Has been involuntarily retired after having served 22 years as a state judicial officer.

(b) A member covered by the revised plan who has completed 12 years of service as a state judicial officer has a vested right to a pension. The vested right is forfeited on the member's application for a refund of the member's accumulated contributions.

(c) (1) If a state judicial officer develops a permanent physical or mental disability while a state judicial officer, the state judicial officer is to receive, from and after the ascertainment of the disability in the manner set forth in paragraph (c)(2) of this section, an annual pension from this State, payable in equal monthly installments during the remainder of the state judicial officer's lifetime.

(2) A state judicial officer may be deemed to have a permanent physical or mental disability and unable to perform the state judicial officer's duties after the Board has considered a certificate to that effect signed by all of the following:

a. The Chief Justice of the Supreme Court, or if the Chief Justice is the subject of the certificate, by the senior Justice of the Supreme Court.

b. By 3 persons previously designated by the Board who meet all of the following:

1. Are duly licensed to practice medicine or surgery in this State.

2. Have been actively engaged in the practice of medicine or surgery in this State for at least 10 years immediately preceding the signing of the certificate.

(62 Del. Laws, c. 415, § 4; 64 Del. Laws, c. 199, § 1; 64 Del. Laws, c. 309, § 2; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 134, § 2; 78 Del. Laws, c. 179, §§ 298-300; 84 Del. Laws, c. 446, § 8; 85 Del. Laws, c. 2, § 3.)

§ 5613. Revised plan — Pension amount [For application of this section, see 79 Del. Laws, c. 315, § 10].

Subject to the provisions of paragraph (2) of this section:

(1) The amount of the annual pension or disability pension payable to a member under the revised plan is the sum of $^1/_{24}$ of final average compensation multiplied by years of service as a state judicial officer up to 12 years inclusive, plus $^1/_{48}$ of final average compensation multiplied by years of service as a state judicial officer from 13 to 24 years inclusive. Disability pensions will be computed on the basis of actual service as a state judicial officer or 12 years of service as a state judicial officer, whichever is greater.

(2) For a member first appointed before July 1, 1980, who accepts the revised plan, as provided in § 5605 of this title, the pension payable under the revised plan shall be the greater of the pension computed in accordance with paragraph (1) of this section or 3% of final average compensation multiplied by years of service as a judge subject to a minimum pension of 50% of final average compensation and a maximum of 75% of final average compensation.

(3) a. Notwithstanding provisions of this section to the contrary, a member may elect to have the member's service or disability pension, computed under this section, reduced by 2%, thereby providing a survivor's pension equal to $^2/_3$ of the reduced amount to the member's eligible survivor at the time of the member's death. The member's election must be made in a form approved by the Board and filed before the issuance of the member's first benefit check. The member's election is irrevocable.

b. Notwithstanding the provisions of this section to the contrary, an individual receiving a service or disability pension which was effective before July 1, 2001, or an individual with a vested right to a service pension, may elect to have the individual's service or disability pension reduced by 2%, thereby providing a survivor's pension equal to $^2/_3$ of the reduced amount to the individual's eligible survivor at the time of the individual's death. The individual's election must be made in a form approved by the Board, filed before December 15, 2001, to be effective January 1, 2002, for the individual receiving a service or disability pension on July 1, 2001, or, in the case of an individual with a vested right to a service pension, filed before the issuance of the individual's first pension check.

c. Notwithstanding provisions of this section to the contrary, a member may elect to have the member's service or disability pension, computed under this section, reduced by 3%, thereby providing a survivor's pension equal to 75% of such reduced amount to the member's eligible survivor at the time of the member's death. The member's election must be made in a form approved by the Board and filed before the issuance of the member's first benefit check. The member's election is irrevocable.

d. Notwithstanding provisions of this section to the contrary, a member may elect to have the member's service or disability pension, computed under this section, reduced by 6%, thereby providing a survivor's pension equal to 100% of the reduced amount to the member's eligible survivor at the time of the member's death. The member's election must be made in a form approved by the Board and filed before the issuance of the member's first benefit check. The member's election is irrevocable.

(62 Del. Laws, c. 415, § 5; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 524, § 11; 73 Del. Laws, c. 154, § 1; 79 Del. Laws, c. 315, § 3; 84 Del. Laws, c. 446, § 9; 85 Del. Laws, c. 2, § 3.)

§ 5614. Revised plan — Survivor's pension [For application of this section, see 79 Del. Laws, c. 315, §10].

(a) On the death during service of a member covered by the revised plan, a monthly survivor's pension must be paid to the member's eligible survivor that is equal to $^2/_3$ of the service pension for which the member would have been eligible and computed on the basis of actual service to the date of death or 12 years, whichever is greater, and had elected the option provided under § 5613(3) of this title.

(b) On the death of a member covered by the revised plan and receiving a service or disability pension at the time of death, a monthly survivor's pension must be paid to the member's eligible survivor that is equal to 1 of the following:

(1) One half of the service or disability pension.

(2) If the pension was computed under § 5613(3) a. or b. of this title, $^2/_3$ of the service or disability pension.

(3) If the pension was computed under § 5613(3)c. of this title, 75% of the service or disability pension.

(4) If the pension was computed under § 5613(3)d. of this title, 100% of the service or disability pension.

(c) On the death after retirement of a member covered by the revised plan, who has a vested right to a pension under § 5612(b) of this title, but who dies before reaching the age of 62, a monthly survivor's pension must be paid beginning in the month during which the member would have reached the age of 62 in an amount equal to $^1/_2$ of the pension for which the member would have been eligible at the age of 62.

(d) For the purpose of this section, the priority of eligible survivors of a member covered by the revised plan is as follows, provided that a member may change the priority of eligible survivors specified under this subsection by designating the priority of eligible survivors on a form prescribed by the Board:

(1) The widow or widower, provided the widow or widower had been married to the deceased member for at least 1 year before the date of death.

(2) If there is not an eligible widow or eligible widower, a child (or with the survivor's pension divided among them in equal shares, all such children if there are more than 1), provided the child is unmarried and 1 of the following applies:

a. The child has not attained age 18.

b. The child has attained age 18 but not age 22 and is attending school on a full-time basis.

c. The child has attained age 18 and has a permanent disability as the result of a disability which began before the child attained age 18.

(3) If there is not an eligible widow, eligible widower, or eligible child, a dependent parent (or, with the survivor's pension divided between them in equal shares, both such parents if there are 2).

(e) The amount payable to a widow or widower who has not attained age 50 at the time the survivor's pension begins must be actuarially reduced, in accordance with actuarial tables approved by the Board, for each month the survivor is under age 50 at the time. However, the actuarial reduction for any widow or widower does not apply for the period during which the widow or widower has in the widow's or widower's care a child who is unmarried and to whom 1 of the following applies:

(1) The child has not attained age 18.

(2) The child has attained age 18 but not age 22 and is attending school on a full-time basis.

(3) The child has attained age 18 and has a permanent disability as the result of a disability which began before the child attained age 18.

(f) A deceased member's parent is deemed to have been dependent on the deceased member if the parent was receiving at least $^1/_2$ of the parent's support from the deceased member at the time of death.

(g) A survivor's pension begins with the month following the month in which the member dies. If payable to a widow, widower, or parent, the survivor's pension ceases with the month in which the survivor dies. If payable to a child, the survivor's pension ceases with the month in which the child dies or fails to meet the conditions of eligibility under paragraph (d)(2) of this section.

(62 Del. Laws, c. 415, § 6; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 524, § 12; 71 Del. Laws, c. 336, § 1; 73 Del. Laws, c. 154, §§ 2, 3; 78 Del. Laws, c. 179, § 301; 79 Del. Laws, c. 315, § 9; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 446, § 10; 85 Del. Laws, c. 2, § 3.)

§ 5615. Adjustment of benefits.

Benefits provided under the revised and closed plans shall be adjusted in the same manner as benefits provided under Chapter 55 of this title.

(62 Del. Laws, c. 415, § 18; 63 Del. Laws, c. 443, § 1.)

§ 5616. Actuarial valuations and appropriations.

(a) The actuary shall prepare an actuarial valuation of the assets and liabilities of the funds as of June 30, each year. On the basis of reasonable actuarial assumptions and tables approved by the Board, the actuary shall determine the normal cost required to meet the actuarial cost of current service and the unfunded actuarial accrued liability.

(b) The State's appropriation to the funds for the Fiscal Year 1994, and for each fiscal year thereafter, shall be the percentage of covered payroll approved by the Board on the basis of the most recent actuarial valuation, and shall equal the sum of the normal cost plus the payment required to implement the provisions of subsection (c) of this section plus the payment required to amortize the unfunded actuarial accrued liability over 40 years from July 1, 1981. The amortization payment shall be an amount computed as a level percentage of the prospective total covered payroll over the remainder of the amortization periods, with such prospective total covered payroll to be determined on the basis of a growth rate, as determined by the Board, compounded annually. Except as provided in subsection (c) of this section, all funds appropriated pursuant to this subsection shall be deposited into the Fund established by § 5601 of this title.

(c) In order to provide a fund for post retirement increases, the State shall include in its annual appropriation payments equal to 2.33% of covered payroll, subject to the limitations contained in § 5548(a)(2) of this title. Beginning with the Fiscal Year 1994 budget, .70% of covered payroll shall be appropriated; in Fiscal Year 1995, 1.11% of covered payroll shall be appropriated; in Fiscal Year 1996, 1.52% of covered payroll shall be appropriated; in fiscal year 1997, 1.93% of covered payroll shall be appropriated; in Fiscal Year 1998 and each fiscal year thereafter 2.33% of covered payroll shall be appropriated. Funds appropriated to implement this subsection shall be deposited into the Post Retirement Fund established by § 5548 of this title.

(69 Del. Laws, c. 104, § 4; 78 Del. Laws, c. 116, § 5.)

§ 5617. Increases in pensions.

Any monthly service or disability pension which became effective before January 1, 1979, and is payable on July 23, 1982, and any survivor pension based on a former service or disability pension that was effective prior to January 1, 1979, shall be increased effective July 1, 1982, in accordance with the following schedule:

Year Service or Disability	Percent Increase in Pension
Pension Becomes Effective	Effective 7/1/82
Prior to 1971	31%
1971	21%
1972	19%
1973	16%
1974	10%
After 1974	5%

(63 Del. Laws, c. 443, § 2.)

§ 5618. Employer pickup of employee contributions.

(a) Each participating employer, pursuant to the provisions of § 414(h)(2) of the United States Internal Revenue Code [26 U.S.C. § 414(h)(2)], shall pick up and pay the contributions which would otherwise be payable by the members under § 5601 of this title. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the member's compensation.

(b) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each member's compensation equal to the amount of the member's contributions picked up by the employer. This deduction, however, shall not reduce the member's compensation for purposes of computing benefits under the retirement system pursuant to this chapter.

(c) Member contributions shall be credited to a separate account within the member's individual account so that the amount contributed prior to the effective date for the pickup of member contributions may be distinguished from the amounts contributed on or after the effective date.

(d) The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

(68 Del. Laws, c. 358, § 3.)

§ 5619. Payment of benefits.

Benefits shall be due and payable under this chapter only to the extent provided in this chapter, and neither the State nor the State Judiciary Retirement Fund shall be liable for any amount in excess of such sums.

(71 Del. Laws, c. 132, § 87.)

§ 5620. Attachment and assignment of benefits.

Except for orders of the Delaware Family Court for a sum certain payable on a periodic basis, the benefits provided by this chapter shall not be subject to attachment or execution and shall be payable only to the beneficiary designated and shall not be subject to assignment or transfer.

(71 Del. Laws, c. 337, § 7.)

§ 5621. Other post-employment benefits appropriations.

Funds appropriated to implement this section shall be deposited into the OPEB Fund as established by § 5281 of this title.

(76 Del. Laws, c. 70, § 8.)

§ 5622. Establishment of Fund.

There shall be established a State Judiciary Retirement Fund, hereinafter referred to as "Fund," to which state appropriations and other employer contributions shall be deposited monthly and to which employee contributions shall be deposited upon deduction from the employee's paycheck and to which earnings on investments, any other contributions, gifts, donations, grants, refunds and reimbursements shall be deposited upon receipt and from which benefits shall be paid and fees and expenses authorized by the Board shall be paid. Subject to Internal Revenue Code § 401(a)(24) [26 U.S.C. § 401(a)(24)], the assets of the Fund will be commingled in the Delaware Public Employees' Retirement System as provided for by § 8308 of this title. The assets of the Fund are held in trust and may not be used for or diverted to any purpose other than for the exclusive benefit of the employees and their beneficiaries.

(76 Del. Laws, c. 279, § 7.)

Part V
Public Officers and Employees
Chapter 57
Social Security

§ 5701. Definitions.

As used in this chapter:

(1) "Employee" includes an officer of a state or political subdivision thereof.

(2) "Employment" means any service performed by an employee in the employ of the State, local government, housing authority or any other political subdivision thereof, for such employer, except (i) service which in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the Social Security Act [42 U.S.C. § 301 et seq.], or (ii) service which under the Social Security Act may not be included in an agreement between the State and the Federal Security Administrator entered into under this chapter. Service which under the Social Security Act [42 U.S.C. § 301 et seq.] may be included in an agreement only upon certification by the Governor in accordance with § 218(d)(3) of that Act [42 U.S.C. § 418(d)(3)] shall be included in the term "employment" if and when the Governor issues, with respect to such service, a certificate to the Secretary of Health, Education and Welfare pursuant to § 5710(b) of this title.

(3) "Federal Insurance Contributions Act" means subchapter A of Chapter 9 of the Federal Internal Revenue Code of 1939 and subchapters A and B of Chapter 21 of the Federal Internal Revenue Code of 1954 [26 U.S.C. § 3101 et seq.], as such Codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by § 1400 of such Code of 1939 and § 3101 of such Code of 1954 [26 U.S.C. § 3101].

(4) "Federal Security Administrator" includes any individual to whom the Federal Security Administrator has delegated any of the Administrator's functions under the Social Security Act [42 U.S.C. § 405(*l*)] with respect to coverage under such Act of employees of states and their political subdivisions.

(5) "Political subdivisions" includes an instrumentality of a state and 1 or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the State or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the State or subdivision; the housing authority continued under Chapter 43 of Title 31 shall be construed to be a political subdivision.

(6) "Secretary of Health, Education and Welfare" includes any individual to whom the Secretary of Health, Education and Welfare has delegated any of the Secretary's functions under the Social Security Act [42 U.S.C. § 405(*l*)] with respect to coverage under such Act of employees of states and their political subdivisions and, with respect to any action taken prior to April 11, 1953, includes the Federal Security Administrator and any individual to whom such Administrator had delegated any such function.

(7) "Social Security Act" means the act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620 [42 U.S.C. § 301 et seq.], officially cited as the "Social Security Act," including regulations and requirements issued pursuant thereto, as such Act has been and may from time to time be amended.

(8) "State Agency" means the State Treasurer.

(9) "Wages" means all remuneration for employment as defined in this section, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of such Act.

(48 Del. Laws, c. 344, § 2; 29 Del. C. 1953, § 5701; 50 Del. Laws, c. 445, §§ 2-4; 57 Del. Laws, c. 741, § 37A; 61 Del. Laws, c. 468, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5702. Declaration of policy.

(a) In order to extend to employees of the State and its political subdivisions and to the dependents and survivors of such employees the basic protection accorded to others by the old-age and survivors insurance system embodied in the Social Security Act, it is declared to be the policy of the General Assembly, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the State and its political subdivisions on as broad a basis as is permitted under the Social Security Act.

(b) It is also the policy of the General Assembly that the protection afforded employees in positions covered by a retirement system on the date an agreement under this chapter is made applicable to service performed in such positions or those receiving periodic benefits under such retirement system at such time will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

(48 Del. Laws, c. 344, § 1; 29 Del. C. 1953, § 5702; 50 Del. Laws, c. 445, § 1.)

§ 5703. Federal-state agreement.

The State Agency, with the approval of the Governor, may enter on behalf of the State into an agreement with the Federal Security Administrator, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old-age

and survivors insurance system to employees of the State or any political subdivision thereof with respect to services specified in such agreement which constitute "employment" as defined in § 5701 of this title. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration and other appropriate provisions as the State Agency and Secretary of Health, Education and Welfare shall agree upon, but, except as may be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that:

(1) Benefits will be provided for employees whose services are covered by the agreement and their dependents and survivors on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act [42 U.S.C. § 401 et seq.];

(2) The State will pay to the Secretary of the Treasury, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages, as defined in § 5701 of this title, equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of such Act;

(3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services is entered into, except that with respect to an agreement or modification thereof entered into prior to January 1, 1954, the agreement or modification thereof may be effective with respect to such services performed on or after January 1, 1951, except that a modification entered into after December 31, 1954, and prior to January 1, 1958, may be effective with respect to services performed after December 31, 1954, or after a later date specified in such modification;

(4) All services which constitute employment and are performed in the employ of the State by employees of the State shall be covered by the agreement; provided, however, that services which may be excluded under the Social Security Act may be excluded by the agreement and provided further that the agreement may be drawn to exclude all employees of the State without prejudice to the right to cover employees of the State in a subsequent modification of the agreement;

(5) All services which (i) constitute employment as defined in § 5701 of this title, (ii) are performed in the employ of a political subdivision of the State and (iii) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the State Agency under § 5706 of this title shall be covered by the agreement; provided, however, that services which may be excluded under the Social Security Act may be excluded by the agreement;

(6) As modified, the agreement shall include all services described in either paragraph (4) or (5) of this section and performed by individuals to whom § 218(c)(3)(B) of the Social Security Act [42 U.S.C. § 418] is applicable and shall provide that the service of any such individual shall continue to be covered by the agreement in case the individual thereafter becomes eligible to be a member of a retirement system; and

(7) As modified, the agreement shall include all services described in either paragraph (4) or (5) of this section and performed by individuals in positions covered by a retirement system with respect to which the Governor has issued a certificate to the Secretary of Health, Education and Welfare pursuant to § 5710(b) of this title.

(48 Del. Laws, c. 344, § 3; 29 Del. C. 1953, § 5703; 49 Del. Laws, c. 194, §§ 1-3; 50 Del. Laws, c. 445, §§ 5-9; 70 Del. Laws, c. 186, § 1.)

§ 5704. Interstate instrumentalities.

Any instrumentality jointly created by this State and any other state or states may, upon the granting of like authority by such other state or states:

(1) Enter into an agreement with the Secretary of Health, Education and Welfare whereby the benefits of the federal old-age and survivors insurance system shall be extended to employees of such instrumentality;

(2) Require its employees to pay, and for that purpose to deduct from their wages, contributions equal to the amounts which they would be required to pay under subsection (a) of § 5705 of this title if they were covered by an agreement made pursuant to § 5703 of this title; and

(3) Make payments to the Secretary of the Treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements.

Such agreement shall, to the extent practicable, be consistent with the terms and provisions of § 5703 of this title and other provisions of this chapter.

(48 Del. Laws, c. 344, § 3; 29 Del. C. 1953, § 5704; 50 Del. Laws, c. 445, § 5.)

§ 5705. Contributions by state employees.

(a) Every employee of the State whose services are covered by an agreement entered into under § 5703 of this title shall be required to pay for the period of such coverage into the Contribution Fund established by § 5707 of this title contributions with respect to wages equal to the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of such Act. Such liability shall arise in consideration of the employee's retention in the service of the State or the employee's entry upon such service after June 8, 1951.

(b) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(c) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments or refund, if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the State Agency shall prescribe.

(48 Del. Laws, c. 344, § 4; 29 Del. C. 1953, § 5705; 50 Del. Laws, c. 445, § 10; 70 Del. Laws, c. 186, § 1.)

§ 5706. Plans for coverage of employees of political subdivisions.

(a) Each political subdivision of the State may submit for approval by the State Agency a plan for extending the benefits of Title II of the Social Security Act [42 U.S.C. § 401 et seq.], in conformity with applicable provisions of such Act, to employees of such political subdivisions. Each such plan and any amendment thereof shall be approved by the State Agency if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the State Agency, except that no such plan shall be approved unless:

(1) It is in conformity with the requirements of the Social Security Act and with the agreement entered into under § 5703 of this title;

(2) It provides that all services which constitute employment and are performed in the employ of the political subdivision by employees thereof shall be covered by the plan except that it may exclude services performed by individuals to whom § 218(c)(3)(B) of the Social Security Act [42 U.S.C. § 418] is applicable; provided, however, that services which may be excluded under the Social Security Act may be excluded by the agreement;

(3) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (c)(1) this section and by subsection (d) of this section are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose;

(4) It provides for such methods of administration of the plan by the political subdivision as are found by the State Agency to be necessary for the proper and efficient administration of the plan;

(5) It provides that the political subdivision will make such reports, in such form and containing such information as the State Agency may from time to time require, and comply with such provisions as the State Agency or the Secretary of Health, Education and Welfare may from time to time find necessary to assure the correctness and verification of such reports; and

(6) It authorizes the State Agency to terminate the plan in its entirety, in the discretion of the State Agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the State Agency and may be consistent with the Social Security Act.

(b) The State Agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (a) of this section and shall not terminate an approved plan without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

(c) (1) Each political subdivision as to which a plan has been approved under this section shall pay into the Contribution Fund with respect to wages, at such time or times as the State Agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the State Agency under § 5703 of this title.

(2) Each political subdivision required to make payments under paragraph (c)(1) of this section may, in consideration of the employee's retention in or entry upon employment after June 8, 1951, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to wages not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of such Act and may deduct the amount of such contribution from wages as and when paid. Contributions so collected shall be paid into the Contribution Fund in partial discharge of the liability of such political subdivision or instrumentality under paragraph (c)(1) of this section. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d) Delinquent payments due under paragraph (c)(1) of this section may, with interest at the rate currently then being charged by the Social Security Administration but not less than $10 per each delinquency, be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or may, at the request of the State Agency, be deducted from any other moneys payable to such subdivision by any department or agency of the State.

(48 Del. Laws, c. 344, § 5; 29 Del. C. 1953, § 5706; 49 Del. Laws, c. 194, §§ 4, 5; 50 Del. Laws, c. 445, §§ 5, 11, 12; 63 Del. Laws, c. 156, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5707. Contribution Fund.

(a) There is established a special fund to be known as the Contribution Fund. Such Fund shall consist of and there shall be deposited in such Fund:

(1) All contributions, interest and penalties collected under §§ 5705 and 5706 of this title;

(2) All moneys appropriated thereto under this chapter;

(3) Any property or securities and earnings thereof acquired through the use of the moneys belonging to the Fund;

(4) Interest earned upon any moneys in the Fund; and

(5) All sums recovered upon the bond of the custodian or otherwise for losses sustained by the Fund and all other moneys received for the Fund from any other source.

All moneys in the Fund shall be mingled and undivided. Subject to this chapter, the State Agency is vested with full power, authority and jurisdiction over the Fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated which are necessary to the administration thereof and are consistent with this chapter.

(b) The Contribution Fund shall be established and held separate and apart from any other funds or moneys of the State and shall be used and administered exclusively for the purpose of this chapter. Withdrawals from such Fund shall be made solely for:

(1) Payment of amounts required to be paid to the Secretary of the Treasury pursuant to an agreement entered into under § 5703 of this title;

(2) Payment of refunds provided for in subsection (c) of § 5705 of this title; and

(3) Refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(c) From the Contribution Fund the custodian of the Fund shall pay to the Secretary of the Treasury such amounts and at such time or times as may be directed by the State Agency in accordance with any agreement entered into under § 5703 of this title and the Social Security Act.

(d) The State Treasurer shall be ex officio treasurer and custodian of the Contribution Fund and shall administer such Fund in accordance with this chapter and the directions of the State Agency and shall pay all warrants drawn upon it in accordance with this section and with such regulations as the State Agency may prescribe pursuant thereto.

(e) (1) There are hereby authorized to be appropriated annually to the Contribution Fund, in addition to the contributions collected and paid into the Contribution Fund under §§ 5705 and 5706 of this title, to be available for the purposes of subsections (b) and (c) of this section until expended, such additional sums as are found to be necessary in order to make the payments to the Secretary of the Treasury which the State is obligated to make pursuant to an agreement entered into under § 5703 of this title.

(2) The State Agency shall submit to each regular session of the General Assembly, at least 90 days in advance of the beginning of such session, an estimate of the amounts authorized to be appropriated to the Contribution Fund by paragraph (e)(1) of this section for the next appropriation period.

(48 Del. Laws, c. 344, § 6; 29 Del. C. 1953, § 5707; 57 Del. Laws, c. 741, § 37B; 61 Del. Laws, c. 468, § 3.)

§ 5708. Rules and regulations.

The State Agency shall make and publish such rules and regulations, not inconsistent with this chapter, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this chapter.

(48 Del. Laws, c. 344, § 8; 29 Del. C. 1953, § 5708.)

§ 5709. Studies and reports.

The State Agency shall make studies concerning the problem of old-age and survivors' insurance protection for employees of the state and local governments and their instrumentalities and concerning the operation of agreements made and plans approved under this chapter. It shall also submit a report to the General Assembly at the beginning of each regular session, covering the administration and operation of this chapter during the preceding calendar year, including such recommendations for amendments to this chapter as it considers proper.

(48 Del. Laws, c. 344, § 9; 29 Del. C. 1953, § 5709.)

§ 5710. Referenda and certification.

(a) With respect to employees of the State, the Governor is empowered to authorize a referendum, the cost of such referendum to be borne by the State, and, with respect to the employees of any political subdivision, the Governor shall authorize a referendum upon request of the governing body of such subdivision, the cost of such referendum to be borne by the political subdivision; and in either case the referendum shall be conducted, and the Governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of § 218(d)(3) of the Social Security Act [42 U.S.C. § 418(d)(3)], on the question of whether service in positions covered by a retirement system established by the State or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. The notice of referendum required by § 218(d)(3)(C) of the Social Security Act [42 U.S.C. § 418(d)(3)(C)] to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors and the liabilities to which they will be subject if their services are included under an agreement under this chapter.

(b) Upon receiving evidence satisfactory to the Governor that with respect to any such referendum the conditions specified in § 218(d)(3) of the Social Security Act have been met, the Governor shall so certify to the Secretary of Health, Education and Welfare.

(29 Del. C. 1953, § 5710; 50 Del. Laws, c. 445, § 13; 70 Del. Laws, c. 186, § 1.)

Part V
Public Officers and Employees
Chapter 58
Laws Regulating the Conduct of Officers and Employees of the State
Subchapter I
State Employees', Officers' and Officials' Code of Conduct

§ 5801. Short title.

This subchapter shall be known and may be cited as the "State Employees', Officers' and Officials' Code of Conduct."

(67 Del. Laws, c. 417, § 1.)

§ 5802. Legislative findings and statement of policy.

The General Assembly finds and declares:

(1) In our democratic form of government, the conduct of officers and employees of the State must hold the respect and confidence of the people. They must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.

(2) To ensure propriety and to preserve public confidence, officers and employees of the State must have the benefit of specific standards to guide their conduct and of some disciplinary mechanisms to guarantee uniform maintenance of those standards. Some standards of this type are so vital to government that violation thereof should subject the violator to criminal penalties.

(3) In our democratic form of government, it is both necessary and desirable that all citizens should be encouraged to assume public office and employment, and that, therefore, the activities of officers and employees of the State should not be unduly circumscribed.

(4) It is the desire of the General Assembly that all counties, municipalities and towns adopt code of conduct legislation at least as stringent as this act to apply to their employees and elected and appointed officials. This subchapter shall apply to any county, municipality or town and the employees and elected and appointed officials thereof which has not enacted such legislation by January 23, 1993. No code of conduct legislation shall be deemed sufficient to exempt any county, municipality or town from the purview of this subchapter unless the code of conduct has been submitted to the State Ethics Commission and determined by a majority vote thereof to be at least as stringent as this subchapter. Any change to an approved code of conduct must similarly be approved by the State Ethics Commission to continue the exemption from this subchapter.

(67 Del. Laws, c. 417, §§ 1, 2; 68 Del. Laws, c. 433, § 1.)

§ 5803. Construction.

This subchapter shall be construed to promote high standards of ethical conduct in state government.

(59 Del. Laws, c. 575, § 1; 67 Del. Laws, c. 417, § 1.)

§ 5804. Definitions.

For the purposes of this subchapter:

(1) "Close relative" means a person's parents, spouse, children (natural or adopted) and siblings of the whole and half-blood.

(2) "Commission" means the State Public Integrity Commission established by this chapter.

(3) "Commission Counsel" means the legal counsel appointed by the Commission pursuant to this chapter.

(4) "Compensation" means any money, thing of value or any other economic benefit of any kind or nature whatsoever conferred on or received by any person in return for services rendered or to be rendered by oneself or another.

(5) A person has a "financial interest" in a private enterprise if:

a. The person has a legal or equitable ownership interest in the enterprise of more than 10% (1% or more in the case of a corporation whose stock is regularly traded on an established securities market);

b. The person is associated with the enterprise and received from the enterprise during the last calendar year or might reasonably be expected to receive from the enterprise during the current or the next calendar year income in excess of $5,000 for services as an employee, officer, director, trustee or independent contractor; or

c. The person is a creditor of a private enterprise in an amount equal to 10% or more of the debt of that enterprise (1% or more in the case of a corporation whose securities are regularly traded on an established securities market).

(6) "Honorary state official" means a person who serves as an appointed member, trustee, director or the like of any state agency and who receives or reasonably expects to receive not more than $5,000 in compensation for such service in a calendar year (not including any reimbursement for expenses).

(7) "Matter" means any application, petition, request, business dealing or transaction of any sort.

(8) "Person" means an individual, partnership, corporation, trust, joint venture and any other association of individuals or entities.

(9) “Private enterprise” means any activity conducted by any person, whether conducted for profit or not for profit and includes the ownership of real or personal property. Private enterprise does not include any activity of the State or of any political subdivision or of any agency, authority or instrumentality thereof.

(10) “State” means the State of Delaware and includes any state agency.

(11) “State agency” means any office, department, board, commission, committee, court, school district, board of education and all public bodies existing by virtue of an act of the General Assembly or of the Constitution of the State, excepting only political subdivisions of the State, their agencies and other public agencies not specifically included in this definition which exist by virtue of state law, and whose jurisdiction:

a. Is limited to a political subdivision of the State or to a portion thereof; or

b. Extends beyond the boundaries of the State.

(12) a. “State employee” means any person:

1. Who receives compensation as an employee of a state agency;

2. Who serves as an appointed member, trustee, director or the like of any state agency and who receives or reasonably expects to receive more than $5,000 in compensation for such service in a calendar year (not including any reimbursement for expenses); or

3. Who is an elected or appointed school board member.

b. “State employee” does not include:

1. Members of the General Assembly;

2. The Chief Justice and Justices of the Supreme Court;

3. The Chancellor and Vice-Chancellors of the Court of Chancery;

4. The President Judge and Judges of Superior Court;

5. The Chief Judge and Judges of Family Court;

6. The Chief Judge and Resident Judges of the Court of Common Pleas;

7. The Chief Magistrate and Justices of the Peace;

8. State officers; or

9. Honorary state officials.

(13) “State officer” means any person who is required by subchapter II of this chapter to file a financial disclosure statement but does not include:

a. Members of the General Assembly;

b. The Chief Justice and Justices of the Supreme Court;

c. The Chancellor and Vice-Chancellors of the Court of Chancery;

d. The President Judge and Judges of Superior Court;

e. The Chief Judge and Judges of Family Court;

f. The Chief Judge and Judges of the Court of Common Pleas; or

g. The Chief Magistrate and Justices of the Peace.

(59 Del. Laws, c. 575, § 1; 61 Del. Laws, c. 132, § 23; 62 Del. Laws, c. 48, § 1; 67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, §§ 2, 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 176, §§ 33, 34; 73 Del. Laws, c. 19, § 1; 76 Del. Laws, c. 213, §§ 44-51.)

§ 5805. Prohibitions relating to conflicts of interest.

(a) *Restrictions on exercise of official authority.* — (1) No state employee, state officer or honorary state official may participate on behalf of the State in the review or disposition of any matter pending before the State in which the state employee, state officer or honorary state official has a personal or private interest, provided, that upon request from any person with official responsibility with respect to the matter, any such person who has such a personal or private interest may nevertheless respond to questions concerning any such matter. A personal or private interest in a matter is an interest which tends to impair a person’s independence of judgment in the performance of the person’s duties with respect to that matter.

(2) A person has an interest which tends to impair the person’s independence of judgment in the performance of the person’s duties with respect to any matter when:

a. Any action or inaction with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent than such benefit or detriment would accrue to others who are members of the same class or group of persons; or

b. The person or a close relative has a financial interest in a private enterprise which enterprise or interest would be affected by any action or inaction on a matter to a lesser or greater extent than like enterprises or other interests in the same enterprise.

(3) In any case where a person has a statutory responsibility with respect to action or nonaction on any matter where the person has a personal or private interest and there is no provision for the delegation of such responsibility to another person, the person may exercise responsibility with respect to such matter, provided, that promptly after becoming aware of such conflict of interest, the person

files a written statement with the Commission fully disclosing the personal or private interest and explaining why it is not possible to delegate responsibility for the matter to another person.

(b) *Restrictions on representing another's interest before the State.* — (1) No state employee, state officer or honorary state official may represent or otherwise assist any private enterprise with respect to any matter before the state agency with which the employee, officer or official is associated by employment or appointment.

(2) No state officer may represent or otherwise assist any private enterprise with respect to any matter before the State.

(3) This subsection shall not preclude any state employee, state officer or honorary state official from appearing before the State or otherwise assisting any private enterprise with respect to any matter in the exercise of such person's official duties.

(c) *Restrictions on contracting with the State.* —

No state employee, no state officer and no private enterprise in which a state employee or state officer has a legal or equitable ownership of more than 10% (more than 1% in the case of a corporation whose stock is regularly traded on an established securities market) shall enter into any contract with the State (other than an employment contract) unless such contract was made or let after public notice and competitive bidding. Such notice and bidding requirements shall not apply to contracts involving $5,000 per year or less if the terms of such contract reflect arms' length negotiations.

(d) *Post-employment restrictions.* — No person who has served as a state employee, state officer or honorary state official shall represent or otherwise assist any private enterprise on any matter involving the State, for a period of 2 years after termination of employment or appointed status with the State, if the person gave an opinion, conducted an investigation or otherwise was directly and materially responsible for such matter in the course of official duties as a state employee, officer or official. Nor shall any former state employee, state officer or honorary state official disclose confidential information gained by reason of public position nor shall the person otherwise use such information for personal gain or benefit.

(e) *Unauthorized disclosure of confidential information.* — No person shall disclose any information required to be maintained confidential by the Commission under § 5806(d), § 5807(b) or (d), or § 5810(h) of this title.

(f) *Criminal sanctions.* — (1) Any person who knowingly or wilfully violates any provision of this section shall be guilty of a misdemeanor, punishable for each such violation by imprisonment of not more than 1 year and by a fine not to exceed $10,000.

(2) A prosecution for a violation of this section shall be subject to the time limitations of § 205 of Title 11.

(3) The Superior Court shall have exclusive jurisdiction over prosecution for all criminal violations of this section.

(g) *Contracts voidable by court action.* — In addition to any other penalty provided by law, any contract entered into by any state agency in violation of this subchapter shall be voidable by the state agency; provided, that in determining whether any court action should be taken to void such a contract pursuant to this subsection, the state agency shall consider the interests of innocent 3rd parties who may be damaged thereby. Any court action to void any transaction must be initiated within 30 days after the state agency involved has, or should have, knowledge of such violation.

(h) *Exceptions for transportation contracts with school districts.* — Except for transportation supervisors for any school district within this State, nothing in this section shall prohibit an employee or the employee's spouse or children (natural or adopted) from contracting for the transportation of school children. Such transportation contracts may be entered into by an employee or the employee's spouse or children without public notice and competitive bidding as is provided in § 6904(c) of this title.

(i) [Deleted.]

(59 Del. Laws, c. 575, § 1; 63 Del. Laws, c. 1, § 1; 64 Del. Laws, c. 423, § 1; 67 Del. Laws, c. 314, § 1; 67 Del. Laws, c. 417, § 1; 68 Del. Laws, c. 198, § 1; 69 Del. Laws, c. 467, §§ 4, 27; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 150, § 86; 71 Del. Laws, c. 227, § 2; 84 Del. Laws, c. 463, § 1.)

§ 5806. Code of conduct.

(a) Each state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government.

(b) No state employee, state officer or honorary state official shall have any interest in any private enterprise nor shall such state employee, state officer or honorary state official incur any obligation of any nature which is in substantial conflict with the proper performance of such duties in the public interest. No state employee, state officer or honorary state official shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:

(1) Impairment of independence of judgment in the exercise of official duties;

(2) An undertaking to give preferential treatment to any person;

(3) The making of a governmental decision outside official channels; or

(4) Any adverse effect on the confidence of the public in the integrity of the government of the State.

Provided however, that a minimal gratuity provided on occasion to blind or disabled state employees or other blind or disabled persons supervised by the Division of Visually Impaired, shall not be considered to be a violation of this section.

(c) No state employee, state officer, or honorary state official shall acquire a financial interest in any private enterprise which such official has reason to believe may be directly involved in decisions to be made by such official in an official capacity on behalf of the State.

(d) Any state employee or state officer who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, any state agency (and any honorary state official who has a financial interest in any private enterprise which is subject to the regulatory jurisdiction of, or does business with, the state agency on which the official serves as an appointee) shall file with the Commission a written statement fully disclosing the same. Such disclosure shall be confidential and the Commission shall not release such disclosed information, except as may be necessary for the enforcement of this chapter. The filing of such disclosure statement shall be a condition of commencing and continuing employment or appointed status with the State.

(e) No state employee, state officer or honorary state official shall use such public office to secure unwarranted privileges, private advancement or gain.

(f) No state employee, state officer or honorary state official shall engage in any activity beyond the scope of such public position which might reasonably be expected to require or induce such state employee, state officer or honorary state official to disclose confidential information acquired by such official by reason of such public position.

(g) No state employee, state officer or honorary state official shall, beyond the scope of such public position, disclose confidential information gained by reason of such public position nor shall such official otherwise use such information for personal gain or benefit.

(h) No state employee, state officer or honorary state official, in the course of public responsibilities, shall use the granting of sexual favors as a condition, either explicit or implicit, for an individual's favorable treatment by that person or a state agency.

(i) Notwithstanding the provisions of Chapters 58, 59, and 69 of this title and the State Merit Rules of Personnel Administration, state employees may contract to provide foster care or respite care for individuals with fees paid for by the State provided further that the employee does so at other than assigned work hours. Additionally, these individuals are not permitted to participate in the review or disposition of any matter related to foster and/or respite care in which they have or may have a personal or private interest and may not be monitored or reviewed by other state employees who are more junior or related to them.

(59 Del. Laws, c. 575, § 1; 63 Del. Laws, c. 1, § 2; 65 Del. Laws, c. 349, § 1; 67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, §§ 5, 27; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 567, § 1; 76 Del. Laws, c. 80, § 33.)

§ 5806A. Prohibitions on nepotism.

(a) By December 1, 2024, the Department of Human Resources shall implement a policy for application to all executive branch agencies that contains the following prohibitions:

(1) A state employee, state officer, or honorary state official may not serve as the direct supervisor of a relative.

(2) A state employee, state officer, or honorary state official may not be directly involved in or attempt to influence state agency decision-making with respect to the hiring or promotion of a relative.

(b) By December 31, 2024, the General Assembly, the judicial branch, and elected state officers shall develop a policy prohibiting nepotism in employment in the legislative and judicial branch, as well as any office or agency led by an elected state officer.

(c) Whenever a substantive change is proposed to the Department of Human Resources policy required under subsection (a) of this section, the Department of Human Resources must provide at least 60 days' notice to the General Assembly prior to implementation of the change. Notice shall be made by delivery of the proposed change to the Secretary of the Senate, the Chief Clerk of the House, and the Director of the Division of Legislative Services.

(d) As used in this section, "relative" means any of the following:

(1) A person's spouse or domestic partner.

(2) A person's parent, stepparent, or child.

(3) The parent, stepparent, or child of a person's spouse or domestic partner.

(4) A person's grandparent or grandchild.

(5) A person's sibling.

(6) The spouse of a person's child.

(7) A minor child for whom the person has assumed and carried out parental responsibilities.

(84 Del. Laws, c. 523, § 1; 84 Del. Laws, c. 255, § 36.)

§ 5807. Waivers of restrictions and advisory opinions.

(a) Notwithstanding the provisions of §§ 5805 and 5806 of this title, upon the written request of any state agency or of any individual who is or was a state employee, state officer or honorary state official, the Commission may grant a waiver to the specific prohibitions contained therein if the Commission determines that the literal application of such prohibition in a particular case is not necessary to achieve the public purposes of this chapter or would result in an undue hardship on any employee, officer, official or state agency. Any such waiver may be granted only by written decision of the Commission. Any person who acts in good faith reliance upon any such waiver decision shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the waiver decision provided there was a full disclosure to the Commission of all material facts necessary for the waiver decision.

(b) Any application for a waiver, any proceedings and any decision with respect thereto shall be maintained confidential by the Commission provided that:

(1) Public disclosure shall be made by the Commission upon the written request of the applicant;

(2) The Commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this subchapter;

(3) The Commission shall report to appropriate federal and state authorities substantial evidence of any criminal violation which may come to its attention; and

(4) In the event that a waiver is granted, the waiver decision and the record of all proceedings relating thereto shall be open to public inspection.

(c) Upon the written request of any state employee, state officer, honorary state official or state agency or a public officer as defined in § 5812 of this title, the Commission, or Commission Counsel subject to § 5808A(a) of this title may issue an advisory opinion as to the applicability of this chapter to any particular fact situation. Any person who acts in good faith reliance upon any such advisory opinion shall not be subject to discipline or other sanction hereunder with respect to the matters covered by the advisory opinion provided there was a full disclosure to the Commission or Commission Counsel of all material facts necessary for the advisory opinion.

(d) Any application for an advisory opinion, any proceedings and any decision with respect thereto shall be maintained confidential by the Commission provided that:

(1) Public disclosure shall be made by the Commission upon the written request of the applicant;

(2) The Commission may make such public disclosure as it determines is required in connection with the prosecution of any violation of this chapter;

(3) The Commission shall report to appropriate federal and state authorities substantial evidence of any criminal violation which may come to its attention; and

(4) The Commission shall prepare a summary of its advisory opinions for public distribution without disclosing the identity of the applicants.

(59 Del. Laws, c. 575, § 1; 67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, §§ 6, 7, 27; 80 Del. Laws, c. 204, § 1.)

§ 5808. State Public Integrity Commission; establishment, membership, offices.

(a) The State Ethics Commission is hereby renamed and reestablished as the State Public Integrity Commission to assume the functions of the State Ethics Commission and to administer and implement this chapter, and to perform such other responsibilities as may be entrusted to it by law.

(b) The Commission shall consist of 7 members appointed by the Governor with the concurrence of the Senate. Not more than 4 members shall be registered with the same political party. No member shall hold any elected or appointed office under the government of the United States or the State or be a candidate for any such office. No member shall hold any political party office or an office in any political campaign. Members of the Commission may be removed by the Governor, with the concurrence of the Senate, for substantial neglect of duty, gross misconduct in office or violation of this chapter.

(c) A member of the Commission shall be appointed for a term of office of 7 years and until a successor has been appointed and has qualified, except that initially the Commission shall consist of the members of the former State Ethics Commission as of July 15, 1994, and said members shall serve the remaining portion of their terms and until their successors have been appointed and have qualified. No member shall serve for more than 1 full 7-year term. When a vacancy occurs in the membership of the Commission, it shall be filled by appointment for the unexpired portion of the term in the same manner as original appointments.

(d) The Commission shall elect a chairperson from among its membership. Four members of the Commission shall constitute a quorum and, if a quorum is present, a vacancy on the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission. Disciplinary hearings may be conducted and sanctions may be imposed only by the affirmative action of at least 4 members. Otherwise the Commission may delegate authority to the chairperson to act for the Commission between meetings.

(e) Each member of the Commission shall be compensated at the rate of $100 for each day devoted to the performance of official duties. Each member of the Commission shall be reimbursed for reasonable and necessary expenses incurred in the performance of official duties.

(f) The principal office of the Commission shall be in Dover but it may meet, and exercise its power, at any other place in the State.

(67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, § 8; 70 Del. Laws, c. 186, § 1.)

§ 5808A. Commission Counsel; powers and duties.

(a) There shall be a Commission Counsel who shall be the legal representative of the Commission and have the following powers and duties:

(1) To assist the Commission in preparing and publishing manuals and guides explaining the duties of individuals covered by this chapter and in other activities, such as seminars and workshops, educating individuals covered by this chapter about its requirements and purposes, and giving instructions and public information materials to facilitate compliance with, and enforcement hereof.

(2) To provide legal counsel to the Commission concerning any matter arising in connection with the exercise of its official powers or duties.

(3) To review information coming to the attention of the Commission relating to potential violations of this chapter.

(4) To investigate information coming to the attention of the Commission that, if true, would constitute a violation of any provision of this chapter and/or to recommend that possible violations of these, or other state and federal laws, be referred by the Commission to the Attorney General or the United States Attorney for investigation and prosecution. Matters may be so referred to the Attorney General or the United States Attorney only upon a determination by at least a majority of the Commission that there are reasonable grounds to believe that a violation may have occurred.

(5) To prosecute disciplinary proceedings, if a determination has been made by at least a majority of the Commission that there are reasonable grounds to believe that a violation may have occurred, before the Commission and to assist the Commission in drafting educational materials, waiver decisions and advisory opinions.

(6) To employ and supervise staff necessary to perform investigatory and prosecutorial functions.

(7) To maintain permanent records of all advisory, waiver, investigatory and prosecutorial matters.

(8) To perform any other tasks requested by the Commission concerning any matter arising in connection with the exercise of its official powers or duties.

(9) Under circumstances in which the Commission has not convened for 60 or more consecutive days, and after notice to the Commission, Commission Counsel may issue written advisory opinions upon the request of any state employee, state officer, honorary state official or state agency as to the applicability of this chapter to any particular fact situation if the request concerns an issue that does not require a waiver and that has previously been determined by:

a. Written opinion of the Commission; or

b. Court opinion interpreting the State Code of Ethics.

(b) The Commission Counsel may recuse from a matter before the Commission when, in the view of Commission Counsel or of the Commission, such recusal is deemed necessary or appropriate. In situations where Commission Counsel recuses, the duties of the Commission Counsel may be exercised by the Attorney General or by outside counsel chosen by the Commission.

(69 Del. Laws, c. 467, § 9; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 204, § 1.)

§ 5808B. Commission Counsel's appointment contingent upon appropriations.

The Commission Counsel established by § 5808A of this title shall not be appointed by the Commission until adequate funds have been appropriated for such purpose. In the absence of such appointment, the Attorney General shall provide legal assistance to the Commission and shall exercise any duties assigned to the Commission Counsel by this chapter. Such duties may also be exercised by outside counsel chosen by the Commission, if adequate funds are appropriated for such purpose.

(69 Del. Laws, c. 467, § 9.)

§ 5809. State Public Integrity Commission — Power and duties.

The powers and duties of the Commission shall be as follows:

(1) To recommend to the General Assembly from time to time such rules of conduct for public employees and officials as it shall deem appropriate.

(2) To issue written advisory opinions upon the request of any state employee, state officer, honorary state official or state agency as to the applicability of this chapter to any particular fact situation.

(3) To refer to Commission Counsel to investigate any alleged violation of this chapter and, after notice and hearing, to recommend by resolution, such disciplinary action as it may deem appropriate to such appropriate official or agency as the Commission shall determine or to take such other disciplinary action as is authorized by § 5810(d) of this title or other provisions of this Code. The Commission may also dismiss any complaint that it determines is frivolous or fails to state a violation.

(4) To report to the appropriate federal or state authorities any substantial evidence of a violation of any criminal law which may come to its attention in connection with any proceeding whether advisory or disciplinary.

(5) To maintain a file of its proceedings, waiver decisions and advisory opinions with a view toward achieving consistency of opinions and recommendations subject to the confidentiality requirements of § 5807(b) and (d), and § 5810(h).

(6) To follow the procedural rules specified in § 5810 of this title and to establish such other procedural rules as shall not be inconsistent with the rules prescribed therein.

(7) To subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the Commission's duties or exercise of its powers.

(8) To prescribe forms for reports, statements, notices and other documents required by law. The Commission may permit the filing of reports, statements, notices, and other documents by electronic means and may specify the form and content of such filings.

(9) To prepare and publish manuals and guides explaining the duties of individuals covered by this chapter; and giving instructions and public information materials to facilitate compliance with, and enforcement hereof.

(10) To provide assistance to state agencies, employees and officials in administering the provisions of this law.

(11) To prepare an annual report by March 1st of each year describing its activities for the previous year and to prepare such other reports and studies as may advance the purposes of this chapter.

(12) To appoint a lawyer admitted to practice in the State to serve as Commission Counsel.

(13) To request appropriate state agencies to provide such professional assistance as it may require in the discharge of its duties.

(14) To contract for any services which cannot satisfactorily be performed by the Commission Counsel or other Commission staff.

(15) Commencing January 15, 1995, to administer and implement the financial disclosure provisions of subchapter II of this chapter and to maintain the records filed pursuant thereto.

(16) Commencing January 15, 1996, to administer and implement the lobbyist registration provisions of this Code and to maintain the records filed pursuant thereto.

(17) To perform such other responsibilities as may be assigned to it by law.

(59 Del. Laws, c. 575, § 1; 67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, §§ 10-13, 27; 75 Del. Laws, c. 57, § 6.)

§ 5810. State Public Integrity Commission — Complaints; hearings; dispositions.

(a) Upon the sworn complaint of any person or on its own initiative, the Commission may refer to the Commission Counsel for investigation any alleged violations of this chapter. The Commission Counsel shall be the prosecuting attorney in disciplinary proceedings before the Commission. In any such investigation or proceeding, a defendant shall be given an opportunity to be heard after notice, to be advised and assisted by legal counsel, to produce witnesses and offer evidence, and to cross-examine witnesses. A transcript of any such proceeding shall be made and retained, subject to the confidentiality requirements of subsection (h) of this section.

(b) A member of the Commission shall be ineligible to participate, as a member of the Commission, in any commission proceeding relating to such member's conduct. A member of the Commission who has been found by the Commission to have violated this chapter shall be ineligible to serve again as a member of the Commission.

(c) A member of the Commission may disqualify himself or herself from participating in any investigation of the conduct of any person upon submission in writing and under oath of an affidavit of disqualification stating that the member cannot render an impartial and unbiased decision in the case in which the member seeks to disqualify himself or herself.

(d) With respect to any violation with which a person has been charged and which the Commission has determined as proved, the Commission may take any 1 or more of the following actions:

(1) Issue a written reprimand or censure of that person's conduct.

(2) With respect to a state employee or state officer, other than an elected official, remove, suspend, demote or take other appropriate disciplinary action with respect to that person, without regard to any limits imposed by Chapter 59 of this title but within the limits of the Constitution and other laws of the State.

(3) With respect to an honorary state official, recommend that appropriate action be taken to remove the official from office.

(e) In any proceeding before the Commission, upon the request of any person charged with a violation of this chapter, such person shall be permitted to inspect, copy or photograph books, papers, documents, photographs or other tangible objects which will be used as evidence against that person in a disciplinary hearing and which are material to the preparation of a defense.

(f) In any proceeding before the Commission, if the Commission Counsel or the Commission at any time receives any exculpatory information respecting an alleged violation against any person, it shall forthwith make such information available to such person.

(g) Any person charged with a violation of this chapter may apply to the Commission for the issuance of subpoenas for the appearance of witnesses and for the production of documents on the person's behalf. The application shall be granted upon a concise showing by such person that the proposed testimony or evidence is relevant (or is reasonably calculated to lead to the discovery of relevant evidence) and is not otherwise available. The application shall be denied if not made at a reasonable time or if the testimony or evidence would be merely cumulative.

(h) (1) All proceedings relating to a charged violation of this chapter shall be maintained confidential by the Commission unless:

a. Public disclosure is requested in writing by the person charged; or

b. the Commission determines after a hearing that a violation has occurred.

(2) Notwithstanding the confidentiality requirements of paragraph (h)(1) of this section, the Commission shall make available for public inspection the record of all proceedings relating to any decision of the Commission which is appealed to Superior Court and the Commission shall report to appropriate federal or state authorities any substantial evidence of a violation of any criminal law which comes to its attention in connection with any proceeding under this chapter.

(3) The chairperson of the Commission shall, with the approval of the Commission, establish such procedures as in the chairperson's judgment may be necessary to prevent the disclosure of any record of any proceedings or other information received by the Commission or its staff except as permitted by this chapter.

(67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, §§ 14-18; 70 Del. Laws, c. 186, § 1.)

§ 5810A. Judicial review.

In the event that the Commission finds that any person has violated any provision of this chapter, said person shall have a right of appeal to Superior Court of any such finding and of any sanctions imposed with respect thereto by filing a notice of appeal with the Superior Court within 30 days of the final action by the Commission in a particular case. The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the Commission for further proceedings on the record. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the Commission's decision was supported by substantial evidence on the record. The burden of proof in any such appeal shall be on the appellant.

(67 Del. Laws, c. 417, § 1; 69 Del. Laws, c. 467, § 19.)

Subchapter II

Financial Disclosure

§ 5811. Findings.

The General Assembly finds and declares that:

(1) In our democratic form of government, persons serving in state government hold positions of public trust which require rigorous adherence to the highest standards of honesty, integrity and impartiality.

(2) In order to insure propriety and preserve public trust, a public official or employee should refrain from acting in an official capacity on any matter wherein the employee or official has a direct or indirect personal financial interest that might reasonably be expected to impair objectivity or independence of judgment, and should avoid even the appearance of impropriety.

(3) A disclosure of the personal financial interests of public officials will serve to guard against conduct violative of this public trust and to restore the public's faith and confidence in representatives of its government.

(64 Del. Laws, c. 110, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5812. Definitions.

(a) "Business enterprise" means corporation, partnership, sole proprietorship or any other individual or organization carrying on a business or profession.

(b) "Capital gain" means capital gains required to be reported to the Internal Revenue Service pursuant to federal internal revenue laws.

(c) "Commission" means the State Public Integrity Commission.

(d) "Constructively controlled" means:

(1) A financial interest in the name of another which is controlled by a public officer by virtue of any relationship of the public officer to another person and which directly benefits the public officer;

(2) Any financial interest of a public officer held jointly with the spouse or child of such public officer;

(3) Any financial interest of the spouse or minor child of a public officer.

(e) "Debt instrument" means bonds, notes, debentures, mortgages or other securities having a fixed yield if not convertible to equity instruments.

(f) "Equity instrument" means any ownership interest in a corporation or other legal entity giving rights to the holder upon liquidation of the entity.

(g) "Fair market value" means, if a security, the quoted price as of January 1 of the year in which the report required by § 5813 of this title is filed, or, if not a security, the price at which the public officer would sell as of January 1 of the year in which the report required by § 5813 of this title is filed.

(h) "Gift" means a payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value unless consideration of equal or greater value is received. "Gift" shall not include a political contribution otherwise reported as required by law, a commercially reasonable loan made in the ordinary course of business, or a gift received from a spouse or any relative within the third degree of consanguinity of the person or person's spouse or from the spouse of any such relative.

(i) "Honoraria" means fees received for speeches, written articles and participation in discussion groups and similar activities, but does not include reimbursement for expenses.

(j) "Income for services rendered" means income from a single source and includes salary, wages, consulting fees and professional services.

(k) "Instrument of ownership" includes, but is not limited to, common or preferred stock, rights, warrants, articles of partnership, proprietary interest, deeds and debt instruments, if convertible to equity instruments.

(*l*) "Position of management" means officer, director, partner, proprietor or other managerial position in a business enterprise.

(m) "Professional organization" means an individual engaged in, or an association organized pursuant to, federal or state law for the practice of medicine, law, accounting, engineering or other profession.

(n) (1) "Public officer" shall mean:

a. Any person elected to any state office; and

b. Any person appointed to fill a vacancy in an elective state office; and

c. Any candidate who has filed for any state office; and

d. The Director of the Division of Legislative Services and Controller General of the Legislative Council; and

e. The Chief Justice and Justices of the Supreme Court; and

f. The Chancellors and Vice-Chancellors of the Court of Chancery; and

g. The President Judge and Judges of Superior Court; and

h. The Chief Judge and Judges of Family Court; and

i. The Chief Judge and Judges of the Court of Common Pleas; and

j. The Chief Magistrate and justices of the peace; and

k. The State Court Administrator and the administrators of Superior Court, Family Court, the Court of Common Pleas, and the Justice of the Peace Courts; and

l. The Public Guardian; and

m. All Cabinet Secretaries and persons of equivalent rank within the Executive Branch; and

n. All division directors and persons of equivalent rank within the Executive Branch; and

o. The State Election Commissioner and the Directors and Deputy Directors of the Department of Elections; and

p. The State Fire Marshal and the Director of the State Fire School; and

q. The Adjutant General of the Delaware National Guard; and

r. The Alcoholic Beverage Control Commissioner and the members of the Appeals Commission, pursuant to § 306(c) of Title 4; and

s. The Public Advocate; and

t. Members of the Public Service Commission.

(2) For purposes of this subchapter, the term "public officer" does not include elected and appointed officials of political subdivisions of the State, of public school districts of the State, and of state institutions of higher learning.

(o) "Reimbursement for expenditures" means any payments to a public officer for expenses incurred by that public officer.

(p) "Time or demand deposits" means checking and savings account in banks or deposits or share in savings and loan institutions, credit unions or money market funds.

(64 Del. Laws, c. 110, § 1; 64 Del. Laws, c. 223, § 1; 67 Del. Laws, c. 418, § 1; 69 Del. Laws, c. 467, § 20; 71 Del. Laws, c. 176, § 35; 72 Del. Laws, c. 190, § 4; 72 Del. Laws, c. 338, § 6; 75 Del. Laws, c. 57, §§ 1-3; 76 Del. Laws, c. 213, §§ 52-55; 77 Del. Laws, c. 193, § 1; 77 Del. Laws, c. 227, § 1; 79 Del. Laws, c. 110, § 1; 79 Del. Laws, c. 127, § 1; 79 Del. Laws, c. 189, § 1; 81 Del. Laws, c. 280, § 53; 84 Del. Laws, c. 255, § 47.)

§ 5813. Report disclosing financial information.

(a) Every public officer as defined in § 5812 of this title shall electronically file a report disclosing financial interests, as hereinafter provided. Each electronic report shall be submitted and electronically verified through the database maintained by the Commission for such records and shall include at least the following information:

(1) The name and position of the public officer; and

(2) The name, instrument and nature of ownership, and any position of management held by, or constructively controlled by, the public officer in any business enterprise in which legal or equitable ownership is in excess of $5,000 fair market value or from which income of more than $5,000 was either derived during the preceding calendar year or might reasonably be expected to be derived during the current calendar year. Time or demand deposits in a financial institution, or any debt instrument having a fixed yield shall not be listed unless convertible to an equity instrument; and

(3) The name, address and type of practice, without reference to the identity of any individual clients served, of any professional organization in which the public officer is the sole practitioner, officer, director or partner, or serves in any advisory capacity, or which is constructively controlled by the public officer, from which income of more than $5,000 was either derived during the preceding year or might reasonably be expected to be derived during the current calendar year; provided, however, that any such organization construed as a business enterprise and reported pursuant to paragraph (a)(2) of this section need not be reported under this subsection; and

(4) The source of each of the following items received during the preceding calendar year, or reasonably expected to be received during the current calendar year:

a. Any income derived for services rendered exceeding $1,000 from a single source, unless such income is otherwise identified pursuant to paragraph (a)(2) or (3) of this section; or

b. Any capital gain exceeding $1,000 from a single source other than from the sale of a residence occupied by the public officer; or

c. Any reimbursement for expenditures exceeding $1,000 from a single source; or

d. Any honoraria; or

e. Any gift with a value in excess of $250 received from any person, identifying also in each case the amount of each such gift. For purposes of compliance with this gift reporting obligation, the recipient may rely in good faith upon the representation of the source of the gift as to the gift's value; and

(5) Each creditor to whom the public officer was indebted for a period of 90 consecutive days or more during the preceding calendar year in an aggregate amount in excess of $1,000.

(b) Each report required by this section shall contain a certification by the public officer that the officer has read the report, and that to the best of the officer's knowledge and belief it is true, correct and complete, and that the officer has not and will not transfer any assets, interests or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

(c) Not later than 14 days after becoming a "public officer" as defined in § 5812 of this title, the report required by this subchapter shall be filed. Thereafter, the report shall be filed on or before the third Wednesday of March each year.

(d) Each report required by this section shall be filed with the Commission.

(64 Del. Laws, c. 110, § 1; 67 Del. Laws, c. 418, § 2; 69 Del. Laws, c. 467, §§ 21-23; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 57, §§ 4, 5; 77 Del. Laws, c. 353, § 1; 79 Del. Laws, c. 349, § 1; 85 Del. Laws, c. 124, § 1.)

§ 5813A. Report disclosing council or board membership.

(a) Every person elected to a state office or appointed to fill a vacancy in an elective state office, or who has filed as a candidate for an elective state office shall disclose in writing to the Commission, and the Commission shall record in its public officer docket, the name and address of every nonprofit organization, excluding religious organizations, civic association, community association, foundation, maintenance organization, or trade group incorporated in the State or having activities in the State, or both, of which the person is a council member or board member.

(b) The disclosure required by subsection (a) of this section must be submitted along with, or as part of, the financial disclosure information required to be provided to the Commission pursuant to § 5813 of this title.

(77 Del. Laws, c. 349, § 1.)

§ 5814. Retention of reports.

(a) The Commission shall keep the reports required by this subchapter on file for so long as the person submitting such report is a public officer of this State, as defined in § 5812 of this title, and for at least 5 years thereafter. All reports on file with agencies other than the Commission as of January 15, 1995, shall be transferred to the Commission by April 15, 1995.

(b) The reports filed pursuant to this subchapter shall be made available at reasonable hours for public inspection and copying pursuant to Chapter 100 of this title.

(64 Del. Laws, c. 110, § 1; 69 Del. Laws, c. 467, § 24.)

§ 5815. Violations; penalties; jurisdiction of Superior Court.

(a) Any public officer who wilfully fails to file a report in violation of §§ 5813, 5813A of this title shall be guilty of a class B misdemeanor.

(b) Any public officer who knowingly files any report required by §§ 5813, 5813A of this title that is false in any material respect shall be guilty of a class A misdemeanor.

(c) The Commission may refer a violation of this subchapter by a candidate for state-wide office to the State Election Commissioner for further action. The Commission may refer to the Commission Counsel for investigation and/or may refer any suspected violation of this subchapter by any public officer to the Attorney General for investigation and prosecution; provided however, that the Commission shall refer any suspected violation of this subchapter by a member of the General Assembly or the judiciary to the Attorney General, who shall have the exclusive authority to investigate and prosecute or otherwise recommend remedies or sanctions for such suspected violation.

(d) Superior Court shall have jurisdiction over all offenses under this subchapter.

(64 Del. Laws, c. 110, § 1; 69 Del. Laws, c. 467, § 25; 77 Del. Laws, c. 349, § 2; 79 Del. Laws, c. 351, § 1.)

§ 5816. Protection of confidentiality.

Nothing contained in this subchapter shall be construed as requiring the disclosure of any fact the confidentiality of which is protected by any applicable federal or state law. Disclosures made pursuant to § 5815 of this title shall not be deemed a violation of this section.

(64 Del. Laws, c. 110, § 1; 79 Del. Laws, c. 351, § 2.)

Subchapter III

Compensation Policy [Effective until May 22, 2026].

§ 5821. Findings [Effective until May 22, 2026].

(a) There are numerous elected state officials and other paid appointed officials who are also employed by state agencies, educational and other institutions, and other jurisdictions of government within the State.

(b) The members of the General Assembly believe that the taxpayers of Delaware should not pay an individual more than once for coincident hours of the workday.

(c) The State should have in place clear policies and procedures to ensure that taxpayers of the State as a whole, and of its various governmental jurisdictions, are not paying employees or officials from more than 1 tax-funded source for duties performed during coincident hours of the workday.

(65 Del. Laws, c. 488, § 1.)

§ 5822. Policy [Effective until May 22, 2026].

(a) Any person employed by the State, or by any political subdivision of the State, including but not limited to any county, city or municipality, who also serves in an elected or paid appointed position in state government or in the government of any political subdivision of the State, including but not limited to any county, city or municipality, shall have his or her pay reduced on a prorated basis for any hours or days missed during the course of the employee's normal workday or during the course of the employee's normal workweek while serving in an elected or paid appointed position which requires the employee to miss any time which is normally required of other employees in the same or similar positions.

(b) Any day an employee misses work due to his or her elected or paid appointed position, he or she shall have his or her immediate supervisor verify a time record stating specifically the number of hours worked that day; said verification to take place at least once every pay period.

(c) All time records, so verified, shall be kept by the immediate supervisor until such time as they are required by the State Auditor.

(d) No employee shall be permitted to make up time during hours other than the normal workday for purposes of compensation. A normal workday is defined by Merit Rule 5.0200. A standard work schedule is defined by Merit Rule 5.0210.

(e) Any hours or days during which an employee uses vacation, personal, or compensatory days to which he or she is entitled shall not constitute hours or days which fall within the scope of this subchapter.

(f) School administrators whose duties require that they work regularly during summer months shall not be exempted from this chapter. If a school administrator shall have no immediate supervisor, the school administrator's time record shall be verified by the appropriate school board at its next regular or special meeting following any pay period in which said administrator missed work due to his or her elected or paid appointed position.

(65 Del. Laws, c. 488, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 190, §§ 1, 2.)

§ 5823. Audits; penalty [Effective until May 22, 2026].

(a) The State Auditor shall conduct an annual audit of the time records which have been kept by the supervisors or school board in accordance with § 5822(b) and (c) of this title to determine whether or not an employee was paid from more than 1 tax-funded source for working coincident hours of the day.

(b) Any discrepancy found by the State Auditor shall be reported to the Public Integrity Commission for investigation pursuant to § 5810 of this title and/or to the Office of the Attorney General for possible prosecution under § 876 of Title 11 (tampering with public records in the first degree) and any other appropriate section.

(65 Del. Laws, c. 488, § 1; 69 Del. Laws, c. 467, § 26.)

Subchapter III

Compensation Policy [Effective May 22, 2026].

§ 5821. Findings; definitions [Effective May 22, 2026].

(a) There are numerous elected or appointed officials who are also employed by state agencies, educational and other institutions, and political subdivisions of this State.

(b) The General Assembly believes that the taxpayers of this State should not pay an individual more than once for coincident hours of the workday.

(c) This State should have in place clear policies and procedures to ensure that the taxpayers of this State as a whole, and of the various political subdivisions of this State, are not paying elected or appointed officials from more than 1 tax-funded source for duties performed during coincident hours of the workday.

(d) As used in this subchapter:

(1) "Commission" means the Public Integrity Commission.

(2) "Dual compensation" means the receipt of compensation for coincident hours of work as an elected or appointed official and as an employee.

(3) "Dual employment" means simultaneously serving as an elected or appointed official and as an employee.

(4) "Elected or appointed official" means an individual elected or appointed to a paid office of this State or a political subdivision of this State.

(5) “Employee” means an individual employed by a state agency or political subdivision of this State other than as an elected or appointed official.

(6) “Institution of higher education” means any public or private educational institution located in this State which provides a program of education beyond the high school level and awards an associate’s, bachelor’s, or advanced degree and that receives moneys from this State, including by an appropriation in the annual appropriations act.

(7) “Political subdivision of this State” means a county, municipality, school district, authority, or other similar entity of this State authorized by law to impose taxes or spend public funds. “Political subdivision of this State” does not include an institution of higher education.

(8) “Public funds” means moneys appropriated by this State or any political subdivision of this State.

(9) “State agency” means as defined in § 5804 of this title. “State agency” does not include an institution of higher education.

(10) “Workday” means as follows:

a. For a state agency, as defined by other law or policy of this State.

b. For a political subdivision of this State, as defined by a law or policy adopted by the political subdivision of this State.

(65 Del. Laws, c. 488, § 1; 85 Del. Laws, c. 20, § 1.)

§ 5822. Governmental compensation policy on dual employment [Effective May 22, 2026].

(a) The pay of an employee must be reduced on a prorated basis for any workday time missed due to service as an elected or appointed official.

(b) The immediate supervisor of an employee who is also an elected or appointed official shall verify a time record stating specifically the number of hours the elected or appointed official worked as an employee. The immediate supervisor shall conduct this verification at least once each pay period.

(c) An immediate supervisor who verifies a time record under subsection (b) of this section shall keep the verified time record until the record is requested by the State Auditor under § 5823 of this title.

(d) A state agency or political subdivision of this State that has an elected or appointed official as an employee may permit the elected or appointed official to make up time during hours other than the workday for purposes of compensation. The immediate supervisor of an employee who is also an elected or appointed official shall verify a time record stating specifically the number of hours the employee made up during hours other than during the workday.

(e) An elected or appointed official who is also an employee may use vacation, personal, or compensatory time to which the elected or appointed official is otherwise entitled to make up for missed workday time related to service as an elected or appointed official.

(f) This subchapter applies to a school administrator who is also an elected or appointed official. If a school administrator does not have an immediate supervisor, the school administrator’s time record must be verified by the school administrator’s school board at the school board’s next regular or special meeting.

(65 Del. Laws, c. 488, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 190, §§ 1, 2; 85 Del. Laws, c. 20, § 2.)

§ 5823. Audits; penalty [Effective May 22, 2026].

(a) The State Auditor shall conduct an annual audit of the time records which have been kept by an elected or appointed official’s immediate supervisor or school board under § 5822 of this title to determine whether the elected or appointed official was paid from more than 1 tax-funded source for working coincident hours of the day.

(b) If the State Auditor finds a discrepancy in the records kept under § 5822 of this title, the State Auditor shall report the discrepancy to the Commission, for investigation under § 5810 of this title, and to the Department of Justice, for prosecution under § 876 of Title 11 (tampering with public records in the first degree) or any other law of this State.

(65 Del. Laws, c. 488, § 1; 69 Del. Laws, c. 467, § 26; 85 Del. Laws, c. 20, § 3.)

§ 5824. Disclosure of dual employment; audit [Effective May 22, 2026].

(a) An elected or appointed official who is also an employee shall disclose the dual employment to the Commission within 15 days after the commencement of the dual employment.

(b) The disclosure under subsection (a) of this section must be made in a format prescribed by the Commission and must include information prescribed by the Commission to determine that sufficient measures or circumstances are in place to avoid dual compensation.

(c) After the disclosure under subsection (a) of this section, an elected or appointed official only has a duty to report to the Commission within 15 days after 1 of the following occurs:

(1) The elected or appointed official’s dual employment ends.

(2) The elected or appointed official begins employment with a different state agency or political subdivision of this State.

(d) If the Commission believes an elected or appointed official is receiving dual compensation, the Commission may request an audit by the State Auditor.

(e) If an employee is found to have received dual compensation in violation of this subchapter, the violation must be reported to the employer for corrective action under the employer's applicable governing policies or law.

(f) Nothing in this section relieves an elected or appointed official of the elected or appointed official's duty to file an annual financial disclosure statement with the Commission under § 5813 of this title.

(85 Del. Laws, c. 20, § 4.)

§ 5825. Institution of higher education compliance with this subchapter [Effective May 22, 2026].

(a) As used in this section, "institution of higher education" means any public or private educational institution located in this State which provides a program of education beyond the high school level and awards an associate's, bachelor's, or advanced degree and that receives moneys from this State, including by an appropriation in the annual appropriations act.

(b) An institution of higher education shall keep the records required to be kept under § 5822 of this title.

(c) Subsection (b) of this section applies to an institution of higher education regarding an employee of the institution of higher education paid in whole or in part with State funds.

(d) On request of the State Auditor, an institution of higher education shall provide the records required under subsection (c) of this section to the State Auditor.

(e) (1) If the State Auditor finds by case decision under subchapter III of Chapter 101 of Title 29 that an institution of higher education is knowingly in violation of subsection (b), (c), or (d) of this section, the State Auditor may impose an administrative penalty as follows:

a. For a first violation, $10,000 for the violation.

b. For a second or subsequent violation within 5 years of the first violation, $50,000 for the violation.

(2) If the State Auditor imposes an administrative penalty under paragraph (e)(1) of this section, the State Auditor shall report the violation and amount of administrative penalty imposed to the Public Integrity Commission, Department of Justice, and the Office of the Controller General.

(f) An institution of higher education shall retain the records required to be kept under this section for 5 years.

(85 Del. Laws, c. 21, § 1.)

Subchapter IV
Registration of Lobbyists

§ 5831. Definitions.

(a) As used in this subchapter, the following terms shall have the meanings indicated:

(1) "Commission" means the State Public Integrity Commission.

(2) "Compensation" means any money, thing of value or any other economic benefit of any kind or nature whatsoever conferred on or received by any person in return for services rendered or to be rendered by such person or another.

(3) "Employer" means any person on whose behalf a lobbyist acts.

(4) "General Assembly" includes any member, committee or subcommittee of either House of the General Assembly.

(5) "Lobbyist" means any individual who acts to promote, advocate, influence or oppose any matter pending before the General Assembly by direct communication with the General Assembly or any matter pending before a state agency by direct communication with that state agency, and who in connection therewith either:

a. Has received or is to receive compensation in whole or in part from any person; or

b. Is authorized to act as a representative of any person who has as a substantial purpose the influencing of legislative or administrative action; or

c. Expends any funds during the calendar year for the type of expenditures listed in § 5835(b) of this title.

(6) "Matter" means any application, petition, request, business dealing, transaction or decision of any sort.

(7) "Person" means any individual, partnership, corporation, trust, joint venture and any other association of individuals or entities.

(8) "State agency" means any office, department, board, commission, committee, school district, board of education and all public bodies existing by virtue of an act of the General Assembly or of the Constitution of the State, excepting only political subdivisions of the State, their agencies and other public agencies not specifically included in this definition that exist by virtue of state law and whose jurisdiction:

a. Is limited to a political subdivision of the State or to a portion thereof; or

b. Extends beyond the boundaries of the State.

(9) "State employee" means person who receives compensation as an employee of a state agency (including the elected or appointed heads of such agencies) or who serves as an appointed member, trustee, director or the like of any state agency.

(b) Paragraphs (a)(5)a. and b. of this section shall not apply to:

(1) Persons performing professional services in drafting bills or regulations or in advising and rendering opinions to clients as to the construction or effect of proposed, pending or enacted legislation or regulations who do not otherwise act as lobbyists;

(2) Persons appearing pursuant to their official duties as employees or elected officials of the State, or any political subdivision thereof, or of the United States, and not as representatives of any other person; moreover, expenditures listed in § 5835 of this title made by such persons or their employers in connection with these official duties shall not qualify such persons as lobbyists under paragraph (a)(5)c. of this section;

(3) Persons who, in relation to the duties or interests of their employment or at the request or suggestion of their employer, communicate with the General Assembly or a state agency concerning any legislation, regulation or other matter before the General Assembly or such state agency, if such communication is an isolated, exceptional or infrequent activity in relation to the usual duties of their employment;

(4) Persons communicating with the General Assembly or a state agency if such communication is undertaken by them as a personal expression and not as an agent of their employers as to matters of interest to a person by whom or by which they are employed and if they receive no additional compensation or reward, in money or otherwise, for or as a result of such communication;

(5) Persons testifying at public hearings conducted by the General Assembly or a state agency who do not otherwise act as lobbyists;

(6) Persons appearing on behalf of any religious organization with respect to subjects of legislation or regulation that directly relate to the religious beliefs and practices of that organization who do not otherwise act as lobbyists;

(7) Attorneys representing clients in administrative adjudications governed by the provisions of subchapter III of Chapter 101 of this title, representing clients before the Tax Appeals Board, or in other administrative procedures where ex parte communications with the state agency with authority over the matter are prohibited;

(8) Attorneys representing clients with regard to criminal or civil law enforcement proceedings, or in any judicial proceedings.

(69 Del. Laws, c. 467, § 28; 70 Del. Laws, c. 186, § 1.)

§ 5832. Registration of lobbyists with the State Public Integrity Commission.

(a) Every lobbyist shall register electronically with the Commission in a lobbyist docket and file, at that time, the authorization from the lobbyist's employer as required by § 5833 of this title. A person who qualifies as a lobbyist in accordance with § 5831(a)(5)a. or b. of this title shall register prior to performing any acts as a lobbyist. A person who qualifies as a lobbyist in accordance with § 5831(a)(5)c. of this title must register within 5 days after so qualifying, if not already registered as a lobbyist.

(b) The information recorded in the Commission's lobbyist docket shall include for each separate employer:

(1) The name, residence or business address and occupation of each lobbyist;

(2) The name and business address of the employer of such lobbyist;

(3) The date on which the employment as lobbyist commenced;

(4) The length of time the employment is to continue; and

(5) The subject matter of legislation, regulation or administrative action as to which the employment relates at that time.

(c) Upon any change in the information recorded in the lobbyist docket, the lobbyist shall within 5 business days report such changes to the Commission, which shall record the change in the docket.

(d) The Commission shall promptly furnish copies of each entry in the lobbyist docket to the Chief Clerk of the House of Representatives, the Secretary of the Senate, the Governor and the head of any state agency upon request of such persons.

(69 Del. Laws, c. 467, § 28; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 401, §§ 2, 3.)

§ 5833. Employer's authorization to act.

Every employer of a lobbyist shall verify such employment and the contents of the electronic Employer Authorization form submitted to the Commission not later than 15 business days after the lobbyist has registered with the Commission. If the employer is a corporation, association or labor union, any authorized officer or agent who is not the lobbyist shall provide electronic verification to the Commission. The authorization shall include the full and legal name and business address of both the employer and the lobbyist, the period of time during which the lobbyist is authorized to act and the subject or subjects of legislation, regulation or administrative action upon which the employer is represented.

(69 Del. Laws, c. 467, § 28; 79 Del. Laws, c. 348, § 1.)

§ 5834. Compensation of lobbyist not to be substantially dependent on outcome of legislative or administrative action.

No person shall employ a lobbyist nor shall any person be employed as a lobbyist pursuant to any compensation agreement that permits more than half of the compensation to be paid to such a lobbyist to be dependent upon the outcome of any legislative or administrative action.

(69 Del. Laws, c. 467, § 28.)

§ 5835. Financial reports by lobbyists.

(a) On or before the twentieth day of the month following each calendar quarter, each lobbyist shall file electronically a report covering the immediately preceding calendar quarter and containing the information required by this section.

(b) A lobbyist shall file separate reports for each employer which the lobbyist represents. Each report shall contain the total expenditures during the reporting period for all direct expenditures, costs or values, whichever is greater, provided for members of the General Assembly or for employees or members of any state agency for the following:

(1) Food and refreshment;

(2) Entertainment, including the cost of maintaining a hospitality room;

(3) Lodging expenses away from home;

(4) Fair value of travel if the trip exceeds 100 miles;

(5) Recreation expenses; and

(6) Gifts or contributions, excluding political contributions as defined in Chapter 80 of Title 15.

(c) The information shall be reported electronically and shall show the total expenditures for the reporting period and shall also list the recipient any time the expenditures exceed $50 per diem. The lobbyist shall also affirm that the lobbyist has provided the recipient of any gift in excess of $50 with a representation as to the value of the gift. The records shall be retained for a period of 4 years from the date of filing.

(69 Del. Laws, c. 467, § 28; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 401, § 4; 80 Del. Laws, c. 393, § 1.)

§ 5836. Activity reports by lobbyists.

(a) Notwithstanding any other provision of this chapter, no lobbyist may promote, advocate, influence or oppose any bill or resolution pending before the General Assembly by direct communication with a member of the General Assembly, the Lieutenant Governor, or the Governor, or any proposed regulation pending before a state agency by direct communication with an employee or official of that state agency, unless the lobbyist reports to the Commission the identity by number of each bill or resolution, and by number and/or title of each regulation, in connection with which the lobbyist has made or intends to make such direct communication, and the name of the employer on whose behalf such direct communication occurred. Reports relating to any subject contained within any budget appropriation bill or bond and capital improvement bill shall also include identification of the specific subject of the direct communication, such subjects to be designated by agreement of the Controller General and Director of the Office of Management and Budget. Other than as specified in this section, a lobbyist shall not be required to disclose with whom such direct communication occurred or a position or other substantive comment on the bill, resolution, or regulation for which a report is filed. For the purposes of this section, direct communications undertaken as part of one's duties as a member of a commission, committee, task force, board or other public body shall not be considered direct communication requiring discloser under this section.

(b) A lobbyist shall make any report to the Commission required by this section relating to a bill or resolution no later than the end of the fifth business day after the date on which the first direct communication takes place, or by June 29 of each year, whichever is earlier. A lobbyist shall make any report to the Commission required by this section relating to a regulation no later than the end of the fifth business day after the date on which the first direct communication takes place. Reports shall be filed electronically in such manner as the Commission may prescribe.

(c) Direct communications by a lobbyist with a member of the General Assembly, the Lieutenant Governor, the Governor, or an employee or official of the state agency that specifically relate to a proposed bill, resolution, or regulation, that occur prior to introduction of such bill or resolution, or initial public notice of such regulation, shall be disclosed no later than the end of the fifth business day after the introduction of the bill or resolution, or initial public notice of such regulation, that was the subject of the direct communication.

(d) The reports made pursuant to this section shall be posted on the Internet by the Commission, in consultation with Legislative Council, in a manner determined by the Government Information Center to allow the public to review such information organized by bill, resolution, regulation, lobbyist, employer, and subject of the budget appropriation bill or bond and capital improvement bill. The chairperson of the Commission shall have the authority to suspend the reports required by this section if electronic filing of those reports is unavailable, in which case the reports required by this section shall be filed no later than the end of the fifth business day after which electronic filing has resumed, or June 29 of each year, whichever is earlier. Reports made pursuant to this section shall be distributed electronically in a format determined by the Commission to each member of the General Assembly no less frequently than once a week when the General Assembly is in session.

(78 Del. Laws, c. 401, § 1.)

§ 5837. Lobbying restrictions for a former member of the General Assembly.

No person who served as a member of the General Assembly shall act as a lobbyist for compensation for a period of 1 year from the time such person is no longer serving in office. Any person who knowingly violates this section shall be guilty of an unclassified misdemeanor.

(79 Del. Laws, c. 427, § 1.)

§ 5838. When registration, report or authorization is considered as filed; access to records.

(a) Any registration, report or authorization form shall be considered filed as of the date it is filed electronically with the Commission or, if electronic filing required by this subchapter is unavailable at the time filing is required, on the date it is mailed if sent by registered or certified mail.

(b) The lobbyist docket maintained by the Commission and any reports, authorizations or other documents filed with the Commission pursuant to this subchapter shall be made available at reasonable hours for public inspection and copying pursuant to Chapter 100 of this title.

(69 Del. Laws, c. 467, § 28; 78 Del. Laws, c. 401, §§ 1, 5; 79 Del. Laws, c. 427, § 1.)

§ 5839. Violation and penalties.

(a) Any person who knowingly fails to register as a lobbyist as required by this subchapter shall be guilty of a misdemeanor.

(b) Any person who knowingly furnishes false information in any registration, authorization or report required by this subchapter shall be guilty of a misdemeanor.

(c) Any person who fails to file an authorization or report, as required by this subchapter shall be deemed to have voluntarily cancelled registration as a lobbyist and shall be prohibited from reregistering or acting as a lobbyist until all delinquent authorizations and/or reports have been filed. Any person who fails to timely file a report pursuant to § 5835 of this title shall pay a late fee of $25 for the first day and $10 for each subsequent day the report is delinquent. The maximum late filing fee shall be $100. The Commission may waive the late filing fee if the Commission determines that the circumstances make imposition of the fee inappropriate. The fee(s) is payable through the Public Integrity Reporting System database maintained by the Commission. All revenue generated by the late filing fees shall be deposited in an appropriated special fund account for the Commission. These funds shall be used to fund all costs necessary to defray the expenses of administration of § 5835 of this title.

(d) The Commission may refer to the Commission Counsel for investigation and/or refer any suspected violation of this subchapter to the Attorney General for investigation and prosecution. The Speaker of the House, the presiding officer of the Senate, the Legislative Council or any member of the General Assembly shall refer, or any other person may refer, any suspected violation of this subchapter to the Commission and/or the Attorney General of the State.

(e) The Superior Court shall have exclusive jurisdiction over all offenses under this subchapter.

(69 Del. Laws, c. 467, § 28; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 401, § 1; 79 Del. Laws, c. 350, § 1; 79 Del. Laws, c. 427, § 1.)

Part V
Public Officers and Employees
Chapter 59
Merit System of Personnel Administration
Subchapter I
Definitions and Exclusions

§ 5901. Definitions.

(a) As used in this chapter, unless the context requires a different meaning:

(1) "Agency" means any agency, board, department, bureau or commission of this State which receives an appropriation under the general appropriation act of the General Assembly.

(2) "Board" means the Merit Employee Relations Board created by this chapter.

(3) "Board member" means a member of the Board.

(4) "Classified service" or "state service" shall have the meaning as set forth in § 5903 of this title.

(5) "Merit comparable positions" means those positions which for salary determination purposes, are assigned, pursuant to the State Budget Act, classification titles and/or pay grades that are comparable to the titles and/or pay grades of similar positions in the classified service.

(6) "Rules" means those rules adopted by the Board pursuant to this chapter.

(7) "Secretary" means the Secretary of the Department of Human Resources.

(b) The definitions of terms appearing in § 1302 of Title 19 apply to this chapter.

(29 Del. C. 1953, § 5901; 55 Del. Laws, c. 443, § 1; 56 Del. Laws, c. 376, § 1; 68 Del. Laws, c. 215, § 1; 69 Del. Laws, c. 436, § 9; 75 Del. Laws, c. 88, § 20(6); 81 Del. Laws, c. 66, § 28; 81 Del. Laws, c. 425, § 21.)

§ 5902. General purpose.

The general purpose of this chapter is to establish for this State a system of personnel administration based on merit principles and scientific methods governing the employees of the State in the classified service consistent with the right of public employees to organize under Chapter 13 of Title 19.

(29 Del. C. 1953, § 5902; 55 Del. Laws, c. 443, § 1; 56 Del. Laws, c. 376, § 2.)

§ 5903. Classified service and exemptions.

Unless otherwise required by law, as used in this chapter, "classified service" or "state service" means all positions of state employment other than the following positions, which are excluded:

(1) Members of the General Assembly and others elected by popular vote and persons appointed to fill vacancies in elective offices.

(2) Officers and employees of the Senate and House of Representatives of the General Assembly.

(3) Election officers.

(4) Heads of state agencies, members of boards and commissions and the chief administrator employed by each board or commission.

(5) One principal assistant or deputy and 1 private secretary for each head of a state agency.

(6) Officers and employees in the office of the Governor.

(7) Assistant Public Defenders, Deputy Attorneys General, and state detectives appointed by the State Attorney General.

(8) Physicians or lawyers acting primarily in a professional capacity and not in an administrative capacity, except those physicians or lawyers employed by the State on a full-time basis.

(9) Persons employed as consultants in a professional or scientific capacity to conduct a temporary and special inquiry, investigation, examination or service on behalf of the General Assembly or a committee thereof, or by authority of the Governor or by authority of a head of a state department, agency, board or commission.

(10) Patient or inmate help in charitable, penal, correctional and other state institutions.

(11) Personnel in the military service of the State.

(12) All employees of each state school district, special school district and charter schools, all employees of the Department of Education and all employees who teach in state institutions pursuant to unit allocations as set forth in § 1703 of Title 14.

(13) All employees of the University of Delaware and of Delaware State University.

(14) Trustees of the University of Delaware and Delaware State University.

(15) Persons engaged in public work conducted jointly with the federal government, with other states or their political subdivisions or with political subdivisions in this State, except certain covered employees of the Department of Agriculture as defined by § 304 of Title 3.

(16) All judges and employees of the state judicial branch.

(17) a. Casual seasonal employees may be employed by the State on a temporary basis in order to assist agencies in the following situations:

1. *Casual assistance. —*

employee is needed on a sporadic or on-call basis where hours cannot be predetermined and vary greatly from week to week. Such employees may be used as needed.

2. *Seasonal assistance. —*

employee is needed for peak operating seasons not to exceed 9 months.

3. *Institutional assistance. —*

employee is needed to provide optimum staffing levels for clients or to maintain security in an institution. Such employees may be used as needed.

4. *Part-time assistance. —*

employee works less than 30 hours per week on a consistent basis. Such employees may be used as needed.

5. *Project assistance. —*

employee performs duties related to a specific project that has defined objectives and an established time period of completion that does not exceed 1 year.

6. *Primary incumbent replacement. —*

employee is needed to fulfill the job responsibilities of the primary incumbent who is unable to perform such responsibilities for an extended period of time. Such employees may be used for a maximum of 9 months or the length of time the incumbent is unable to perform the job responsibility, whichever is less.

7. *Intern. —*

employee is a college student enrolled in an academic program and working to gain job related experience. Such employees may be used for a maximum of 9 months.

8. *Co-op student. —*

employee is a high school or college student enrolled in an academic program who is working to gain job related experience. Such employees may work part time during the school year and full time during times when school is not in session and may be used as needed.

9. *Summer/School break assistance. —*

employee is hired for a specific time period and uses this employment as an introduction to government and its services. Such employees may be used for a maximum of 9 months.

b. The term durational is not applicable to any classification of employee employed by the State of Delaware.

c. Agencies that experience circumstances that require the use of casual seasonal employees that are not defined in subsection (a) of this section must submit a request to the Secretary, the Director of the Office of Management and Budget and the Controller General for approval. Upon completion of 1 year of work from casual seasonal employee, the Secretary, the Director of the Office of Management and Budget and the Controller General must review the agency need for such casual seasonal employment.

(18) Members and employees of the Delaware State Police.

(19) All employees of the Delaware Technical and Community College.

(20) All members and employees of the Legislative Council, except that the exclusion granted by this subdivision shall not extend beyond and shall terminate on June 30, 1970.

(21) One position within the Division of State Banking Commission, Department of State in addition to those listed in paragraph (5) of this section.

(22) Employees appointed to exceptional employment positions pursuant to § 5904A of this title during the trial work period.

(23) Positions designated as exempt by either the determination by the Secretary, the Director of the Office of Management and Budget and Controller General or via budget epilogue language.

Any classified employee leaving the classified service to accept a position under paragraph (4), (5), (6) or (23) of this section shall automatically be granted an extended leave of absence. Upon completion of such appointment, the Secretary shall place the employee in a classified position for which the employee meets minimum qualifications in the same or a lower pay grade as the position that the employee held when leaving the classified service. The salary shall be paid at no less than the equivalent pay grade and percentage of the pay grade midpoint from which the employee took this leave of absence.

(24) One position within the Division of Public Health, Department of Health and Social Services, for a dental director.

(25) One position within the Division of Social Services, Department of Health and Social Services, for a chief physician.

(29 Del. C. 1953, § 5903; 55 Del. Laws, c. 443, § 1; 56 Del. Laws, c. 184; 57 Del. Laws, c. 110; 59 Del. Laws, c. 348, § 6; 59; 59 Del. Laws, c. 555, § 1; 60 Del. Laws, c. 539, § 7; 60 Del. Laws, c. 624, § 1; 61 Del. Laws, c. 461, § 1; 63 Del. Laws, c. 142, § 46;

64 Del. Laws, c. 291; 64 Del. Laws, c. 439, § 3; 65 Del. Laws, c. 87, § 39; 66 Del. Laws, c. 182, § 1; 67 Del. Laws, c. 281, § 74; 67 Del. Laws, c. 339, § 1; 68 Del. Laws, c. 169, § 1; 69 Del. Laws, c. 49, § 1; 69 Del. Laws, c. 67, § 2; 70 Del. Laws, c. 111, § 2; 70 Del. Laws, c. 425, § 25; 73 Del. Laws, c. 181, §§ 1, 2; 73 Del. Laws, c. 310, §§ 6, 18; 74 Del. Laws, c. 68, § 40; 74 Del. Laws, c. 164, § 1; 74 Del. Laws, c. 309, § 31; 75 Del. Laws, c. 88, §§ 20(6), 21(13), 25(2), 26(2); 76 Del. Laws, c. 280, § 424; 77 Del. Laws, c. 333, § 1; 79 Del. Laws, c. 71, § 1; 79 Del. Laws, c. 339, § 1; 81 Del. Laws, c. 66, § 29; 82 Del. Laws, c. 148, § 1; 83 Del. Laws, c. 525, § 2.)

§ 5904. Classification of exempt employees.

Any employee whose position has been in an exempt status under § 5903(4) and (5) of this title who, as the result of a reorganization of state government approved by the General Assembly, is thereafter assigned to a position in the classified service, shall have such position classified by the Secretary and an appropriate title and pay grade assigned thereto, in accordance with this chapter and the rules and regulations promulgated under this chapter. Any such employee shall be continued in such employee's newly assigned position without an examination requirement, unless subsequently separated from such position as provided by law.

(29 Del. C. 1953, § 5904; 57 Del. Laws, c. 582, § 2A; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 20(6); 81 Del. Laws, c. 66, § 30.)

§ 5904A. Exceptional employment.

Employment of persons with mental or physical disabilities in a Selective Placement Program or an Agency Aide Program shall be administered by the Director of Talent Management or the Director's designee. Such employment shall be by appointment without competitive recruitment and without listing on a referral list. Employment through the Selective Placement Program is limited to 12 months. Each appointee in the Selective Placement Program who successfully completes a trial work period, or passes a competitive examination, may be considered for permanent employment or probationary employment in the classified service. An appointment through the Agency Aide Program is of indefinite duration. Before any appointment is made, the Director of Talent Management or the Director's designee shall advise the applicant of the availability of benefits counseling resources, which offer information or guidance on the effect of employment on public benefits including income from the Social Security Administration.

(74 Del. Laws, c. 164, § 3; 75 Del. Laws, c. 88, § 20(6); 75 Del. Laws, c. 350, § 85; 76 Del. Laws, c. 124, § 1; 81 Del. Laws, c. 66, § 31; 84 Del. Laws, c. 89, § 1.)

§ 5905. Leave regulations for certain exempt positions.

(a) State employees in the exempt positions enumerated in subsection (d) of this section shall accrue sick leave at the rate of 9.5 hours for each completed calendar month of state service.

(1) Such employees shall have unlimited accrual privileges on unused sick leave.

(2) Sick leave accrual for purposes of cash payment upon separation from state service shall not exceed a maximum of 675 hours.

(b) State employees in the exempt positions enumerated in subsection (d) of this section shall accrue annual leave 13.25 hours for each completed calendar month of service.

(1) Annual leave carried over into a new calendar year may not exceed twice the exempt employee's annual accrual rate. This determination shall be made as of December 31 of each calendar year, although it shall be possible to accrue and carry in excess of twice the annual accrual rate during the course of a calendar year.

(2) Secretaries of executive departments and/or agency heads are responsible for maintaining a record of their own and their employee's leave accrual and usage. Such records shall be reviewed by the employee annually during the month of December and such review shall be made a part of the employee's leave record.

(c) State employees in exempt positions enumerated in subsection (d) of this section, upon termination of state service, shall be compensated for unused annual leave and sick leave consistent with current merit rules. This section also applies to retired Delaware State Police who return to state service and who otherwise meet the eligibility requirements for retirement under the Delaware State Employees Pension Plan.

(d) The leave regulations set forth in this section shall only apply to those full-time appointed exempt positions except elected officials, judges (excluding justices of the peace), casual and seasonal employees, temporary employees and interns.

(66 Del. Laws, c. 248, § 1; 69 Del. Laws, c. 291, §§ 31-33; 70 Del. Laws, c. 118, § 31; 70 Del. Laws, c. 314, § 1; 73 Del. Laws, c. 181, § 3; 75 Del. Laws, c. 20, § 1.)

Subchapter II

Board and Director

§ 5906. Composition of the Merit Employee Relations Board.

(a) The Merit Employee Relations Board shall consist of 5 Board members, including 2 management representatives, 2 labor representatives and a chairperson. The Governor shall appoint, with Senate approval, the members for a term of 3 years, or until their successors are appointed; provided however, that members may be removed at the pleasure of the Governor.

(b) When appointed, members shall be residents of this State for at least 3 years immediately preceding their appointments. One member shall reside in the City of Wilmington, 1 shall reside in the remainder of New Castle County, and 1 each shall reside in each of the other 2 counties of the State. The fifth member may reside anywhere in the State. The qualifications for members shall continue during their term of office.

(c) The Secretary of the Department of Human Resources, or the Secretary's designee, shall be the liaison between the Board and the Department of Human Resources and shall attend all meetings of the Board. The Secretary shall not participate in the deliberation of any cases before the Board, nor sit with members of the Board, during the hearing or deliberations. The Secretary or the Secretary's designee shall be limited to representing and/or testifying on behalf of the Department of Human Resources and other state agencies before the Board.

(d) The Merit Employee Relations Board shall have clerical and legal support staff separate from the staff of the Department of Human Resources, and such staff shall be located separate from the Department of Human Resources.

(29 Del. C. 1953, § 5906; 55 Del. Laws, c. 443, § 1; 69 Del. Laws, c. 436, § 1; 75 Del. Laws, c. 88, § 20(6); 81 Del. Laws, c. 66, § 32.)

§ 5907. Powers, duties and functions of the Board.

In addition to the duties set forth elsewhere in this chapter, and consistent with the right of public employees to organize under Chapter 13 of Title 19, the Board shall:

(1) Request that the Secretary of the Department of Human Resources investigate problems or complaints arising from the implementation of the Merit System and the effect of merit policies and procedures on employees in the classified service;

(2) Appoint 1 or more members from its own membership to act as representatives of the Board at any meeting where such representation is deemed desirable;

(3) Require the Secretary to submit all proposed Merit Rule revisions to the statewide Labor-Management Committee for review and comment prior to submission to the Board for public hearing and adoption; and

(4) Make an annual report to the Governor, and special reports and recommendations upon the Governor's request.

(29 Del. C. 1953, § 5907; 55 Del. Laws, c. 443, § 1; 56 Del. Laws, c. 376, § 3; 69 Del. Laws, c. 436, § 2; 75 Del. Laws, c. 88, §§ 20(6), 25(2); 81 Del. Laws, c. 66, § 33.)

§ 5908. Organization and meetings of the Board.

(a) The Board shall meet as often as necessary to assure the timely disposition of cases. The Chair shall cause reasonable notice to be given to each Board member and the Secretary of the Department of Human Resources of the time and place of each meeting. Three members shall constitute a quorum for the transaction of business at any meeting.

(b) Each Board member shall be paid $100 for each day devoted to Board business, not to exceed $4,000 annually. Members shall be entitled to reimbursement for travel in accordance with State guidelines.

(29 Del. C. 1953, § 5908; 55 Del. Laws, c. 443, § 1; 64 Del. Laws, c. 90, § 50; 65 Del. Laws, c. 87, § 64; 69 Del. Laws, c. 436, § 3; 75 Del. Laws, c. 88, § 20(6); 81 Del. Laws, c. 66, § 34.)

§ 5909. Limitation on expenditures.

The General Assembly recognizes that appropriations may be needed if the Board is to carry out effectively this chapter. However, no change in pay rates shall take effect and no other expenses shall be incurred until an appropriation therefor shall have been made by the General Assembly.

(29 Del. C. 1953, § 5909; 55 Del. Laws, c. 443, § 1; 69 Del. Laws, c. 436, § 9.)

§ 5910. Deputy directors [Repealed].

(29 Del. C. 1953, § 5912; 55 Del. Laws, c. 443, § 1; 57 Del. Laws, c. 582, § 2D; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 15; repealed by 81 Del. Laws, c. 66, § 35, eff. July 1, 2017.)

§ 5911. Duties of Director [Repealed].

Repealed by 75 Del. Laws, c. 88, § 15, effective July 1, 2005.

§ 5912.

Subchapter III
Rules

§ 5914. Rules; hearing; adoption.

The Secretary shall prepare and submit to the Board proposed rules covering the classified service. The rules shall be reviewed by the Board at a public hearing held following public notice. The rules, as proposed by the Secretary, shall become final upon the completion of the public hearing, unless rejected by a majority of the members appointed to the Board.

(29 Del. C. 1953, § 5914; 55 Del. Laws, c. 443, § 1; 69 Del. Laws, c. 436, § 6; 81 Del. Laws, c. 66, § 36.)

§ 5915. Classification; uniformity; appeal of classification.

(a) The rules shall provide for the preparation, maintenance and revision of a position classification plan for all positions in the classified service and all merit comparable positions, based upon similarity of duties performed and responsibilities assumed so that uniform qualifications and pay ranges shall apply to all positions in the same classification.

(b) After approval of such maintenance review classifications determination by the Secretary and the Director of the Office of Management and Budget and Controller General, the Secretary shall notify the agency and employee of the results. The maintenance review classification determination shall become effective on the following July 1.

(c) Any maintenance review classification determination may be appealed to the Merit Employee Relations Board by any affected employee or agency within 30 calendar days of notification. The Merit Employee Relations Board shall hear all maintenance review classification appeals before it in chronological order, beginning with the oldest such appeal unless all parties are in agreement with other such arrangements.

(d) Within 10 calendar days of the filing of an appeal, the Board shall assign an independent reviewer, trained in job analysis, to evaluate the merits of the employee's appeal. Within 30 calendar days, the independent reviewer must submit a written independent finding to the Board, and copy to the employee and the Secretary. In unusual circumstances, the Board may authorize the independent reviewer an additional 30 calendar days to complete the review.

(e) The employee and the Secretary shall have 30 calendar days to accept the finding rendered by the independent reviewer and notify the Board.

(f) If the findings of the independent reviewer are accepted by the employee and the Secretary, the Board shall also accept the findings.

(g) If these findings are ignored or disputed by either the employee or the Secretary, the parties shall be notified and permitted to respond and the Board shall hold a hearing on the employee's appeal within 60 calendar days.

(h) At the hearing, the parties may present brief oral argument in support of their position.

(i) The Board shall render a final and binding decision on the matter within 15 calendar days of the hearing. In rendering its decision, the Board shall consider the following criteria:

(1) The findings of the independent reviewer;

(2) The Secretary's initial determination;

(3) The Secretary's response to the independent reviewer's findings;

(4) The employee's response to the independent reviewer's findings;

(5) The oral argument;

(6) The consistency with other existing classified positions of a similar nature; and

(7) The minimization of the number of classifications.

(j) The Board shall have the authority to hire a staff of independent reviewers and contract for services in carrying out the provisions of this section.

(k) In the event that the Secretary can demonstrate that sufficient funds are not available to fund the classification decisions rendered by this section, the effective date may be delayed until the beginning of the next fiscal year.

(29 Del. C. 1953, § 5915; 55 Del. Laws, c. 443, § 1; 68 Del. Laws, c. 215, § 2; 69 Del. Laws, c. 436, § 9; 70 Del. Laws, c. 271, § 1; 75 Del. Laws, c. 88, §§ 20(6), 21(13), 34; 76 Del. Laws, c. 280, § 135; 81 Del. Laws, c. 66, § 37.)

§ 5916. Uniform pay plan; hazardous duty pay.

(a) The rules shall provide for a pay plan for all employees in the classified service, after consultation with state officers and after a public hearing held by the Board. Such pay plan shall become effective only after it has been approved by the Governor after submission to the Governor by the Board and after adequate appropriations to put such plan into effect have been received. Amendments to the pay plan may be made in the same manner. Nothing shall be contained in the pay plan except the salary and wage schedule and each employee in the classified service shall be paid at the rate set forth in the pay plan for the position classification. Any state employees who are not covered under Title 20, who are normally scheduled to work on weekends, and, who are members of the National Guard or United States Reserves shall be afforded the opportunity to reschedule within the same pay cycle their normally scheduled work weekends whenever their National Guard or United States Reserves drill weekend conflicts with their state weekend to work. The employee shall provide the State with 30 days advance notification of their scheduled Guard or Reserve drill weekend.

(b) No agency shall engage a consultant or authorize expenditures of any General or Special Funds for the purpose of studying personnel policies and/or the wage and salary classification of employees without the written authorization of the Secretary, the Director of the Office of Management and Budget and the concurrence of the Controller General.

(c) No state employee whose salary is designated in the annual appropriations act shall receive compensation, whether in wages, salary, wages-in-kind, food allotment bonuses or overtime, from agencies of this State in excess of said salary regardless of the source of funds involved except as provided in §§ 5105(c), 5112(b) and 5123 of this title. In the event that an employee shall receive excess compensation, the amount of the appropriation from the General Fund shall be reduced by the amount of such excessive compensation and the Attorney General shall take such steps as necessary to recover from such employee any such excessive amount as has actually been paid. In the

event the “All Other” part of the salary is made up entirely of federal funds and such federal funds are terminated or reduced, that state appropriation is hereby increased to provide the “Total Salary” indicated.

(d) A state employee may perform additional duties for a state agency other than that employee’s principal employing agency, with the consent of that employee’s principal employing agency, and may be paid additional compensation, provided such additional duties are not a part of that employee’s regular duties for the principal employing agency and not rendered during the time paid for by the principal employing agency. All wage payments resulting from the performance of such additional duties, including FLSA overtime, shall be the responsibility of the secondary employing agency unless otherwise authorized by the Director of the Office of Management and Budget and the Secretary.

(e) No employee of any department or agency shall receive hazardous duty pay, except those specifically included in the following paragraphs:

(1) Employees, otherwise qualified, who are employed by the Department of Correction (or its successor agency).

(2) Employees, otherwise qualified, who are employed by the Delaware Psychiatric Center (or its successor agency) and who are assigned to programs for the criminally insane.

(3) Employees, otherwise qualified, who are employed by the Department of Services for Children, Youth and Their Families (or its successor agency).

(4) Casual seasonal employees performing the same job duties as those eligible employees identified in paragraphs (e)(1), (2), (3) of this section, shall also be deemed eligible. The amount of the monthly hazardous duty pay supplement shall be prorated based on the actual hours worked.

(5) Employees employed in the Prison Education Program as authorized in Chapter 24 of Title 14 whose primary job location is within the institutions.

(f) Nothing in this section shall be construed or interpreted by the Merit Employee Relations Board or by the Secretary to include hazardous duty pay as coming within the definition of fringe benefits.

(g) Notwithstanding any law or rule to the contrary, beginning July 1, 2024, nonexempt Department of Transportation employees shall be paid overtime at the rate of time and ½ after the employee has accrued 37.5 compensable hours that week.

(29 Del. C. 1953, § 5916; 55 Del. Laws, c. 443, § 1; 56 Del. Laws, c. 376, § 5; 65 Del. Laws, c. 87, § 66; 66 Del. Laws, c. 85, § 196; 67 Del. Laws, c. 47, § 29; 69 Del. Laws, c. 436, § 9; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1; 72 Del. Laws, c. 395, § 215; 72 Del. Laws, c. 413, § 1; 73 Del. Laws, c. 310, § 1; 75 Del. Laws, c. 88, §§ 20(6), 21(13), 25(2), 26(2); 77 Del. Laws, c. 327, § 208; 80 Del. Laws, c. 242, § 1; 81 Del. Laws, c. 66, § 38; 82 Del. Laws, c. 64, § 30; 84 Del. Laws, c. 396, § 1.)

§ 5917. Competitive recruitment.

(a) The rules shall provide for open competitive recruitment to test the relative fitness of applicants for positions in the classified service. Such recruitment shall be announced publicly at least 7 days prior to the date for filing applications therefore and may be advertised through the press, radio and other media.

(b) The Secretary shall maintain a listing of those positions in the classified service that require the administration of a competitive examination. Examinations may be written or oral, or a combination of both, or they may be unassembled examinations, in which case the examining authority may evaluate specialized training and experience. Examinations shall be prepared by the Secretary, after consultation with the appointing authority where appropriate.

(29 Del. C. 1953, § 5917; 55 Del. Laws, c. 443, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 20(6); 76 Del. Laws, c. 124, § 2; 81 Del. Laws, c. 66, § 39.)

§ 5918. Promotions.

The rules shall provide for promotions, giving consideration to the applicant’s qualifications, performance record, seniority, conduct and, where practicable, to the results of competitive recruitment. Vacancies shall be filled by promotion whenever practicable and in the best interest of the classified service. Any promotional competition for a position funded solely by general funded appropriations, involving 2 or more candidates and a referral list issued by the Secretary, shall be considered a competitive recruitment under § 5917 of this title.

(29 Del. C. 1953, § 5918; 55 Del. Laws, c. 443, § 1; 62 Del. Laws, c. 55, § 1; 76 Del. Laws, c. 124, §§ 3, 4; 81 Del. Laws, c. 66, § 40.)

§ 5919. Referral lists.

The rules shall provide for the establishment of referral lists for appointment and promotion. Such lists shall include the names of successful candidates in the order of their relative performance in the particular examinations, except where such lists contain fewer than 31 candidates, in which case the names of the successful candidates may be listed in alphabetical order. In the event that the score of the thirtieth name is tied with other candidates, all tied scores will be placed on the referral list even if it exceeds 30. Vacant positions in pay grades 1-5 will be filled by agency recruitment efforts unless a referral list is required by federal law for that position.

(29 Del. C. 1953, § 5919; 55 Del. Laws, c. 443, § 1; 60 Del. Laws, c. 599, § 1; 65 Del. Laws, c. 348, § 11; 70 Del. Laws, c. 272, § 1; 73 Del. Laws, c. 142, § 1; 76 Del. Laws, c. 124, § 5.)

§ 5920. Rejection for unfitness.

The rules shall provide for the rejection of candidates or eligibles who fail to comply with reasonable requirements of the Secretary in regard to such factors as age, physical condition, training and experience, or who have been guilty of infamous or disgraceful conduct, are addicted to alcohol or to narcotics or have attempted any deception or fraud in connection with an recruitment.

(29 Del. C. 1953, § 5920; 55 Del. Laws, c. 443, § 1; 76 Del. Laws, c. 124, § 6; 81 Del. Laws, c. 66, § 41.)

§ 5921. Appointment of highest ranking candidates.

The rules shall provide for the appointment of a person standing among the highest 30 on the appropriate referral list, to fill a vacancy, except as provided in § 5919 of this title. In no case shall the rules require the employing agency to give a reason for rejecting names on the list unless all names are rejected. When the appointing authority selects an applicant for hire from the list the applicant may, at the discretion of the appointing authority, start work immediately and be placed on the payroll forthwith and any additional approvals or paperwork required by the rules shall be performed subsequently.

(29 Del. C. 1953, § 5921; 55 Del. Laws, c. 443, § 1; 60 Del. Laws, c. 599, § 2; 61 Del. Laws, c. 463, § 1; 69 Del. Laws, c. 291, § 30; 72 Del. Laws, c. 359, § 1; 76 Del. Laws, c. 124, §§ 7, 8.)

§ 5922. Probation.

(a) The rules shall provide for a period of probation before appointment or promotion is made complete and during which period a probationer may be discharged or reduced in class or rank. Probationary employees shall be entitled to receive an appropriate performance report or reports during the probationary period, providing warning of any poor performance.

(b) If the probationary employee's services were unsatisfactory, the probationary employee shall be dropped from the payroll, except in the case of promotional probation in which case the probationer shall be handled per applicable merit rules. If the probationary employee's services were satisfactory or no action taken within the probationary period, the appointment shall be deemed permanent. The determination of the appointing authority shall be final and conclusive.

(29 Del. C. 1953, § 5922; 55 Del. Laws, c. 443, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 350, § 86; 76 Del. Laws, c. 80, § 82.)

§ 5923. Emergency employment.

The rules shall provide for emergency employment for not over 30 days, with or without competition, with the consent of the Secretary.

(29 Del. C. 1953, § 5923; 55 Del. Laws, c. 443, § 1; 76 Del. Laws, c. 124, § 9; 81 Del. Laws, c. 66, § 42.)

§ 5924. Department of Technology and Information's acceptable use policy.

The Secretary shall ensure that each merit employee signs a copy of the Department of Technology and Information's acceptable use policy and that the signed copy is placed in each employee's personnel file. If an investigation concludes that a merit employee has violated that policy, any discipline resulting in the loss of wages must first be reviewed by the Department of Human Resources prior to implementation of the discipline.

(76 Del. Laws, c. 227, § 2; 81 Del. Laws, c. 66, § 43.)

§ 5925. Transfers.

The rules shall provide for transfer from a position in 1 department or agency to a similar position in another department or agency involving similar qualifications, duties, responsibilities and pay range.

(29 Del. C. 1953, § 5925; 55 Del. Laws, c. 443, § 1.)

§ 5926. Reinstatement.

The rules shall provide for reinstatement within 2 years, with the approval of the Secretary, of persons who resign in good standing or who are laid off without fault or delinquency on their part.

(29 Del. C. 1953, § 5926; 55 Del. Laws, c. 443, § 1; 81 Del. Laws, c. 66, § 44.)

§ 5927. Performance records.

The rules shall provide for the keeping of performance records on all employees in the classified service, which records may be considered in determining salary increases or decreases, promotion, layoffs and reinstatement, demotions, discharges and transfers.

(29 Del. C. 1953, § 5927; 55 Del. Laws, c. 443, § 1.)

§ 5928. Layoffs; transfers; reductions.

The rules shall provide for layoffs, transfers or reduction in rank because of lack of funds or work, or abolition of a position, or material change in duties or organization and for reemployment of employees so laid off, giving consideration in each such case to performance record and seniority in service.

(29 Del. C. 1953, § 5928; 55 Del. Laws, c. 443, § 1.)

§ 5929. Fines.

The rules shall provide for imposition, as a disciplinary measure, of a fine of not more than 10 days' pay or suspension from the service without pay for not longer than 30 days.

(29 Del. C. 1953, § 5929; 55 Del. Laws, c. 443, § 1.)

§ 5930. Discharge; reduction in rank or grade.

The rules shall provide for discharge or reduction in rank or grade for cause after the probationary period for appointment or promotion is completed. The person to be discharged or reduced in rank for cause shall have the right of appeal as set forth in this chapter.

(29 Del. C. 1953, § 5930; 55 Del. Laws, c. 443, § 1.)

§ 5931. Grievances.

(a) The rules shall provide for the establishment of a plan for resolving employee grievances and complaints. The final 2 steps of any such plan shall provide for hearings before the Secretary or the Secretary's designee and before the Board, respectively, unless a particular grievance is specifically excluded or limited by the Merit Rules. The Secretary and the Board, at their respective steps in the grievance procedure, shall have the authority to grant back pay, restore any position, benefits or rights denied, place employees in a position they were wrongfully denied, or otherwise make employees whole, under a misapplication of any provision of this chapter or the Merit Rules. The rules shall require that the Board take final action on a grievance within 90 calendar days of submission to the Board. Upon approval of all parties, the 90 days may be extended an additional 30 calendar days.

(b) Should the plan required by subsection (a) of this section provide for various stages, phases or steps to be followed, the failure of the employing department or agency to respond or consider the grievance or complaint within the time required by the rules shall automatically result in the grievance or complaint moving to the next stage, phase or step unless the delay results from an agreement in writing between the employing department or agency and the employee who filed the grievance or complaint, or the employee has indicated in writing to the personnel office of the department or agency his or her opposition to the automatic movement to the next stage, phase or step.

(c) No state employee shall be discharged, threatened or otherwise retaliated against with respect to the terms or conditions of their employment due to the exercise of their rights under the grievance and complaint procedure established under subsection (a) of this section.

(1) An employee who alleges a violation of this subsection may file a written complaint directly to the Department of Human Resources. The employee and the Secretary or designee may agree to meet and attempt an informal resolution of the complaint, and/or the Secretary or designee shall hear the complaint and issue a written decision within 45 days of the complaint's receipt. Such decision shall be final and binding on the employee's appointing authority.

(2) Where such decision finds that an individual engaged in conduct prohibited by this subsection, the appointing authority shall initiate appropriate disciplinary action consistent with that decision.

(3) If the complainant employee is not satisfied with the Secretary or designee's decision, the employee may submit a written appeal to the Merit Employee Relations Board (MERB) within 20 calendar days of receipt of that decision. Such appeal shall be handled and processed in the same manner as other appeals heard by the MERB.

(29 Del. C. 1953, § 5931; 55 Del. Laws, c. 443, § 1; 56 Del. Laws, c. 376, § 6; 69 Del. Laws, c. 436, § 7; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 541, § 1; 75 Del. Laws, c. 103, § 1; 75 Del. Laws, c. 350, § 84; 81 Del. Laws, c. 66, § 45.)

§ 5932. Work schedules.

The rules shall provide for work schedules, call-in, and attendance regulations, rest periods and leaves of absence without pay.

(29 Del. C. 1953, § 5932; 56 Del. Laws, c. 376, § 6.)

§ 5933. Leaves.

(a) The rules shall provide for annual, sick and special leaves of absence, with pay or at reduced pay. Whenever an officer or employee of the State, including those exempt from the classified service, qualifies for workers' compensation disability benefits, such officer or employee, for a period not to exceed 3 months from the date such compensation begins, shall not be charged sick leave and shall receive from the State the difference, if any, between the total of: (1) The amount of such compensation, (2) any disability benefits received under the Federal Social Security Act, and (3) any other employer supported disability program, and the amount of wages to which the officer or employee is entitled on the date such compensation begins, provided the injury or disease for which such compensation is paid is not the direct result of such officer or employee's misconduct and occurs during a period of employment for which the employee is entitled to receive wages. No more than 1 period of supplemental pay shall be made under this subsection for any work injury, including any recurrence or aggravation of that work injury.

(b) Subsection (a) of this section applies to officers or employees of the State who qualified to receive supplemental compensation under this section subsequent to June 30, 1981. Officers or employees of the State who qualified to receive supplemental compensation under this section prior to July 1, 1981, and remain entitled to receive such supplemental compensation, shall have such supplemental compensation terminated as of September 1, 1985.

(c) Notwithstanding subsection (a) of this section, the 3-month limitation shall not apply to any employee injured while performing a hazardous duty assignment and whose injury or injuries arose out of and in the course of performing hazardous duty; provided, however,

such employee shall be entitled to the benefits of this section for not more than 12 months. Hazardous duty assignments shall include, but not be limited to:

(1) Employees otherwise qualified who are employed by the Department of Correction;

(2) Employees otherwise qualified who are employed by the Delaware Psychiatric Center who are assigned to programs for the criminally insane;

(3) Employees otherwise qualified who are employed by the Division of Youth Rehabilitation;

(4) State law-enforcement officers in the performance of their duties; provided, however, no law-enforcement officer shall be covered under this section while said officer is performing a function or duty that is considered administrative in nature;

(5) State employees serving in response to the imminent danger of hazardous waste material, including but not limited to the SERT Team.

(d) The Secretary shall promulgate such rules and regulations as may be required to administer this act and shall periodically review and recommend other state employees engaged in hazardous duty assignments for inclusion for coverage under this section.

(e) Notwithstanding subsection (a) of this section, any employee who suffers a serious illness or injury in the line of duty that is caused or contributed to by war or act of war (declared or not), who is a member of the United States Military or National Guard shall not be charged sick leave for recovery for medical procedures or operations resulting from said injury or illness for a period of 6 months. To be eligible for this category of leave the employee shall have returned to active state employment status for a period of not less than 30 calendar days and shall have completed any necessary certification established by the Secretary. The eligibility for such period of leave shall not be longer than 6 consecutive months and shall be invoked within the first year of return to active employment status. In extraordinary circumstances, approval may be sought from the Secretary to use said consecutive leave on an intermittent basis. All benefits and rights within this subsection shall exhaust within the first year of return to active employment status. The Secretary shall be authorized to establish rules and procedures consistent with this subsection.

(f) A State employee who is a member of the military reserves of the United States or the Delaware National Guard, shall be excused from work with pay to attend training camp or serve special duty as ordered by the United States military or the Delaware National Guard. Paid leave under this subsection must not exceed 225 hours for employees working a 37.5 hour work week or 240 hours for employees working a 40 hour work week in any calendar year. For purposes of this subsection, “State employee” includes all benefit-eligible employees who are in classified service or who are exempt from classified service.

(29 Del. C. 1953, § 5933; 56 Del. Laws, c. 376, § 6; 60 Del. Laws, c. 247, § 1; 63 Del. Laws, c. 80, § 53; 65 Del. Laws, c. 154, § 1; 65 Del. Laws, c. 498, § 1; 70 Del. Laws, c. 550, § 1; 75 Del. Laws, c. 88, § 20(6); 75 Del. Laws, c. 89, § 30; 76 Del. Laws, c. 370, § 1; 81 Del. Laws, c. 66, § 46; 84 Del. Laws, c. 94, § 1.)

§ 5934. Working conditions.

The rules shall provide for the development and operation of programs to improve work effectiveness and morale of employees in the state service, including training, safety, health, welfare, counseling, recreation and employee relations.

(29 Del. C. 1953, § 5934; 55 Del. Laws, c. 443, § 1; 56 Del. Laws, c. 376, § 6.)

§ 5935. Veterans’ and members’ preference.

(a) The rules shall provide for preference to be given to veterans of the armed forces of the United States (Army, Navy, Air Force, Space Force, Marine Corps, and Coast Guard) who served as an active member of the armed forces of the United States and were terminated honorably. The rules shall also provide for preference to be given to active and honorably discharged members with at least 20 years of service in either the Delaware National Guard or a reserve unit located within Delaware.

(b) Such rules shall provide that:

(1) Preference shall be confined to original entrance and shall not be applied to promotion within the classified service or to retention in case of reduction in force;

(2) Preference shall be granted only in the form of credits to be added to earned ratings in examinations, with disabled veterans receiving no more than 10 points and other veterans or members who qualify under subsection (a) of this section no more than 5 points;

(3) A definition of a disabled veteran shall be set forth in the rules;

(4) All veterans or members who qualify under subsection (a) of this section shall be required to meet job requirements before receiving preference credits;

(5) Employees in the classified service who, while in good standing, leave or have left the state service to engage in military service shall be given credit for seniority purposes for the time served in the armed forces not to exceed 3 years; and

(6) Five preference points may be claimed by the spouse of any of the following, so long as the spouse achieves a passing examination grade:

a. Any veteran or member who qualifies under subsection (a) of this section who has died, so long as the widow or widower has not remarried;

b. Any member of the armed forces serving on active duty who, at the time of application for the priority, is listed in 1 or more of the following categories and has been so listed for a total of more than 90 days:

1. Missing in action;

2. Captured in line of duty by a hostile force; or

3. Forcibly detained or interned in line of duty by a foreign government or power; or

c. Any veteran or member who qualifies under subsection (a) of this section who has a disability resulting from a service connected disability.

(29 Del. C. 1953, § 5935; 55 Del. Laws, c. 443, § 1; 56 Del. Laws, c. 376, § 6; 59 Del. Laws, c. 448, § 1; 60 Del. Laws, c. 318, § 1; 65 Del. Laws, c. 71, § 1; 76 Del. Laws, c. 124, §§ 10, 11; 78 Del. Laws, c. 216, § 1; 80 Del. Laws, c. 188, § 1; 84 Del. Laws, c. 323, § 4.)

§ 5936. Enforcement.

The rules shall provide for such rules and administrative regulations not inconsistent with this chapter as may be proper and necessary for its enforcement.

(29 Del. C. 1953, § 5936; 55 Del. Laws, c. 443, § 1; 56 Del. Laws, c. 376, § 6.)

§ 5937. Interview and preference for current casual seasonal employees.

The rules shall provide for an automatic interview for an applicant who is a casual seasonal employee working in the division and section, performing the same job duties as the posted merit position, provided the casual seasonal employee meets the minimum qualifications and any preferential or selective qualifications included in the posting and the casual seasonal employee may be given preference in the hiring process.

(79 Del. Laws, c. 305, § 1; 84 Del. Laws, c. 516, § 1.)

§ 5938. Collective bargaining.

(a) Except as expressly provided in subsection (c) of this section, nothing contained in this chapter or in the rules shall deny, limit or infringe upon the right of any employee in the classified service or any exclusive bargaining representative under Chapter 13 of Title 19.

(b) Except as expressly provided in subsection (c) of this section, nothing contained in this chapter or in the rules shall deny, limit or infringe upon any collective bargaining agreement or the authority and duty of this State or any agency thereof to engage in collective bargaining with the exclusive bargaining representative under Chapter 13 of Title 19.

(c) The rules adopted or amended by the Board under the following sections shall apply to any employee in the classified service represented by an exclusive bargaining representative or covered by a collective bargaining agreement under Chapter 13 of Title 19, except in the case of collective bargaining agreements reached pursuant to § 1311A of Title 19: §§ 5915 through 5921, 5933, 5935, and 5937 of this title.

(d) The rules adopted or amended by the Board under the following sections shall not apply to any employee in the classified service represented by an exclusive bargaining representative to the extent the subject thereof is covered in whole or in part by a collective bargaining agreement under Chapter 13 of Title 19: §§ 5922 through 5925 of this title, except where transfer is between agencies or where change is made in classification or pay grade; §§ 5926 through 5928 of this title, except where an employee laid off by 1 agency is reemployed by another; and §§ 5929 through 5932, 5934, and 5936 of this title.

(e) The Secretary or the Secretary's designee and the Board shall meet with the exclusive bargaining representative at reasonable times to negotiate in good faith with respect to any rule to be adopted or amended under §§ 5915 through 5921, 5933, 5935, and 5937 of this title and, to the extent the subject thereof is not covered in whole or in part by a collective bargaining agreement under Chapter 13 of Title 19, §§ 5922 through 5932, 5934, and 5936 of this title.

(29 Del. C. 1953, § 5938; 56 Del. Laws, c. 376, § 7; 69 Del. Laws, c. 436, § 9; 76 Del. Laws, c. 178, § 5; 81 Del. Laws, c. 66, § 47; 82 Del. Laws, c. 26, § 3.)

§ 5939. Preference for unemployed [Repealed].

Repealed by 76 Del. Laws, c. 124, § 13, effective July 12, 2007.

§ 5940. Review dates.

The review date for employees of the classified service shall be December 31 of each fiscal year, except for fiscal year 1990. For fiscal year 1990, the review date for all employees shall be January 1, 1990, and shall not change during the fiscal year. The review date for employees hired during any fiscal year shall be December 31 of the subsequent fiscal year, except for fiscal year 1990. For fiscal year 1990, the review date for employees hired before January 1, 1990, shall be January 1, 1990, and for those hired after January 1, 1990, the review date shall be July 1, 1990.

(62 Del. Laws, c. 277, § 11; 67 Del. Laws, c. 47, § 12(k); 70 Del. Laws, c. 118, § 32.)

Subchapter IV

Enforcement and Appeals

§ 5941. Duties of state officers and employees.

All officers and employees of the State shall comply with and aid in all proper ways in carrying out this chapter and the rules, regulations and orders thereunder. All officers and employees shall furnish any records or information which the Secretary or the Board may request

for any purpose of this chapter. The Secretary, with the approval of the Board, may institute and maintain any action or proceeding at law or in equity that the Secretary considers necessary or appropriate to secure compliance with this chapter and the rules, regulations and orders thereunder.

(29 Del. C. 1953, § 5941; 55 Del. Laws, c. 443, § 1; 69 Del. Laws, c. 436, § 9; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 66, § 48.)

§ 5941A. Requirement of registration with Selective Service System.

The rules shall provide that all males born after January 1, 1960, must have registered with the Selective Service System in order to be eligible for state employment.

(65 Del. Laws, c. 505, § 1.)

§ 5942. Certification of payrolls; audits.

(a) No state disbursing or auditing officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the classified service unless the payroll voucher or account bears the certification or electronic approval of the appropriate state officer that the persons named therein are being paid in accordance with this chapter and the rules, regulations and orders thereunder.

(b) The Director of the Office of Management and Budget shall conduct such post audits of state payrolls and such other investigations as deemed necessary to ensure that this chapter and the rules, regulations and orders thereunder are being observed. Any violations shall be called immediately to the attention of the appropriate agency head and to the Auditor of Accounts and Secretary of Finance. Thereafter, no payment shall be made to any employee whose salary rate has been questioned until the rate has been adjusted to the satisfaction of the Director of the Office of Management and Budget.

(29 Del. C. 1953, § 5942; 55 Del. Laws, c. 443, § 1; 70 Del. Laws, c. 509, §§ 2, 3; 75 Del. Laws, c. 88, §§ 20(6), 36.)

§ 5943. Enforcement of chapter by legal action.

(a) The exclusive remedy available to a classified employee for the redress of an alleged wrong, arising under a misapplication of any provision of this chapter, the merit rules or the Secretary's regulations adopted thereunder, is to file a grievance in accordance with the procedure stated in the merit rules. Standing of a classified employee to maintain a grievance shall be limited to an alleged wrong that affects his or her status in his or her present position.

(b) Any Delaware resident or state employee may maintain a suit to restrain a disbursing officer from making any payment in contravention of any provision of this chapter, the merit rules or the Secretary's regulations adopted thereunder. Jurisdiction for such action shall lie in the Chancery Court.

(c) The State may maintain an action for the reimbursement of wages, benefits or both, paid contrary to this chapter, the merit rules or the Secretary's regulations adopted thereunder, against the recipient employee. All moneys recovered in such action shall be paid to the State Treasury and credited to the account from which original payments had been drawn. The appointing authority may take disciplinary action against any employee in the classified service who negligently prepared the document authorizing the overpayment of wages, benefits or both, contrary to any provision of this chapter, the merit rules or the Secretary's regulations adopted thereunder. Disciplinary action shall not be taken against any employee in the classified service who merely approved such document authorizing overpayment unless the person so approving participated in the preparation of such document.

(d) Any person appointed or employed in contravention of any provision of this chapter, the merit rules or the Secretary's regulations adopted thereunder, who performs services for which such person is not paid, may maintain an action against any officer or officers who purported to so appoint or employ such person to recover the agreed wages, benefits or both, or the reasonable value thereof, if no pay was agreed upon, plus interest, court costs and reasonable attorney's fees.

(e) It shall be the obligation of the appointing authority to determine that documents necessary for placing a person on the state payroll are properly executed prior to the date that the employee begins, transfers to, promotes to, demotes to or in any other way changes the employee's position in state employment. Documentation, depending on the position to be filled, consists of some or all of the following:

(1) Job application;

(2) Certification list;

(3) Copy of the job posting if a permanent position;

(4) Written notification signed by the appointing authority stating:

a. Position being filled;

b. Pay grade of the employee;

c. Employee's gross pay each pay period;

d. Source of funding of the position;

e. Two copies of the employee's Social Security card;

(5) Hiring approval during a hiring freeze.

In the event that an employee otherwise qualified for classified service is properly appointed but improperly placed on the state payroll, the State shall be liable for the wages, benefits or both of the employee during the first 10 working days of the employee's employment. In the event that the employee is not properly placed on the state payroll by the end of the employee's tenth working day, the appointing authority shall lay off the employee until the employee is properly so placed, or be liable to the employee for wages, benefits or both, in accordance with subsection (d) of this section. The review date for persons not properly placed on the state payroll shall be the date the person first reported for duty in that position.

(f) For the purpose of subsections (d) and (e) of this section, the Secretary or the Secretary's designee shall determine whether an employee is properly appointed. The Secretary or the Secretary's designee shall certify the appointment by approving the state personnel transaction supplied by the agency. The approval of the Secretary or the Secretary's designee shall relieve any officer or appointing authority from liability because of an improper appointment, except where the improper appointment was effected through the fraud of any officer or appointing authority. The approval of the Secretary or the Secretary's designee shall similarly relieve any officer or appointing authority from liability for the payment of wages, benefits or both arising under subsection (d) or subsection (e) of this section, except where the officer or appointing authority is grossly negligent in disregarding any provision of this chapter, the merit rules or the Secretary's regulations adopted thereunder. Such approval by the Secretary or the Secretary's designee shall not prevent the appointing authority from taking disciplinary action against any employee in the classified service who negligently prepared the document authorizing the overpayment of wages, benefits or both.

(g) If the appointing authority wrongfully withholds certification of the payroll account of any employee, such employee may maintain a proceeding to compel the appointing authority to certify such payroll account.

(h) No action for the reimbursement of wages, benefits or both, improperly paid to a state employee shall be brought after the expiration of 3 years from the date the wages, benefits or both were improperly paid.

(i) Section 8111 of Title 10 shall be applicable to employment between a person and the State.

(j) Following the passage of this section, all state agencies shall conduct audits of the payroll records of each of its employees. In the event that the audit indicates that a discrepancy exists between the amount actually paid and the amount that should have been paid, the agency shall notify the employee, the appointing authority, the Secretary of Finance and the Auditor of Accounts, with sufficient documentation to point out the source and amount of the discrepancy, within 10 calendar days of the date of the completion of the audit. In the event that the audit indicates an overpayment, the appointing authority shall provide the Attorney General with the same notice provided the employee. The Attorney General may proceed in accordance with subsection (c) of this section. The appointing authority shall, within 1 pay period, correct the discrepancy on proper personnel payroll forms.

(k) For the purpose of this section "appointing authority" shall be as defined in the merit rules adopted pursuant to § 5914 of this title.

(l) Notwithstanding any section of the Code, or any uncodified section of the Delaware law to the contrary, no action for reimbursement as hereinbefore described shall be brought by the State for the overpayment of wages or benefits made, up to and including the last day of the pay period following the date this section becomes effective.

(m) To permit all state agencies to comply and conduct the audit required by subsection (j) of this section, this section shall become effective 6 months from July 12, 1978.

(29 Del. C. 1953, § 5943; 55 Del. Laws, c. 443, § 1; 56 Del. Laws, c. 376, § 8; 61 Del. Laws, c. 523, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 509, §§ 4-6; 75 Del. Laws, c. 88, § 20(6); 75 Del. Laws, c. 350, § 83; 81 Del. Laws, c. 66, § 49.)

§ 5944. Oaths, testimony and the production of records.

The Board, each Board member and the Secretary shall have power to administer oaths, subpoena witnesses and compel the production of books and papers relevant to any investigation or hearing authorized by this chapter. Any person who shall fail to appear in response to a subpoena or to answer any question or produce any books or papers relevant to any such investigation or hearing may be compelled to do so by order of the Superior Court.

(29 Del. C. 1953, § 5944; 55 Del. Laws, c. 443, § 1; 69 Del. Laws, c. 436, § 9; 81 Del. Laws, c. 66, § 50.)

§ 5945. Refusal of employee to testify.

If any employee in the state service shall wilfully refuse or fail to appear before any court or judge, any legislative committee or any officer, board or body authorized to conduct any hearing or inquiry, or, having appeared, shall refuse to testify or answer any question relating to the affairs or government of the State or the conduct of any state officer or employee on the ground that the employee's testimony or answers would tend to incriminate the employee or shall refuse to waive immunity from prosecution on account of any matter about which the employee may be asked to testify at any such hearing or inquiry, the employee shall forfeit the employee's office or position and shall not be eligible thereafter for appointment to any position in the state service.

(29 Del. C. 1953, § 5945; 55 Del. Laws, c. 443, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5946. Prohibited acts.

(a) No person shall make any false statement, certificate, mark, rating or report with regard to any hearing, test, certification or appointment made under any provision of this chapter or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter and the rules thereunder.

(b) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the classified service.

(c) No employee of the Board, examiner or other person shall defeat, deceive or obstruct any person in the right to examination, eligibility, certification or appointment under this chapter or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.

(29 Del. C. 1953, § 5946; 55 Del. Laws, c. 443, § 1; 69 Del. Laws, c. 436, § 9; 70 Del. Laws, c. 186, § 1.)

§ 5947. Penalties; jurisdiction.

(a) Any person who wilfully violates this chapter or any of the rules shall be guilty of a misdemeanor and shall be punished therefor as the Court may direct.

(b) Any person who is convicted of a misdemeanor under subsection (a) of this section shall, for a period of 5 years, be ineligible for appointment to, or employment in, a position in the state service, and if the person is an officer or employee of the State shall forfeit the person's office or position.

(c) The Superior Court shall have exclusive jurisdiction of violations of this chapter.

(29 Del. C. 1953, § 5947; 55 Del. Laws, c. 443, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5948. Records of Board.

The Board's records, except such records as the rules may properly require to be held confidential for reasons of public policy, shall be public records and shall be open to public inspection subject to reasonable regulations as to the time and manner of inspection as may be prescribed by the Secretary. Reports concerning character, personal history and health of employees or applicants for employment shall be held confidential except when a majority of the Board shall find it to be in the public interest that the same shall be open to public inspection.

(29 Del. C. 1953, § 5948; 55 Del. Laws, c. 443, § 1; 69 Del. Laws, c. 436, § 9; 81 Del. Laws, c. 66, § 51.)

§ 5949. Appeals.

(a) An employee in the classified service who has completed a probationary period of service may not, except for cause, be dismissed or demoted or suspended for more than 30 days in any 1 year. Within 30 days after any such dismissal, demotion or suspension, an employee may appeal to the Board for review thereof. Upon such review, both the appealing employee and the appointing authority whose action is reviewed shall have the right to be heard publicly and to present evidentiary facts. At the hearing, technical rules of evidence shall not apply. The rules shall require that the Board take final action on an appeal within 90 calendar days of submission to the Board. Upon approval of all parties, the 90 days may be extended an additional 30 calendar days.

(b) If the Board upholds the decision of the appointing authority, the employee shall have a right of appeal to the Superior Court on the question of whether the appointing authority acted in accordance with law. The burden of proof of any such appeal to the Board or Superior Court is on the employee. If the Board finds against the appointing authority, the appointing authority shall have a right of appeal to the Superior Court on the question of whether the appointing authority acted in accordance with law. The burden of proof of any such appeal to the Superior Court is on the appointing authority. All appeals to the Superior Court shall be by the filing of a notice of appeal with the Court within 30 days of the employee being notified of the final action of the Board.

(c) Whenever subsection (a) or (b) of this section conflicts with any collective bargaining agreement, or whenever any collective bargaining agreement is exclusive with respect to matters which are the subject thereof, the collective bargaining agreement shall apply and shall be followed.

(d) If the Board finds that the action complained of was taken by the appointing authority for any political, religious or racial reason, or is not supported by the facts as having been for cause, the employee shall be reinstated to the former position or a position of like status and pay without loss of pay for the period of suspension.

(29 Del. C. 1953, § 5949; 55 Del. Laws, c. 443, § 1; 56 Del. Laws, c. 376, § 9; 69 Del. Laws, c. 436, §§ 8, 9; 70 Del. Laws, c. 186, § 1.)

Subchapter V

Miscellaneous

§ 5950. Employee recognition.

(a) It shall be part of the function of state agencies to conduct employee recognition programs for Merit System employees and employees in positions that are assigned comparable Merit System classes or pay grades. All such employee recognition programs shall be approved by the Secretary of the Department of Human Resources prior to implementation.

(b) The first full week in May shall be designated Public Service Recognition Week. Employee recognition programs shall not, however, be confined to this week.

(67 Del. Laws, c. 444, § 1; 75 Del. Laws, c. 88, § 20(6); 81 Del. Laws, c. 66, § 52.)

§ 5951. Services to political subdivisions and excluded agencies.

Subject to approval of the Board, which shall take into account the primary responsibility of the Secretary towards the classified service, the Secretary may enter into agreements with any agency excluded from this chapter, or with any municipality or other political subdivision of this State to furnish services and facilities of the Board to such agency, municipality or political subdivision in the administration of its personnel according to merit principles. Any such agreement shall provide for the reimbursement to the State of the reasonable cost of the services and facilities furnished, as determined by the Secretary. All excluded agencies and all municipalities and political subdivisions of the State are authorized to enter into such agreements.

(29 Del. C. 1953, § 5951; 55 Del. Laws, c. 443, § 1; 69 Del. Laws, c. 436, § 9; 81 Del. Laws, c. 66, § 53.)

§ 5952. Federal merit system standards.

Notwithstanding any other provisions of this chapter, the Board and each officer and employee of this State are authorized and directed to take such action with respect to matters involving personnel as may be necessary to insure the continued eligibility of this State for grants-in-aid under any federal law or program.

(29 Del. C. 1953, § 5952; 55 Del. Laws, c. 443, § 1; 69 Del. Laws, c. 436, § 9.)

§ 5953. Discrimination prohibited.

(a) For purposes of this section:

(1) “Housing status” means as defined in § 204 of Title 19.

(2) “Military status” means status as any of the following:

a. A member of the uniformed forces, as defined in 10 U.S.C. § 101, or a reserve component thereof listed under 10 U.S.C. § 10101.

b. A “veteran” as defined in 38 U.S.C. § 101.

c. A “dependent” of a servicemember as defined in 50 U.S.C. § 3911.

(3) “Protective hairstyle” includes braids, locks, and twists.

(4) “Race” includes traits historically associated with race, including hair texture and a protective hairstyle.

(b) A person may not be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or be in any way favored or discriminated against with respect to employment in the classified service, because of political or religious opinions or affiliations, sexual orientation, gender identity, sex, military status, race, housing status, or any other basis protected under Chapter 7 of Title 19.

(c) The veterans’ and members’ preference in § 5935 of this title and any other distinction or differential treatment on the basis of military status that is allowed by Delaware law or regulation, federal law, or regulation, or government contract is not a violation of this section.

(29 Del. C. 1953, § 5953; 55 Del. Laws, c. 443, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 90, § 22; 79 Del. Laws, c. 47, § 25; 83 Del. Laws, c. 13, § 23; 84 Del. Laws, c. 429, § 12; 85 Del. Laws, c. 104, § 8; 85 Del. Laws, c. 144, § 17.)

§ 5954. Political activity; penalty.

(a) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration.

(b) No employee in the classified service shall engage in any political activity or solicit any political contribution, assessment or subscription during the employee’s hours of employment or while engaged in the business of the State.

(c) No person shall induce, directly or indirectly, any employee in the classified service to make a contribution, assessment or subscription to a political party under the representation, actual or implied, that such assessment, subscription or contribution will have any effect on the employee’s employment with the State.

(d) Any officer or employee in the classified service who violates any of the provisions of this section shall forfeit such office or position, and for 1 year shall be ineligible for any office or position in the state service.

(29 Del. C. 1953, § 5954; 55 Del. Laws, c. 443, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5955. Federal Fair Labor Standards Act; application to state personnel practices and merit system rules.

Notwithstanding any other provision of state law, the federal Fair Labor Standards Act, Chapter 8 of Title 29 of the United States Code, shall supersede state law relating to state personnel practices and shall supersede the rules adopted by the Merit Employee Relations Board pursuant to this chapter, but only to the extent such state law or merit rules are in conflict with the Fair Labor Standards Act [29 U.S.C. § 201 et seq.]. This supersession of state law and the merit system rules shall continue in effect only so long as, and only to the extent that, the provisions of the federal Fair Labor Standards Act [29 U.S.C. 201 et seq.], by their own terms or by judicial interpretation, are

deemed to apply to state government personnel practices. To the extent necessary for state compliance with the Fair Labor Standards Act, the Secretary shall have the authority to implement this section, including, but not limited to, the authority to determine where conflicts exist between state law or merit rules and the federal act, and to resolve such conflicts by appropriate rulings and regulations.

(65 Del. Laws, c. 215, § 1; 69 Del. Laws, c. 436, § 9; 75 Del. Laws, c. 88, § 20(6); 81 Del. Laws, c. 66, § 54.)

§ 5956. Donated leave program.

(a) An officer or employee of this State, with the approval of the officer or employee's immediate supervisor or the Director of the Division in which the officer or employee is employed, may donate accrued sick leave and annual leave to a Leave Bank established by the Secretary for all officers or employees of this State or to another officer or employee of this State.

(1) An officer or employee of the State may donate up to $^1/_2$ their yearly accrual of sick leave per year without having to match with annual leave. Nothing in this subsection, however, shall prohibit an officer or employee of the State who donates up to $^1/_2$ of their yearly accrual of sick leave from donating annual leave up to their available balance as of the date of donation.

(2) An officer or employee of the State may donate additional amounts of sick leave in excess of $^1/_2$ their yearly sick leave accrual per year, however, such donations must be matched on a ratio of 2 hours sick leave per 1 hour annual leave.

(b) A person wishing to donate leave time under this section may request the Secretary to debit the donor’s sick leave and annual leave accounts.

(c) Sick leave and annual leave accrued in the Leave Bank or directly donated to an employee may be used by a recipient only for a catastrophic illness of the recipient or of a family member of the recipient. For purposes of this section, the term ‘‘catastrophic illness’’ means an illness or injury to an employee or to a member of an employee’s family which is diagnosed by a physician and certified by the physician as rendering the employee or a member of the employee’s family unable to work, or in the case of a family member who does not work, the medical equivalent of ‘‘unable to work,’’ for a period greater than 5 calendar weeks. Separate periods of disability lasting 7 calendar days or more each, resulting from the same or a related medical condition and occurring within any 12-consecutive-month period, shall be considered the same period of disability. For purposes of this section, ‘‘family member’’ or ‘‘member of an employee’s family’’ means an employee’s spouse, son, daughter or parent who resides with the employee and who requires the personal attendance of the employee during the family member’s catastrophic illness.

(d) The Secretary shall convert the donated leave into cash value at the donor’s rate of pay, shall re-convert the cash value to hours of leave at the recipient’s rate of pay, and shall then credit the recipient’s account.

(e) Before receiving donated leave time under this section, the recipient of the leave time shall:

(1) Have been an officer or employee of this State for at least 6 months before the recipient is eligible for donated leave time;

(2) Have used all of the recipient’s sick days and $^1/_2$ of the recipient’s annual leave; however, when the donated leave time is for the catastrophic illness of a family member, the employee must have used all of the employee’s sick days and annual leave; and

(3) Have established medical justification for such receipt, which must be renewed every 30 days.

(f) An employee who is covered by a collective bargaining agreement may donate leave to, or receive donations of leave from, an employee or officer who is not covered by a collective bargaining agreement.

(g) The Secretary shall have the authority to carry out the mandates of this section.

(h) The agency employing the recipient of a grant of donated leave shall pay all cost of the use of that donated leave. No funds shall be attached to any hours of donated leave.

(i) The State’s liability under this program shall not exceed the number of hours donated by employees.

(j) The provisions of this section related to a direct donation of hours from one officer or employee of this State to another officer or employee shall become effective February 2, 1996. The provisions of this section related to donation of hours to the Leave Bank shall become effective upon the establishment of the Bank or May 2, 1996, whichever occurs first.

(k) Donated leave received by an officer or employee of this State under this section is to run concurrently with any leave available under the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq.

(70 Del. Laws, c. 306, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 395, § 42; 72 Del. Laws, c. 440, §§ 6-9; 75 Del. Laws, c. 88, § 20(6); 81 Del. Laws, c. 66, § 55; 81 Del. Laws, c. 188, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 277, §§ 2, 3.)

Part V
Public Officers and Employees

Chapter 60
Disaster Service Volunteer Leave

§ 6001. Short title.

This chapter may be cited as the “Disaster Service Volunteer Leave Act.”

(70 Del. Laws, c. 21, § 1.)

§ 6002. Definitions.

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

(1) “Certified disaster service volunteer” or “volunteer” means any person who has completed the necessary training for and been certified as a disaster service specialist by the American Red Cross.

(2) “Disaster” means any disaster designated at Level III or higher in the American National Red Cross Regulations and Procedures, including both national and state disasters.

(3) “State agency” or “agency” means any state office, officer, official, department, board, commission, institution, bureau, agency, division or unit of the State, including those within the legislative and judicial branches of state government.

(70 Del. Laws, c. 21, § 1.)

§ 6003. Disaster service volunteer leave.

(a) An employee of a state agency who is a certified disaster service volunteer may be granted leave from work with pay, in accordance with subsection (b) of this section below, for up to an aggregate of 15 work days, consecutively or nonconsecutively, in any 12-month period to participate in specialized disaster relief services for the American Red Cross in connection with any disaster, upon the request of the American Red Cross for such employee’s services and upon the approval of such employee’s employing agency.

(b) An employee of a state agency granted leave pursuant to subsection (a) of this section shall be compensated by the employee’s employing agency at the employee’s regular rate of pay for those regular work hours during which the employee is absent from work, but shall not receive overtime pay, shift differential pay, hazardous duty pay or any other form of pay or compensation in addition to the employee’s regular pay. An employee of a state agency who is granted leave pursuant to subsection (a) of this section shall not lose any seniority or any already accumulated vacation time, sick time or earned overtime due to such leave.

(c) The State shall not be liable for workers’ compensation claims arising from accident or injury while the state employee is on assignment as a certified disaster service volunteer for the American Red Cross. Duties performed while on disaster leave shall not be considered to be a work assignment by a state agency. In determining whether to grant leave to an employee, the employee’s employing agency may consider the needs of the American Red Cross for expertise in a particular certified area. The employee’s activities and job functions while on leave, however, shall not be directed by the State but shall be determined and controlled solely by the American Red Cross.

(d) An employee who is on leave pursuant to this section shall not be deemed to be an employee of the State for purposes of the Delaware Tort Claims Act.

(70 Del. Laws, c. 21, § 1; 70 Del. Laws, c. 186, § 1.)

Part V
Public Officers and Employees
Chapter 60A
Deferred Compensation for Public Officers and Employees of the State

§ 6051. Purpose.

The purpose of this chapter is to create a vehicle through which all employees of the State may, on a voluntary basis, provide for additional retirement income security through a program of deferred compensation. The deferred compensation program provided by this chapter shall be in addition to any retirement or other benefit program provided by law for employees of the State.

(60 Del. Laws, c. 146, § 1.)

§ 6052. Definitions.

As used in this chapter:

(1) "Board" shall mean the Plans Management Board pursuant to § 2722 of this title.

(2) "Deferred compensation" means income earned as a public officer or employee of the State which, pursuant to a written agreement between the State and the employee, is set aside for retirement purposes.

(3) "Deferred compensation program" means such plans to allow deferred compensation pursuant to §§ 457, 403(b) and 401(a) of the Internal Revenue Code [26 U.S.C. §§ 457, 403(b) and 401(a)], as may be adopted by the Board.

(4) "Employee" means an individual who is employed by the State, including elected or appointed officials, and who receives compensation wholly or in part directly from the State Treasury or through an agency within the State that is wholly or in part supported by the State. The term "employee" includes employees of the Delaware Transit Corporation and Delaware Solid Waste Authority. Individuals hired as consultants shall not qualify as employees.

(5) "Qualified participant" is defined as an employee of the State, including school districts, who has deferred compensation under the provisions of this chapter and satisfies either of the following conditions:

a. Employee must be enrolled in the deferred compensation program for no less than 6 consecutive months immediately preceding receipt of the match;

b. Employee has deferred the maximum allowable by the Internal Revenue Service within the 6 months preceding receipt of the match.

(60 Del. Laws, c. 146, § 1; 72 Del. Laws, c. 488, § 1; 80 Del. Laws, c. 295, § 3; 84 Del. Laws, c. 154, § 1.)

§ 6053. Deferred Compensation Council [Repealed].

(60 Del. Laws, c. 146, § 1; 69 Del. Laws, c. 64, § 84; 75 Del. Laws, c. 88, § 20(6); 75 Del. Laws, c. 350, § 163; repealed by 80 Del. Laws, c. 295, § 3, eff. July. 1, 2016.)

§ 6054. Administration; reports.

(a) All plans of deferred compensation which may be adopted shall provide that each participating employee will be furnished a quarterly statement of the employee's account, on a form approved by the Board, showing at least the amount of income deferred, the investments purchased and the charges assessed on such purchases.

(b) Each plan of deferred compensation which may be adopted shall provide that in the event of nonrenewal or termination, all accounts enrolled in the plan, including all records, investments and proceeds thereof, shall be transferred to an agent designated by the Board.

(60 Del. Laws, c. 146, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 295, § 3.)

§ 6055. Payroll deductions.

The Department of Finance and the State Treasurer are authorized to make payroll deductions under this chapter pursuant to regulations adopted by the Board for any public officer or employee of the State who has authorized such deductions in writing. The Treasurer of the State shall account for all such payroll deductions and shall make payment of such deductions in accordance with regulations adopted by the Board. Any income deferred under such a plan shall continue to be included as regular compensation for the purpose of computing the contributions to and benefits from the State Employees' Pension Plan, any pension plan for members of the state judiciary and any pension plan for members of the State Police. Unless subject to the provisions of § 6062 of this title, any sum so deferred shall not be included in the computation of any federal or state income taxes withheld on behalf of any such employee, but shall be included for computation of Social Security Administration contributions.

(60 Del. Laws, c. 146, § 1; 64 Del. Laws, c. 433, § 1; 80 Del. Laws, c. 295, § 3.)

§ 6056. Maximum amount deferrable.

Any provision of this chapter notwithstanding, the maximum amount of income which any 1 employee may elect to defer after June 30, 1975, shall not exceed the limit established by the Internal Revenue Service.

(60 Del. Laws, c. 146, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 354, § 39.)

§ 6057. Limitation on investments.

The deferred compensation program may offer any of the following investment options and none other:

(1) Savings accounts in federally insured banking institutions.

(2) United States government bonds or debt instruments.

(3) Life insurance and annuity contracts, provided the companies offering such contracts are subject to regulation by the Insurance Commissioner of the State.

(4) Investment funds registered under the Investment Company Act of 1940.

(5) Securities which are traded on the New York Stock Exchange National Association of Securities Dealers Automated Quotations (NASDAQ) and American Stock Exchange.

(60 Del. Laws, c. 146, § 1; 72 Del. Laws, c. 204, § 14.)

§ 6058. Audit [Repealed].

(60 Del. Laws, c. 146, § 1; repealed by 80 Del. Laws, c. 295, § 3, eff. July 1, 2016.)

§ 6059. Costs [Repealed].

(60 Del. Laws, c. 146, § 1; 74 Del. Laws, c. 68, § 81; repealed by 80 Del. Laws, c. 295, § 3, eff. July 1, 2016.)

§ 6060. Employer Match Plan.

The Board is hereby authorized and directed to establish a plan pursuant to § 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. § 401(a)), as amended.

(72 Del. Laws, c. 488, § 2; 80 Del. Laws, c. 295, § 3.)

§ 6061. Employer contribution to qualified participants [Suspended effective July 1, 2008; see 85 Del. Laws, c. 62, § 7(e)].

Commencing January 1, 2001, and each pay period thereafter, an amount equal to 100 percent of the voluntary contribution of every qualified participant, not to exceed $10 per pay period, shall be credited to the § 401(a) [26 U.S.C. § 401(a)] account of each qualified participant making a voluntary deferral under the provisions of this chapter. The employer contribution shall be remitted each pay period by the State Treasurer from an appropriation authorized for this purpose.

Modifications to the match amount per pay period, percentage of contribution matched, number of pay periods per year to be matched and other fiscal and operational aspects of the program are contingent upon funding by the General Assembly and may be administered through rules and regulations promulgated by the Board and pursuant to § 401(a) of the Internal Revenue Code (26 U.S.C. § 401(a)).

(72 Del. Laws, c. 488, § 3; 77 Del. Laws, c. 84, § 7(d); 80 Del. Laws, c. 295, § 3.)

§ 6062. Roth savings option.

(a) The Board shall ensure that 26 U.S.C. §§ 403(b) and 457(b) retirement plans allow participants the option to designate their contributions into the plans as Roth contributions.

(b) The Office of Management and Budget shall make all necessary changes to the state employee payroll system necessary to facilitate the addition of a Roth option to state 403(b) and 457(b) retirement plans for state employees.

(c) The State Treasurer shall take all necessary steps to facilitate the addition of a Roth option to state 403(b) and 457(b) retirement plans.

(79 Del. Laws, c. 372, § 1; 80 Del. Laws, c. 295, § 3.)

Part V
Public Officers and Employees
Chapter 60B
First State Quality Improvement Fund

(82 Del. Laws, c. 64.)

§ 6071. Establishment.

(a) The First State Quality Improvement Fund is hereby established within the Department of Human Resources.

(b) Moneys provided to the Fund shall be subject to an annual appropriation by the General Assembly in the Annual Budget Act of the State of Delaware. Appropriations made to the First State Quality Improvement Fund shall not be subject to reversion to the General Fund of the State unless otherwise specified by the General Assembly in the Annual Budget Act.

(70 Del. Laws, c. 338, § 1; 75 Del. Laws, c. 88, § 20(6); 77 Del. Laws, c. 84, § 73; 77 Del. Laws, c. 327, § 66; 78 Del. Laws, c. 78, § 66; 78 Del. Laws, c. 290, § 62; 79 Del. Laws, c. 78, § 60; 79 Del. Laws, c. 290, § 63; 80 Del. Laws, c. 79, § 62; 80 Del. Laws, c. 298, § 66; 81 Del. Laws, c. 58, § 69; 81 Del. Laws, c. 66, § 56; 81 Del. Laws, c. 280, § 102; 82 Del. Laws, c. 64; 84 Del. Laws, c. 53, § 1.)

§ 6072. Legislative intent.

The General Assembly finds that Delaware state agencies and employees can improve their performance and delivery of services to Delaware citizens by implementing a long-term commitment to continuous improvement, performance budgeting and other initiatives. A First State Quality Improvement Fund supports implementation of operational excellence initiatives and reinvestment of savings in tools for improving efficiency and effectiveness. Agencies may reduce positions requirements through retraining, reassignment, or other methods, such as automation. The General Assembly intends for this process to involve employees at all levels to improve customer confidence and satisfaction with Delaware state government.

(70 Del. Laws, c. 338, § 1; 77 Del. Laws, c. 84, § 73; 77 Del. Laws, c. 327, § 66; 78 Del. Laws, c. 78, § 66; 78 Del. Laws, c. 290, § 62; 79 Del. Laws, c. 78, § 60; 79 Del. Laws, c. 290, § 63; 80 Del. Laws, c. 79, § 62; 80 Del. Laws, c. 298, § 66; 81 Del. Laws, c. 58, § 69; 81 Del. Laws, c. 280, § 102; 82 Del. Laws, c. 64; 84 Del. Laws, c. 53, § 2.)

§ 6073. Purposes.

(a) The Fund shall be expended for long-term commitments to continuous quality improvement and other operational excellence initiatives, except as provided in § 6076.

(b) Moneys appropriated to the Fund may be allocated for activities and programs based on commonly-accepted industry best practices:

(1) Create continuous quality improvement plans for agencies.

(2) Establish performance-based budgeting measures to quantify effectiveness.

(3) Re-engineer work processes consistent with Lean and other process improvement methodologies.

(4) Train employees and leadership to lead continuous improvement organizations.

(5) Other operational excellence initiatives.

(6) Engage vendors and/or consultants to:

a. Set strategic direction and goals.

b. Conduct seminars/facilitations for executive branch leadership.

c. Help selected agencies adopt operational excellence initiatives.

d. Train Delaware state employees as trainers to sustain initiatives.

(70 Del. Laws, c. 338, § 1; 77 Del. Laws, c. 84, § 73; 77 Del. Laws, c. 327, § 66; 78 Del. Laws, c. 78, § 66; 78 Del. Laws, c. 290, § 62; 79 Del. Laws, c. 78, § 60; 79 Del. Laws, c. 290, § 63; 80 Del. Laws, c. 79, § 62; 80 Del. Laws, c. 298, § 66; 81 Del. Laws, c. 58, § 69; 81 Del. Laws, c. 280, § 102; 82 Del. Laws, c. 64; 84 Del. Laws, c. 53, § 3.)

§ 6074. Distribution and accountability of the First State Quality Improvement Fund.

The Department of Human Resources Training and HR Solutions Division in partnership with the Government Efficiency and Accountability Review (GEAR) Program management team shall adopt rules and regulations necessary to implement this chapter, including guidelines for the distribution of these funds.

(70 Del. Laws, c. 338, § 1; 77 Del. Laws, c. 84, § 73; 77 Del. Laws, c. 327, § 66; 78 Del. Laws, c. 78, § 66; 78 Del. Laws, c. 290, § 62; 79 Del. Laws, c. 78, § 60; 79 Del. Laws, c. 290, § 63; 80 Del. Laws, c. 79, § 62; 80 Del. Laws, c. 298, § 66; 81 Del. Laws, c. 58, § 69; 81 Del. Laws, c. 280, § 102; 82 Del. Laws, c. 64; 84 Del. Laws, c. 53, § 4.)

§ 6075. Fund purpose [Repealed].

(70 Del. Laws, c. 338, § 1; 77 Del. Laws, c. 84, § 73; 77 Del. Laws, c. 327, § 66; 78 Del. Laws, c. 78, § 66; 78 Del. Laws, c. 290, § 62; 79 Del. Laws, c. 78, § 60; 79 Del. Laws, c. 290, § 63; 80 Del. Laws, c. 79, § 62; 80 Del. Laws, c. 298, § 66; 81 Del. Laws, c. 58, § 69; 81 Del. Laws, c. 280, § 102; 82 Del. Laws, c. 64; repealed by 84 Del. Laws, c. 53, § 5, effective June 27, 2023.)

§ 6076. Emergency and special appropriations.

(a) In the event of an emergency involving the health, safety or welfare of the citizens of the State, any portion of the balance remaining in the Fund may be expended pursuant to an act of appropriation passed by $^{3}/_{5}$ of all the members elected to each house of the General Assembly.

(b) In the event of cutbacks in federal funding of Delaware state programs affecting the health, safety or welfare of the citizens of the State, and upon recommendation by the Joint Finance Committee, any portion of the balance remaining in the Fund may be expended pursuant to an act of appropriation.

(70 Del. Laws, c. 338, § 1; 77 Del. Laws, c. 84, § 73; 77 Del. Laws, c. 327, § 66; 78 Del. Laws, c. 78, § 66; 78 Del. Laws, c. 290, § 62; 79 Del. Laws, c. 78, § 60; 79 Del. Laws, c. 290, § 63; 80 Del. Laws, c. 79, § 62; 80 Del. Laws, c. 298, § 66; 81 Del. Laws, c. 58, § 69; 81 Del. Laws, c. 280, § 102; 82 Del. Laws, c. 64; 84 Del. Laws, c. 53, § 6.)

§ 6077. Termination.

The First State Quality Improvement Fund may be terminated by the General Assembly, upon the recommendation of the Joint Finance Committee when, in the opinion of the Joint Finance Committee, the program has not realized improvement in agency performance, monetary savings to the State or any other reason in which agency or employee performance has not demonstrated proof of improvements to the delivery of Delaware state services. Additionally, the Fund may be terminated when all moneys from the Fund have been expended and no further appropriation is approved by the General Assembly.

(70 Del. Laws, c. 338, § 1; 77 Del. Laws, c. 84, § 73; 77 Del. Laws, c. 327, § 66; 78 Del. Laws, c. 78, § 66; 78 Del. Laws, c. 290, § 62; 79 Del. Laws, c. 78, § 60; 79 Del. Laws, c. 290, § 63; 80 Del. Laws, c. 79, § 62; 80 Del. Laws, c. 298, § 66; 81 Del. Laws, c. 58, § 69; 81 Del. Laws, c. 280, § 102; 82 Del. Laws, c. 64; 84 Del. Laws, c. 53, § 7.)

§ 6078. Liberal construction of chapter.

This chapter, being necessary for the prosperity and welfare of the State and its citizens, shall be construed liberally to effect the purposes of this chapter.

(70 Del. Laws, c. 338, § 1; 77 Del. Laws, c. 84, § 73; 77 Del. Laws, c. 327, § 66; 78 Del. Laws, c. 78, § 66; 78 Del. Laws, c. 290, § 62; 79 Del. Laws, c. 78, § 60; 79 Del. Laws, c. 290, § 63; 80 Del. Laws, c. 79, § 62; 80 Del. Laws, c. 298, § 66; 81 Del. Laws, c. 58, § 69; 81 Del. Laws, c. 280, § 102; 82 Del. Laws, c. 64; 84 Del. Laws, c. 53, § 8.)

Part V
Public Officers and Employees

Chapter 60C
Delaware Tobacco Settlement Act of 1999

§ 6080. Findings and purpose.

(a) Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the State. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into a settlement with the State or are found culpable by the courts.

(e) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interests of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

(72 Del. Laws, c. 182, § 1.)

§ 6081. Definitions.

(a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(b) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) "Allocable share" means allocable share as that term is defined in the Master Settlement Agreement.

(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(2) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(3) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (d)(1) of this section. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute 1 individual "cigarette."

(e) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, by the State and leading United States tobacco product manufacturers.

(f) "Qualified escrow fund" means an escrow arrangement with a federally- or State-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with § 6082(2) of this title.

(g) “Released claims” means released claims as that term is defined in the Master Settlement Agreement.

(h) “Releasing parties” means releasing parties as that term is defined in the Master Settlement Agreement.

(i) “Tobacco product manufacturer” means an entity that after July 20, 1999, directly (and not exclusively through any affiliate):

(1) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of Section II(mm) of the Master Settlement Agreement and that pays the taxes specified in Section II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) Becomes a successor of an entity described in paragraph (i)(1) or (2) of this section.

The term “tobacco product manufacturer” shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of the provisions of paragraphs (i)(1)-(3) of this section.

(j) “Units sold” means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or “roll-your-own” tobacco containers) bearing the excise tax stamp of the State. The Department of Finance agency shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

(72 Del. Laws, c. 182, § 1.)

§ 6082. Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after July 20, 1999, shall do 1 of the following:

(1) Become a participating manufacturer (as that term is defined in Section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2) a. Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

1. 1999: $.0094241 per unit sold after July 20, 1999;

2. 2000: $.0104712 per unit sold;

3. For each of 2001 and 2002: $.0136125 per unit sold;

4. For each of 2003 through 2006: $.0167539 per unit sold;

5. For each of 2007 and each year thereafter: $.0188482 per unit sold.

b. A tobacco product manufacturer that places funds into escrow pursuant to paragraph (2)a. of this section shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

1. To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this paragraph (2)b.1. in the order in which they were placed into escrow, and only to the extent and the time necessary to make payments to required under such judgment or settlement;

2. To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the State in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to Section IX(1) of that Agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

3. To the extent not released from escrow under paragraph (2)b.1. or 2. of this section, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

c. Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subdivision shall annually certify to the Attorney General that it is in compliance with this subdivision. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

1. Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subdivision, may impose a civil penalty to be paid to the general fund of the State in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

2. In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subdivision, may impose a civil penalty to be paid to the Delaware Health Fund of the State in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

3. In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.

(72 Del. Laws, c. 182, § 1; 74 Del. Laws, c. 378, § 1.)

Part V
Public Officers and Employees

Chapter 60D
Enforcement Provisions of Delaware Tobacco Settlement Act of 1999

§ 6083. Findings and purpose.

The General Assembly hereby finds that violations of Chapter 60C of this title, the Delaware Tobacco Settlement Act of 1999, threaten the integrity of the Tobacco Master Settlement Agreement, the fiscal soundness of the State, and the public health. The General Assembly hereby finds that enactment of the procedural enhancements promulgated by this chapter will aid in the enforcement of Chapter 60C of this title, and will thereby safeguard the Master Settlement Agreement, the fiscal soundness of the State, and the public health.

(74 Del. Laws, c. 124, § 1.)

§ 6084. Definitions.

(a) "Affixing agent" means a person who is authorized to affix tax stamps to packages or other containers of cigarettes under Chapter 53 of Title 30 or any person that is required to pay the excise tax imposed pursuant to Chapter 53 of Title 30 on Cigarettes.

(b) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol", "lights", "kings", and "100s", and includes any brand name (alone or in conjunctions with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of Cigarettes.

(c) "Cigarette" has the same meaning as in § 6081(d) of this title.

(d) "Department" means the Department of Finance for the State.

(e) "Master settlement agreement" has the same meaning given to that term in § 6081(e) of this title.

(f) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(g) "Participating manufacturer" has the same meaning given to that term in Section II(jj) of the master settlement agreement and all amendments thereto.

(h) "Qualified escrow fund" has the same meaning given to that term in § 6081(f) of this title.

(i) "Tobacco product manufacturer" has the same meaning given to that term in § 6081(i) of this title.

(j) "Units sold" has the same meaning given to that term in § 6081(j) of this title.

(74 Del. Laws, c. 124, § 1.)

§ 6085. Certifications; directory; tax stamps.

(a) *Certification.* — Every tobacco product manufacturer whose cigarettes are sold in this State, whether directly or through a distributor, retailer or similar intermediary or intermediaries, shall execute and deliver in the manner prescribed by the Attorney General a certification to the Department and Attorney General, no later than April 30 of each year, certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer is either a participating manufacturer or is in full compliance with Chapter 60C of this title, including all quarterly installment payments required by § 6087(e) of this title.

(1) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list 30 calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General and Department.

(2) A nonparticipating manufacturer shall include in its certification:

a. A list of all of its brand families and the number of units sold for each brand family that were sold in the State during the preceding calendar year;

b. A list of all its brand families that have been sold in the State at any time during the current calendar year;

c. Indicating, by an asterisk, and brand family sold in the State during the preceding calendar year that is no longer being sold in the State as of the date of such certification; and

d. Identifying by name and address any other manufacturer of such brand families in the preceding or current calendar year.

The nonparticipating manufacturer shall update such list 30 calendar days prior to any addition to or modification of its brand families by execution and delivering a supplemental certification to the Attorney General and Department.

(3) In the case of a nonparticipating manufacturer, such certification shall include representations that:

a. Such nonparticipating manufacturer is registered to do business in the State or has appointed a resident agent for service of process and provided notice thereof as required by § 6086 of this title; and

b. Such nonparticipating manufacturer:

1. Has established and continues to maintain a qualified escrow fund; and

2. Has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund; and

c. Such nonparticipating manufacturer is in full compliance with Chapter 60C of this title and this chapter, and any regulations promulgated pursuant thereto; and

d. 1. The name, address and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required pursuant to Chapter 60C of this title and all regulations promulgated thereto;

2. The account number of such qualified escrow fund and any sub-account number for Delaware;

3. The amount such nonparticipating manufacturer placed in such fund for cigarettes sold in the State during the preceding calendar year, the date and amount of each such deposit, and such evidence or verification as may be deemed necessary by the Attorney General to confirm the foregoing; and

4. The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to Chapter 60C of this title and all regulations promulgated thereto.

(4) A tobacco product manufacturer may not include a brand family in its certification unless:

a. In the case of a participating manufacturer, said participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement; and

b. In the case of a nonparticipating manufacturer, said nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of Chapter 60C this title.

Nothing in this section shall be construed as limiting or otherwise affecting the State's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of Chapter 60C of this title.

(5) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of 5 years, unless otherwise required by law to maintain them for a greater period of time.

(b) *Directory of cigarettes approved for stamping and sale.* — Not later than August 7, 2003, the Attorney General shall develop and publish on its website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (a) of this section and all brand families that are listed in such certifications (the "Directory"), except as noted below.

(1) The Attorney General shall not include or retain in such Directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the Attorney General determines is not in compliance with paragraphs (a)(2) and (3) of this section, unless the Attorney General has determined that such violation has been cured to the satisfaction of the Attorney General.

(2) Neither a tobacco product manufacturer nor brand family shall be included or retained in the Directory if the Attorney General concludes, in the case of a nonparticipating manufacturer, that

a. Any escrow payment required pursuant to Chapter 60C of this title for any period for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General; or

b. Any outstanding final judgment, including interest thereon, for a violation of Chapter 60C of this title has not been fully satisfied for such brand family or such manufacturer.

(3) The Attorney General shall update the Directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the Directory in conformity with the requirements of this chapter. The Attorney General shall post in the Directory and transmit by e-mail or other practicable means to each affixing agent and tobacco product manufacturer notice of any removal from the Directory of that tobacco product manufacturer or brand family at least 30 days prior to removal from the Directory of such tobacco product manufacturer or brand family. Unless otherwise provided by agreement between an affixing agent and a tobacco product manufacturer, the affixing agent shall be entitled to a refund from a tobacco product manufacturer for any money paid by the affixing agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer in the possession of the affixing agent on the effective date of removal from the Directory, or as subsequently received from a retail dealer as provided herein, of that tobacco product manufacturer or brand family of cigarettes. Unless otherwise provided by agreement between a retail dealer and an affixing agent or a tobacco product manufacturer, a retail dealer shall be entitled to a refund from an affixing agent or a tobacco product manufacturer for any money paid by the retail dealer to such affixing agent or tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still in the possession of the retail dealer on the effective date of removal from the Directory of that tobacco product manufacturer or brand family of cigarettes. The Attorney General shall not restore to the Directory the tobacco product manufacturer or the brand family until the tobacco product manufacturer has paid the affixing agent or retail dealer any refund due.

(4) Every affixing agent shall provide and update as necessary an electronic mail address to the Attorney General for the purpose of receiving any notifications as may be required by this chapter.

(c) *Prohibition against stamping or sale of cigarettes not in the directory.* — It shall be unlawful for any person:

(1) To affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the Directory;

(2) To sell, offer or possess for sale in this State, cigarettes of a tobacco product manufacturer or brand family not included in the Directory.

(74 Del. Laws, c. 124, § 1.)

§ 6086. Agent for service of process.

(a) *Requirement for agent for service of process.* — Any nonresident or foreign Non-participating manufacturer that has not registered to do business in the State as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the Directory, appoint and continually engage without interruption the services of an agent in this State to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this title and Chapter 60C of this title, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number and proof of the appointment and availability of such agent to, and to the satisfaction of, the Department and Attorney General.

(b) The nonparticipating manufacturer shall provide notice to the Department and Attorney General 30 calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than 5 calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the Department and Attorney General of said termination within 5 calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(c) Any nonparticipating manufacturer whose cigarettes are sold in this State, who has not appointed and engaged an agent as herein required, shall be deemed to have appointed the Secretary of State as such agent and may be proceeded against in courts of this State by service of process upon the Secretary of State; provided, however, that the appointment of the Secretary of State as such agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the Directory.

(74 Del. Laws, c. 124, § 1.)

§ 6087. Reporting of information; escrow installments.

(a) *Reporting by affixing agents.* — Not later than 20 calendar days after the end of each calendar quarter, and more frequently if so directed by the Department, each affixing agent shall submit such information as the Department and Attorney General require to facilitate compliance with this chapter, including, but not limited to, a list by brand family of the total number of cigarettes, or, in the case of roll your own, the equivalent stick count, for which the affixing agent affixed stamps during the previous calendar month or otherwise paid the tax due for such cigarettes. The affixing agent shall maintain, and make available to the Department and the Attorney General, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Department for a period of 5 years.

(b) *Disclosure of information.* — The Department is authorized to disclose to the Attorney General any information received and requested by the Attorney General for purposes of determining compliance with and enforcing the provisions of this chapter and Chapter 60C of this title. The Department and Attorney General shall share with each other the information received under this chapter, and may share such information with other federal, State or local agencies only for purposes of enforcement of this chapter, Chapter 60C of this title, or corresponding laws of other states.

(c) *Verification of qualified escrow fund.* — The Attorney General may require at any time from the nonparticipating manufacturer proof, from the financial institution in which such manufacturer has established a Qualified Escrow Fund for the purpose of compliance with Chapter 60C of this title, of the amount of money in such fund, exclusive of interest, the amount and date of each deposit to such fund, and the amount and date of each withdrawal from such fund.

(d) *Requests for additional information.* — In addition to the information required to be submitted pursuant to Chapter 60C of this title and this chapter, the Department may require an affixing agent or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with Chapter 60C of this title.

(e) *Quarterly escrow installments.* — To promote compliance with this chapter, the Department may promulgate regulations requiring a tobacco product manufacturer subject to the requirements of § 6085(a)(2) of this title to make the escrow deposits required in quarterly installments during the year in which the sales covered by such deposits are made. The Department may require production of information sufficient to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

(74 Del. Laws, c. 124, § 1.)

§ 6088. Penalties and other remedies; Class B misdemeanor.

(a) *License revocation and civil penalty.* — In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that an affixing agent has violated § 6085(c) of this title or any regulation adopted pursuant to this chapter, the Department

may revoke or suspend the license of the affixing agent in the manner provided by Chapter 53 of Title 30. Each stamp affixed and each sale or offer to sell cigarettes in violation of § 6085(c) of this title shall constitute a separate violation. For each violation hereof, the Department may also impose a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes or $5,000 upon a determination of violation of § 6085(c) of this title or any regulations adopted pursuant thereto. Such penalty shall be imposed in the manner provided by Chapter 53 of Title 30.

(b) *Contraband and seizure.* — Any cigarettes that have been sold, offered for sale, or possessed for sale in this State in violation of § 6085(c) of this title shall be deemed contraband under § 5346 of Title 30 and such cigarettes shall be subject to seizure and forfeiture as provided in such section, and all such cigarettes so seized and forfeited shall be destroyed and not resold.

(c) *Injunction.* — The Attorney General may seek an injunction to restrain a threatened or actual violation of §§ 6085(c), 6087(a) or 6085(d) of this title by an affixing agent and to compel the affixing agent to comply with such subsections. In any action brought pursuant to this section, the State shall be entitled to recover the costs of investigation, costs of the action and reasonable attorney fees.

(d)*Unlawful sale and distribution.* — It shall be unlawful for a person to:

(1) Sell or distribute cigarettes, or

(2) Acquire, hold, own, posses, transport, import or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the State in violation of § 6085(c) of this title.

A violation of this section shall be a Class B misdemeanor.

(e) *Unfair and deceptive trade practice.* — A person who violates § 6085(c) of this title engages in an unfair and deceptive trade practice in violation of Chapter 25 of Title 6.

(74 Del. Laws, c. 124, § 1.)

§ 6089. Miscellaneous provisions.

(a) *Notice and review of determination.* — A determination of the Attorney General to not include or to remove from the Directory a brand family or tobacco product manufacturer shall be subject to review in the manner prescribed by Chapter 101 of this title.

(b) *Applicants for licenses.* — No person shall be issued a license or granted a renewal of a license to act as an affixing agent unless such person has certified in writing, under penalty of perjury, that such person will comply fully with this section.

(c) *Dates.* — For the year 2003, the first report of affixing agents required by § 6087(a) of this title shall be due Aug. 7, 2003; the certifications by a tobacco product manufacturer described in § 6085(a) of this title shall be due Aug. 22, 2003, and the Directory described in § 6085(b) of this title shall be published or made available by Oct. 6, 2003.

(d) *Promulgation of regulations.* — The Department may promulgate regulations necessary to effect the purposes of this chapter.

(e) *Recovery of costs and fees by Attorney General.* — In any action brought by the State to enforce this chapter, the State shall be entitled to recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney fees.

(f) *Disgorgement of profit of violations of chapter.* — If a court determines that a person has violated this chapter, the court shall order any profits, gain, gross receipts or other benefit from the violation to be disgorged and paid to the Delaware Health Fund. Unless otherwise expressly provided the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

(g) *Construction and severability.* — If a court of competent jurisdiction finds that the provisions of this chapter and of chapter of this title conflict and cannot be harmonized, then such provisions of Chapter 60C of this title shall control. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter causes Chapter 60C of this title to no longer constitute a qualifying or model statute, as those terms are defined in the master settlement agreement, then that portion of this chapter shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid, unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof.

(74 Del. Laws, c. 124, § 1.)

Part V
Public Officers and Employees

Chapter 60E
Public Attorney Student Loan Repayment Program

(83 Del. Laws, c. 499, § 1.)

§ 6090. Establishment; statement of purpose.

(a) There is established a Public Attorney Student Loan Repayment Program for attorneys employed by the State or 1 of Delaware's civil legal aid organizations for the purpose of practicing law. The program allows qualified applicants to apply for a payment from the State to the applicant's lending agency to pay a portion of the applicant's qualified educational loan. The Council shall administer the program.

(b) The purpose of the program is to improve the recruitment and retention of attorneys employed by the State or 1 of Delaware's civil legal aid organizations to ensure high quality legal services.

(c) The application prescribed, and policies adopted pursuant to this subchapter shall be available on the Council's website.

(83 Del. Laws, c. 499, § 1.)

§ 6091. Definitions.

As used in this subchapter:

(1) "Award" means the Council's decision to make a loan payment on an applicant's behalf.

(2) "Civil legal aid organization" means Community Legal Aid Society, Delaware Volunteer Legal Services, or Legal Services Corporation of Delaware.

(3) "Council" means the Delaware Criminal Justice Council.

(4) "Lending agency" means an entity that provides a qualified education loan.

(5) "Loan award committee" means a committee composed of the following members:

a. Executive Director of the Council.

b. The Chief Defender, or the Chief Defender's designee.

c. The Attorney General, or the Attorney General's designee.

d. The Chief Justice, or the Chief Justice's designee.

e. A member of the Delaware bar appointed by the Governor.

(6) "Loan payment" means a payment by the Council to a successful applicant's lending agency of a portion of the applicant's qualified educational loan.

(7) "Program" means the Public Attorney Student Loan Repayment Program established in this subchapter.

(8) "Qualified educational loan" means a government, commercial, or foundation loan for actual costs paid for tuition and reasonable educational expenses related to an applicant's undergraduate or law degree program.

(83 Del. Laws, c. 499, § 1.)

§ 6092. Funding.

(a) Appropriations for the program will be made to the Council through the annual Appropriations Act in a separate line item appropriation. The Council is authorized to accept private donations and federal funding to support the program.

(b) The Council may use up to 5% of the amount appropriated for the program to cover costs of administering the program.

(83 Del. Laws, c. 499, § 1.)

§ 6093. Eligibility for the program.

To qualify to participate in the program, all of the following must apply:

(1) The applicant has secured a qualified educational loan prior to submitting an application.

(2) The applicant is an active member in good standing of the Bar of the Supreme Court of the State of Delaware or is practicing law under Supreme Court Rule 55.

(3) The applicant has been an employee of the State or 1 of Delaware's civil legal aid organizations for at least a year, and the applicant's primary job function is the practice of law.

(83 Del. Laws, c. 499, § 1.)

§ 6094. Application.

(a) The application to participate in the program shall require the applicant to certify that they meet the eligibility requirements of § 6093 of this title. The application shall otherwise be in the form prescribed by the Council.

(b) The applicant must submit a new, completed application each year, along with any additional information the Council may request in accordance with program regulations.

(83 Del. Laws, c. 499, § 1.)

§ 6095. Decision and disbursement.

(a) The ability to make awards each year is contingent upon the availability of funds.

(b) Funds are to be distributed evenly amongst the qualified applicants per year, with the loan award committee meeting annually to oversee the allocation of funds.

(c) Notwithstanding subsection (b) of this section, if there are insufficient funds to make an award to every applicant who satisfies the requirements of this subchapter, the loan award committee shall give priority to applicants having the greatest financial need.

(d) The applicants having the greatest financial need is determined in the sole discretion of the loan award committee. The Council shall request all of the following information, but the weight to be given to the information shall be determined in the sole discretion of the loan award committee:

(1) The applicant's income.

(2) The applicant's spousal income.

(3) The number of the applicant's dependents.

(4) The total amount of the applicant's qualified educational loans.

(5) The applicant's monthly loan payment amount.

(e) The Council shall make payment directly to the applicant's lending agency on behalf of the applicant.

(f) An applicant may receive only 1 award per year and may receive no more than 10 awards in the applicant's lifetime. An award may be made as a single annual payment or disbursed over periodic intervals, at the Council's discretion.

(g) Applicants who make over $130,000 a year are ineligible for an award under this subchapter.

(83 Del. Laws, c. 499, § 1; 84 Del. Laws, c. 295, § 77.)

§ 6096. Amount of award.

An award shall be a minimum of $2,500 and shall not exceed $5,000.

(83 Del. Laws, c. 499, § 1.)

§ 6097. Rules and regulations.

The Council may adopt implementing rules and regulations. Rules and regulations shall be adopted in consultation with the loan award committee.

(83 Del. Laws, c. 499, § 1.)

§ 6098. Penalties.

If an applicant knowingly submits false information or commits fraud in connection with the application process, the Council may reevaluate the applicant's eligibility for an award and may withdraw an award. Any award made as the result of deliberate fraud may be recovered by the State through an action at law.

(83 Del. Laws, c. 499, § 1.)

§ 6099. Annual reporting.

Each fiscal year, the Council shall report to the General Assembly, the Attorney General, Chief Defender, and the Chief Justice the following summary data, which shall be de-identified to the greatest extent possible:

(1) The aggregate number of attorneys who applied for an award.

(2) The aggregate number of attorneys who received an award.

(3) The race, ethnicity, age, and gender represented by attorneys who applied for an award.

(4) The race, ethnicity, age, and gender represented by attorneys who received an award.

(5) The employer of attorneys who applied for an award.

(6) The employer of attorneys who received an award.

(7) The legal practice areas of attorneys who applied for an award.

(8) The legal practice areas of attorneys who received an award.

(9) The average amount of an award to an attorney under to the program.

(10) Other summary data identified by the loan award committee.

(83 Del. Laws, c. 499, § 1.)

Part V
Public Officers and Employees

Chapter 60F
Provision of State Flag to Next of Kin [For application of this chapter, see 84 Del. Laws, c. 407, § 2]

(84 Del. Laws, c. 407, § 1.)

§ 6001F. Definitions [For application of this section, see 84 Del. Laws, c. 407, § 2].

As used in this chapter:

(1) "Flag" means a Delaware state flag.

(2) a. "Law-enforcement officer" means a sworn member of a police force or other law-enforcement agency of this State or of a county or municipality in this State, whether employed full or part-time, who is responsible for the prevention and the detection of crime and the enforcement of laws of this State or other governmental units within the State. The sworn member must be a member of any of the following:

1. The Delaware State Police.
2. The New Castle County Police.
3. A police department, bureau, or force of an incorporated city or town in this State.
4. The Delaware River and Bay Authority Police.
5. The Capitol Police.
6. The Delaware State University Police Department.
7. The University of Delaware Police Division.
8. An agent of the State Division of Alcohol and Tobacco Enforcement.
9. An officer or agent of the State Police Drug Diversion Unit.
10. A state detective or special investigator of the Department of Justice.
11. An officer or agent of the Delaware Police Sex Offender Task Force, or an agent employed by a state, county, or municipal law-enforcement agency engaged in monitoring sex offenders.
12. A member of the Office of the State Fire Marshall.
13. A municipal fire marshal or a sworn member of the City of Wilmington Fire Department, either of which is a graduate of a Delaware Police Academy, or similar academy, which is accredited or authorized by the Police Officer Standards and Training Commission under Chapter 84 of Title 11.
14. A correction officer. "Correction officer" means an individual employed by the Department of Correction in a position responsible for supervising correctional officers in secured facilities or classified with a correctional officer job title.
15. A probation and parole officer. "Probation and parole officer" means an individual employed by the Department of Correction or the Department of Services for Children, Youth, and their Families, with the qualifications and having powers and responsibilities pertaining to investigation, supervision and otherwise, provided by law or determined by the Department of Correction or the Department of Services for Children, Youth and their Families, respectively.

b. "Law-enforcement officer" does not mean any of the following:

1. A sheriff, regular deputy sheriff, or constable.
2. A security force for a state agency or other governmental unit.
3. An individual holding police power by virtue of occupying another position or office.

(3) "Next of kin" means an individual who is the surviving spouse, partner, parent, or the individual legally entitled to the remains of a deceased person.

(4) "Person" means any of the following:

a. A volunteer or paid member of a fire department in this state.

b. A law-enforcement officer.

c. A uniformed member of the Delaware National Guard.

(84 Del. Laws, c. 407, § 1.)

§ 6002F. Eligibility [For application of this section, see 84 Del. Laws, c. 407, § 2].

The next of kin of a deceased person is entitled to a flag if all of the following criteria are met:

(1) The person has provided at least 10 years of service to this state in at least 1 of the entities listed under § 6001F of this title. Service in more than 1 entity may be combined in calculating the 10-year threshold.

(2) The person dies in the line of duty or while an active member of at least 1 of the entities listed under § 6001F of this title.

(3) The next of kin requests a flag from the appropriate entity under § 6003F of this title.

(84 Del. Laws, c. 407, § 1.)

§ 6003F. Distribution [For application of this section, see 84 Del. Laws, c. 407, § 2].

On the request of a next of kin, the following entities shall provide a flag under this section:

(1) The Delaware State Fire Prevention Commission, if the person served as a volunteer or paid member of a fire department in this State.

(2) The Department of Safety and Homeland Security, if the person served as a law-enforcement officer, unless the person served as a correction officer or probation and parole officer.

(3) The Department of Correction, if the person served as a correction officer or a probation and parole officer.

(4) The Delaware National Guard, if the person served as a member of the Delaware National Guard.

(84 Del. Laws, c. 407, § 1.)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations
Chapter 61
General Fund

§ 6101. Definition of agency.

The term "agency," as used in this chapter, shall include every board, department, bureau, commission, person or group of persons or other authority created and now existing or hereafter to be created to execute, supervise, control and/or administer governmental functions under the laws of this State or to perform such other duties as may be prescribed or to whom any moneys are appropriated under any budget appropriation act or supplemental appropriation act or any other act which authorizes and requires any department to collect and/or use any taxes, fees, licenses, permits or other receipts for services or otherwise for the performance of any function of or related to or supported in whole or in part by the laws of this State and/or created to administer any laws providing for the collection of taxes, fees, permits, licenses or other forms of receipts from any sources whatsoever for the use of the State or any agency of the State, except the judiciary and the courts of the State.

(42 Del. Laws, c. 77, § 2; 29 Del. C. 1953, § 6101.)

§ 6102. Composition of General Fund; Delaware Higher Education Loan Program Fund.

(a) Except as otherwise specifically provided by law, all receipts and moneys of this State shall be deposited by or to the credit of the State Treasurer in 1 General Fund. The General Fund shall include all moneys derived from taxes, fees, permits, licenses, fines, forfeitures or from any other sources or of other receipts of any kind or from any other source including the sale or disposition of surplus or other property of the State and of every agency thereof including receipts heretofore authorized as funds for specific use of any agency by the authority of any law of this State, but not including funds specified by the Constitution of the State to the extent thereof only and not including funds derived from the sale of bonds for the specific purposes named therein, and not including funds or receipts or grants made for a particular purpose pursuant to an act of Congress of the United States, and not including any endowment fund or gift made for particular purposes and not including any sinking fund authorized by the laws of this State. This section shall be construed to include moneys formerly credited to the School Fund except that all sums required to be credited to such School Fund by the Constitution of this State shall continue to be credited to the School Fund to the extent thereof only.

(b) Nothing in this chapter shall be construed to deprive any agency of the right to receive and expend, for the purpose for which they were collected, any proceeds collected for board, tuition or hospital treatment and from the sale of farm products, and this chapter shall have no application to any money or other property received by the University of Delaware, Delaware State University or Delaware Technical and Community College from any source except money appropriated to it, or for its use, by the General Assembly of the State.

(c) If an agency, in the process of replacing an item of state-owned equipment, should sell such equipment, the proceeds of the sale may be credited to the appropriate General Fund appropriation account of the agency and applied toward the cost of the replacement in accordance with regulations established by the Director of the Office of Management and Budget.

(d) This section notwithstanding, the State Board of Education shall be authorized to charge a rental rate for portable classrooms owned by the State and to use the proceeds for necessary repairs or lease purchase of additional portable classrooms.

(e) All money which has been appropriated by the General Assembly now deposited in a special fund account, as well as all money hereafter appropriated by the General Assembly to Delaware Higher Education Loan Program, hereinafter called the agency, established by Executive Order 40, dated August 27, 1970, for the use in and purpose of carrying out the function of the Delaware Higher Education Loan Program established under the provisions of the United States Higher Education Act of 1965 (20 U.S.C. § 1001 et seq.), shall be deposited by or to the credit of the State Treasurer in 1 special fund account to be known as the Delaware Higher Education Loan Program Fund. In addition, the following money or receipts shall be deposited by or to the credit of the State Treasurer in the Delaware Higher Education Loan Program Fund:

(1) Money or receipts advanced by the federal government for carrying out the program of the agency;

(2) Money or receipts received by the agency as loan insurance premiums;

(3) Money or receipts received by the agency through gift, grant or by other means from other sources;

(4) Money or receipts collected on defaulted loans by the agency after expenses of collection; or

(5) Money or receipts in the nature of interest or other earnings derived from the investment by the State Treasurer thereof.

The money or receipts deposited in or credited to the Delaware Higher Education Loan Program Fund shall not be part of the General Fund of the State and shall not be commingled with the money or receipts of the General Fund or of any other special fund of the State.

(f) All moneys collected pursuant to Chapter 73 of Title 6, other than those which are to be deposited in or transferred to the Investor Protection Fund pursuant to § 73-703 of Title 6, shall be part of the General Fund. The Attorney General shall specifically include in the Attorney General's annual operational budget the salaries, including, but not limited to, the salary of the Deputy Attorney General appointed Securities Commissioner, and other expenses of administering Chapter 73 of Title 6 which are not met by the Investor Protection Fund.

(g) All revenue collected by the Division of Child Support Services, as established under the Social Services Amendments of 1974 (P.L. 93-647, 42 U.S.C. § 651 et seq.) pursuant to its functions under the Division of Child Support Services and Paternity Program, except

for an amount to be specified annually in the budget act as an appropriated special fund which shall be considered an incentive payment to enable the Division to increase child support collections, shall be deposited into a special fund account known as the Division of Child Support Services Account. The revenue deposited into the Division of Child Support Services Account shall not be a part of the General Fund of the State and shall only be handled in accordance with § 457 of the Social Services Amendments of 1974 (42 U.S.C. § 657). Further, such portions of these funds deposited to the credit of the Division of Child Support Services Account, as shall be periodically determined to belong to the State, shall be deposited to the credit of the General Fund of the State.

(h) Nothing in this chapter shall be construed to deprive the Delaware State Housing Authority of the right to receive and expend, for operating costs, replacements and maintenance, rental and operating income from housing managed by said Authority and to maintain separate internal funds accounts and reserve accounts for such purposes; provided, further, that any interest or other earnings which accrue on balances in any accounts managed by the Delaware State Housing Authority shall not be deposited in the General Fund except on General Fund appropriations.

(i) Provisions of this chapter to the contrary notwithstanding, the Delaware Emergency Management Agency shall have the right to apply for, receive and expend funds or grants, pursuant to contracts or otherwise, from public or private sources, for operating expenses associated with the Delaware radiological emergency plan, and to have such funds maintained in a special fund account for such purposes.

(j) Other provisions of this section notwithstanding, certain funds deposited by a reorganized school district shall be credited to the local fund account of that district. Funds so credited shall include:

(1) Library funds;

(2) Payments for lost or damaged equipment, books, supplies and materials of the school;

(3) Payment for damaged real property of the school district;

(4) Parking permits;

(5) Any other income derived from fees, permits, licenses, fines or forfeitures.

(k) (1) Provisions of this chapter to the contrary notwithstanding, the Office of Management and Budget is authorized to establish and maintain a special fund for the purposes of improving statewide, departmental, and divisional indirect cost recoveries from programs financed in whole or in part with federal funds. The Director of the Office of Management and Budget, with the approval of the Controller General, may enter into such contracts and employ such people or services as the Director deems necessary to increase the amounts of and monitor the receipt of indirect cost recoveries to the State. Specifically, this fund may reimburse the State Auditor's office for federal audits performed if the audited agency has deposited sufficient federal funds to compensate the Auditor of Accounts for services rendered. Federal reimbursements deposited in such special fund, and not required to carry out the purposes described in this section, shall be transferred to the General Fund. The Director of the Office of Management and Budget will make periodic reports of progress toward increased indirect cost reimbursements to the Delaware State Clearinghouse Committee at such time as the chairperson may determine.

(2) The Indirect Cost Recovery Program is authorized to recover indirect costs from nonfederal special funded regulatory and service agencies. Costs that are allocated to a state agency under this authority shall be billed to the state agency, and the cost is payable to the Office of Management and Budget. The source of payment for the billed indirect cost shall be any revenue source except the General Fund. If the billed agency is authorized to bill and recover direct expenses, the agency shall recover indirect costs in the same manner.

(*l*) Provisions of this chapter to the contrary notwithstanding, the Business Enterprise Program, operated by the Division for the Visually Impaired within the Department of Health and Social Services under the authority of 20 U.S.C. § 107 et seq., shall be authorized to expend receipts from the vending stands in the Program for operating costs, maintenance and overhead.

(m) (1) A Revenue Management Unit shall be established, within the Division of Business Administration and General Services, for the administration of all responsibilities and duties related to the revenue collection function of the institutions and agencies operated by the Department, including all policies and procedures pertaining to the administration of subchapter III of Chapter 79 of this title.

(2) An appropriated special fund (ASF) is to be designated as the Department of Health and Social Services Revenue Management Fund, which shall be used for the operation of the Revenue Management Unit, to be funded through the Department revenues which the Unit collects. On or about July 1 of each fiscal year, the total amount of the ASF appropriation for this Unit for the fiscal year shall be deposited in the aforementioned holding account. At the close of the fiscal year, the unspent and unencumbered balance in said line shall revert to the General Fund.

(n) Notwithstanding any other provision of law to the contrary, every fee or other charge for a license or permit (whether the revenue generated has been deposited in the General Fund or in an appropriated special fund account) which is in effect and was imposed before July 2, 1990, by any authority, department, agency, instrumentality, commission, officer, board or other unit of state government which is authorized by law to issue such license or permit is hereby approved and ratified by the General Assembly retroactive to the date each such fee or other charge was imposed or increased.

(o) (1) Notwithstanding other provisions of this chapter, there shall be established a special fund of the State to be known as the "Inspection and Maintenance Fund" (referred to in this subsection as "the I & M Fund").

(2) The Secretary of Finance shall, commencing at the beginning of each fiscal year, cause to be deposited into the I & M Fund amounts received as payments of costs assessed by the Justice of the Peace Courts relating to traffic and criminal cases under § 9801(2) of Title 10 [repealed], until the amount deposited in said fiscal year shall equal $2,800,000.

(3) The purpose of the I & M Fund is to provide operating expenses associated with the Delaware Motor Vehicle Enhanced Inspection and Maintenance Program. Any balance in the I & M Fund as of the last day of the fiscal year in excess of $250,000 shall be deposited into the General Fund.

(4) The Secretary of Finance shall make deposits into the I & M Fund as required under this section commencing after June 30, 1995.

(p) [Transferred.]

(q) (1) A special fund of the State is created in the Department of Finance to be known as the "Elderly Property Tax Relief and Education Expense Fund," to which shall be deposited $13,000,000 received in any revenue source not otherwise committed to a special fund and from which shall be paid claims made under this subsection and § 1919(d) of Title 14. Should such claims exceed $13,000,000 during any fiscal year, the Secretary of Finance, with the approval of the Director of the Office of Management and Budget and Controller General, may transfer from the general contingency line in the Department of Education to the Elderly Property Tax Relief and Education Expense Fund the amount of such reasonably foreseen additional claims. Any balance remaining in the Elderly Property Tax Relief and Education Expense Fund at the conclusion of any fiscal year shall revert to the General Fund.

(2) Sums appropriated pursuant to this subsection shall be allocated to school districts using a method that recognizes factors including, but not limited to, the number of primary residential households owned by persons 65 or over who meet the durational residency requirement of § 1917(c) of Title 14 in each school district, the relative value of residential property owned by persons 65 and over, the relative property values of each school district, the school tax rates of each school district, and the average rate of application for tax relief pursuant to this subsection. The final method and allocation of these moneys shall be approved by the Secretary of Finance in consultation with the Controller General.

(3) Local school boards shall decide through majority vote of the whole school board whether to authorize a credit against taxation imposed pursuant to Chapter 19 of Title 14 on the valuation of any qualified property, as defined in § 1917(c) of Title 14. The maximum such credit shall be the lesser of 50% of such tax remaining after taking into account any exemption pursuant to Title 9 and Title 22, or $500. The receiver of taxes and county treasurer shall apply such credit after any change to the current expense tax rate pursuant to this section. Should the local school board decide to authorize less than the maximum amount of credit against taxation, the local school board shall develop a plan for using moneys received pursuant to this subsection, provide appropriate and reasonable public notice and comment on the proposed plan, and approve the plan through majority vote of the local school board. Local school boards shall submit the approved plan to the Secretary of Finance, the Secretary of Education, the Director of the Office of Management and Budget and the Controller General. In the event that local school boards choose not to authorize the aforementioned credit against taxation, the sums appropriated herein will result in increased state funding for education-related expenses of the school districts. Education-related expenses for the purposes of this subsection shall be defined as including, but not being limited to, computer hardware and software, library resources and other instructional materials, and minor capital improvements to school facilities. Local school boards and all other responsible parties under this paragraph are hereby directed to cause such conditions to be met as soon as practicable after the enactment of this section, but in no event later than October 30, 1999, and shall notify the Secretary of Finance and the Controller General as soon as such conditions are met. Notwithstanding any of the foregoing to the contrary, funds received pursuant to this section shall not be used for major capital improvements or debt service.

(r) (1) A special fund of this State is created in the Department of Finance to be known as the "Disabled Veterans Property Tax Relief and Education Expense Fund," to which must be deposited $1,000,000 received in any revenue source not otherwise committed to a special fund and from which must be paid claims made under this subsection and § 1919(e) of Title 14. Should such claims exceed $1,000,000 during any fiscal year, the Secretary of Finance, with the approval of the Director of the Office of Management and Budget and Controller General, may transfer from the general contingency line in the Department of Education to the Disabled Veterans Property Tax Relief and Education Expense Fund the amount of such reasonably foreseen additional claims. Any balance remaining in the Disabled Veterans Fund at the conclusion of any fiscal year must revert to the General Fund.

(2) Sums appropriated pursuant to this subsection shall be allocated to school districts using a method that recognizes factors including, but not limited to, the number of primary residential households owned by disabled veterans in each school district, the relative value of residential property owned by disabled veterans, the relative property values of each school district, the school tax rates of each school district, and the average rate of application for tax relief pursuant to this subsection. The final method and allocation of these moneys shall be approved by the Secretary of Finance in consultation with the Controller General.

(3) Local school boards shall decide through majority vote of the whole school board whether to authorize a credit against taxation imposed pursuant to Chapter 19 of Title 14 on the valuation of any qualified property, as defined in § 1917(d) of Title 14. If a local school board has authorized the tax credit, then the credit must be allowed for a surviving spouse of a deceased qualified person who satisfies the eligibility requirements in § 1917(d) of Title 14. The credit shall be for the full amount of tax remaining after taking into account any exemption pursuant to Title 9 and Title 22. The receiver of taxes and county treasurer shall apply such credit after any change to the current expense tax rate pursuant to this subsection. In the event that local school boards choose not to authorize the aforementioned credit against taxation, the sums appropriated herein will revert to the General Fund. In the first year after a school board authorizes a credit, the Secretary of Finance, in consultation with the receiver of taxes or county treasurer, shall determine the effective date of such credit based upon reasonable implementation requirements and operational capacity.

(s) Receipts received under Chapter 11 of Title 12, shall be deposited into the General Fund provided; however, that in no fiscal year shall such General Fund deposits exceed $554,000,000.

(t) (1) An appropriated special fund of the State to be known as the "Federal Fiscal Relief Fund" is hereby created in the Office of Management and Budget. The State Treasurer shall deposit all state assistance funds received under Title VI of the federal Social Security Act [42 U.S.C. § 801 (repealed)] to the Federal Fiscal Relief Fund.

(2) Moneys from the Federal Fiscal Relief Fund must be expended for Delaware's citizens in the following areas:

a. To provide essential government services;

b. To cover the costs to the State of complying with any federal intergovernmental mandate to the extent that the mandate applies to the State and the federal government has not provided funds to cover the costs; and

c. To make investments in those areas of highest priority of the General Assembly to the benefit of all Delawareans.

(3) The Federal Fiscal Relief Fund is an interest earning account. All interest earned must be reinvested in the Federal Fiscal Relief Fund.

(4) Money may not be expended from the Federal Fiscal Relief Fund except pursuant to an appropriation within the State's Bond and Capital Improvement Act or the annual Appropriations Act, or otherwise enacted by the General Assembly.

(u) All debt service payments collected by the State from local school districts with respect to the school districts' obligations issued to the State pursuant to § 7506 of this title, for the local share of school district capital projects shall be deposited in a special fund account to be known as the "School District Local Share Special Account." The amounts are to be deposited in said account to pay the debt service payable by the State with respect to general obligation bonds issued by the State. The holders of the general obligation bonds which are paid, in whole or in part, from the special account created pursuant to this subsection shall continue to have all the rights and remedies to which they are entitled under § 10, article VIII of the Constitution of this State and under Chapter 74 of this title.

Should the amount in said special fund account prove insufficient relative to the debt service obligations at any time during the fiscal year, the State Treasurer is hereby authorized to pay the obligation from any debt service account. Any interfund transaction so required shall be reversed when funding becomes available.

(v) Notwithstanding any other provision in law to the contrary, the Division of Medicaid and Medical Assistance shall be allowed to deposit the applicable state share of any drug rebate funds, drug settlement proceeds, including qui tam cases, third-party collections and other collections related to the provision of health care (minus retention amounts specified in state or federal law), as well as any fines, restitution or punitive damages related thereto into the appropriate Medicaid and Medical Assistance account and use them to meet program costs.

(w) The Secretary of Finance shall transfer all additional receipts in excess of the threshold established in subsection (s) of this section to a holding account entitled "Escheat-Special Fund" to be allocated to a reserve fund for extraordinary escheat claims. Any reserve fund balance accumulated in a prior fiscal year deemed by the Secretary of Finance to be in excess of amounts necessary to satisfy such claims shall be transferred by the Secretary of Finance to the Other Post-Employment Benefits Fund as established by § 5281 of this title, provided that any such excess reserve fund balance accumulated in the current fiscal year may be otherwise expended for K-12 school construction with the mutual concurrence of the Director of the Office of Management and Budget, the Secretary of Finance and the Co-Chairs of the Joint Committee on Capital Improvement.

(42 Del. Laws, c. 77, § 1; 43 Del. Laws, c. 12; 29 Del. C. 1953, § 6102; 50 Del. Laws, c. 46, § 1; 50 Del. Laws, c. 406, § 1; 55 Del. Laws, c. 325; 57 Del. Laws, c. 196; 58 Del. Laws, c. 367; 59 Del. Laws, c. 208, § 3; 59 Del. Laws, c. 311, § 1; 60 Del. Laws, c. 281, § 1; 60 Del. Laws, c. 408, § 1; 60 Del. Laws, c. 444, § 1; 61 Del. Laws, c. 468, § 4; 62 Del. Laws, c. 172, § 1; 63 Del. Laws, c. 254, § 2; 64 Del. Laws, c. 50, § 1; 64 Del. Laws, c. 99, § 1; 64 Del. Laws, c. 334, § 165(a)-(c); 65 Del. Laws, c. 181, § 1; 66 Del. Laws, c. 190, § 15; 66 Del. Laws, c. 303, §§ 118, 175, 210; 67 Del. Laws, c. 259, § 1; 67 Del. Laws, c. 274, § 14; 69 Del. Laws, c. 67, § 2; 69 Del. Laws, c. 78, § 4; 69 Del. Laws, c. 172, § 1; 69 Del. Laws, c. 222, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 210, § 21; 72 Del. Laws, c. 251, § 1; 72 Del. Laws, c. 252, § 1; 72 Del. Laws, c. 256, § 1; 73 Del. Laws, c. 9, § 4; 73 Del. Laws, c. 310, § 3; 74 Del. Laws, c. 49, § 1; 75 Del. Laws, c. 88, § 21(13); 75 Del. Laws, c. 89, § 145; 75 Del. Laws, c. 350, § 165; 76 Del. Laws, c. 205, § 5; 76 Del. Laws, c. 288, § 11; 77 Del. Laws, c. 84, § 160; 78 Del. Laws, c. 76, § 15; 78 Del. Laws, c. 77, § 33(a); 78 Del. Laws, c. 78, § 108; 78 Del. Laws, c. 175, § 113; 79 Del. Laws, c. 79, § 29; 80 Del. Laws, c. 78, § 15; 80 Del. Laws, c. 234, § 24; 81 Del. Laws, c. 71, § 2; 81 Del. Laws, c. 78, § 12; 83 Del. Laws, c. 124, § 3; 83 Del. Laws, c. 529, § 2; 84 Del. Laws, c. 297, § 18.)

§ 6102A. Twenty-First Century Fund Investments Act.

(a) This section shall be referred to as the "Twenty-First Century Fund Investments Act of 1995," hereinafter referred to as "the Act."

(b) (1) A special fund of the State is created in the Department of Finance to be known as the "Twenty-First Century Fund." The Secretary of Finance shall transfer the initial $35,000,000 payment received from the settlement with New York in the *Delaware v. New York, 507 U.S. 490, 113 S. Ct. 1550, 123 L. Ed. 2d 211 (1993)* litigation from the General Fund to the Twenty-First Century Fund. The Secretary of Finance shall deposit upon receipt the remaining proceeds from the settlement with the State of New York less expenses relating to the litigation. The Secretary of Finance shall also deposit amounts received as "distributions held by financial intermediaries" as that term is defined in § 1198(3) of Title 12 [repealed] for a full period of dormancy prior to January 1, 1988, and which had not been deposited into the State's General Fund as of April 1, 1994. The General Assembly at any time may appropriate additional moneys to the Twenty-First Century Fund.

(2) Moneys from the Twenty-First Century Fund shall be expended for Delaware's citizens by making long-term investments to enhance the State's infrastructure and economic development, and for improving the quality of life.

(3) The Twenty-First Century Fund shall be invested by the State Treasurer in securities consistent with the investment policies established by the Cash Management Policy Board. All income earned, and gains realized from the sales of such securities, shall be reinvested in the Twenty-First Century Fund. Losses from any sales of securities shall be charged to the Twenty-First Century Fund.

(4) No money shall be expended from the Twenty-First Century Fund except pursuant to an appropriation incorporated in the State's Bond and Capital Improvements Act or the annual Appropriations Act.

(5) To the extent cash available in the Twenty-First Century Fund is insufficient to pay the costs authorized for expenditure from the Twenty-First Century Fund, funds may be advanced from either the Bond and Capital Improvements Act or the General Fund, but must be subsequently reimbursed as the Twenty-First Century Fund's invested moneys become available.

(6) The transfer of funds appropriated from the Twenty-First Century Fund shall be approved and administered by the Secretary of Finance. Such expenditures shall be made only upon the satisfaction of the specific requirements established by law to govern expenditures for these purposes. Unexpended cash balances in the Twenty-First Century Fund Account and Project Accounts shall be interest-earning and such interest shall be credited to the Fund Account, except as provided for in subsection (e) of this section and in § 5423 of Title 30.

(c) *Open space.* — (1) Investment income from the Land and Water Conservation Trust Fund Endowment Account shall generate funds for local outdoor recreation, park, and trail projects administered under § 5423 of Title 30 and § 8017A [repealed] of this title and state stewardship projects administered under § 5423 of Title 30.

(2) For purposes of match, state funds appropriated for the Community Transportation Fund shall qualify as matching contributions for outdoor recreation, park, and trail projects as described in § 5423 of Title 30 and § 8017A [repealed] of this title.

(3) Notwithstanding any other provision of the Delaware Code, a portion of the investment income generated from the Land and Water Conservation Trust Fund Endowment for outdoor recreation, park, and trail projects as described in § 5423 of Title 30, and § 8017A [repealed] of this title may be used to fund administrative costs that are necessary to administer this chapter.

(d) *Farmland preservation.* — (1) A special fund appropriation account is hereby created in the Department of Agriculture to be known as the "Farmland Preservation Account." The sum appropriated from the Twenty-First Century Fund for Farmland Preservation shall be used to support purchase of development rights in accordance with the provisions of §§ 913-918 of Title 3 to preserve quality farmland and ensure the continued viability of Delaware's agricultural industry.

(2) The Secretary of Agriculture is authorized to expend funds appropriated from the Twenty-First Century Fund for Farmland Preservation under the following conditions and terms:

a. Funds of up to $1 million shall be transferred, in each fiscal year that moneys are appropriated for farmland preservation, to the farmland preservation account upon the request of the Secretary of Agriculture for expenditures sufficient to purchase development rights as approved by the Aglands Preservation Foundation.

b. Additional amounts appropriated from the Twenty-First Century Fund for Farmland Preservation shall be transferred to the Farmland Preservation Account upon the transmittal of a letter of certification from the Secretary of Agriculture and the Chair of the Aglands Preservation Foundation to the Secretary of Finance demonstrating matching contributions of a total of at least a 1 (non-State) to 4 (State) ratio per fiscal year. Matching contributions shall be defined as donations of cash, land, development rights to land and/or discounted land values, referred to as donations on bargain sales. Only contributions received subsequent to July 11, 1995, shall qualify as matching contributions.

(3) Of the funds transferred for the Farmland Preservation Program, the following shall be used for the expenses of the Agricultural Lands Preservation Foundation:

a. Up to $150,000 may be used for the operating expenses of the Agricultural Lands Preservation Foundation and may be held in an interest-bearing account.

b. Up to $350,000 may be used to pay the costs of mapping, legal services and other related costs required to create agricultural district agreements and the costs of appraisals of all eligible properties, and shall be exempt from matching requirements and may be held in an interest-bearing account.

c. The Foundation shall designate $3,000,000 in each county to be applied as a 1:1 match of county funds designated for the purchase of preservation easements. In order to qualify such county funds must be transferred to the Delaware Agricultural Lands Preservation Trust Fund. The combination of such funds shall be used to purchase easements from those properties which have applied to the Foundation within said county, or in an area of the county designated in writing by the county, according to the procedures of the Foundation. Where joint funds are used, the county and the Foundation must mutually agree as to the easements purchased. Any county funds not fully utilized in such purchases shall be returned to the county and such funds of the State as are not fully utilized in such purchases shall revert to the Foundation's pool of funds available for preservation easements statewide.

(e) *Parks endowment.* — A special fund appropriation account is hereby created in the Department of Natural Resources and Environmental Control, Division of Parks and Recreation, to be known as the "Parks Endowment Account." It is the intent of the General Assembly that the sum appropriated from the Twenty-First Century Fund for the Parks Endowment Account shall be known as the

"principal" and shall remain intact. The Parks Endowment Account shall be invested in a manner consistent with endowment investment guidelines as approved by the Cash Management Policy Board. The Department of Natural Resources and Environmental Control may expend up to 5 percent annually, on a 5-year rolling average, of the value of the Parks Endowment Account for capital-related purposes, including minor capital improvements, to preserve the quality of the State's parks system and enhance recreational opportunities.

(f) *Neighborhood revitalization.* — (1) A special fund appropriation account is hereby created in the Division of Small Business to be known as the "Neighborhood Revitalization Account." The sum appropriated from the Twenty-First Century Fund for Neighborhood Housing Revitalization shall be used to create a program to be administered according to guidelines and procedures developed by the Council on Housing and the State Housing Director to expand affordable housing opportunities for families and improve entire communities through the rehabilitation of existing houses. The Account shall serve as a revolving account and shall be eligible to receive loan repayments.

(2) The Council on Housing and the State Housing Director shall develop a competitive process to approve applications for the rehabilitation of housing in existing neighborhoods and, in connection therewith, shall develop criteria to assess the relative housing needs of such neighborhoods. The State Housing Director shall review and recommend applications for the approval of the Council on Housing. Special consideration shall be given in the application approval process for communities which demonstrate a comprehensive approach to revitalization. Application guidelines for investment property owners shall be more stringent than guidelines for owner occupants, and shall include both rent and tenant income restrictions for the life of the loan or lien.

(3) The Council on Housing and State Housing Director shall coordinate its program and procedures with the planning objectives of the Cabinet Committee on State Planning issues.

(4) The Council on Housing and the State Housing Director shall be required to submit a strategic plan containing the guidelines and procedures for the administration of the program to the Joint Legislative Committee on Capital Improvement Programs by October 1, 1995. No funds shall be expended from the Neighborhood Revitalization Account until the Joint Legislative Committee on Capital Improvement Programs has reviewed and approved the plan.

(5) Upon the request of the State Housing Director subsequent to approval of an application in accordance with this subsection, funds appropriated from the Twenty-First Century Fund for Neighborhood Revitalization shall be transferred to the Neighborhood Revitalization Account for expenditures sufficient to make such loans or grants.

(g) *Water and wastewater infrastructure.* — (1) To ensure that Delaware has the water and wastewater treatment infrastructure necessary to preserve its environment, provide its citizens with clean drinking and recreational waters and permit economic growth, funds appropriated from the Twenty-First Century Fund shall be expended to improve the State's water and wastewater infrastructure.

(2) A special fund appropriation account is hereby created in the Department of Natural Resources and Environmental Control, Division of Water to be known as the "Infrastructure Planning Account." The Planning Account shall be dedicated to the development of comprehensive municipal and county plans. Such plans shall include municipalities and counties' needs for water facilities and for wastewater facilities under the direction of the Water Infrastructure Advisory Council. Grants from the Planning Account shall be issued pursuant to guidelines and procedures developed by the Cabinet Committee on State Planning Issues, which guidelines and procedures shall give preference to applicants which intend to develop comprehensive municipal plans and to coordinate such plans with their counties' plans and state development policies. To be eligible for funding, a municipality or county seeking such grant must commit to provide a 50 percent matching contribution. Upon request from the Secretary of Natural Resources and Environmental Control, subsequent to the approval of a project in accordance with this subsection, funds of up to a total of $2 million shall be transferred to the Account for expenditures sufficient to fund the state share of such project.

(3) A special fund appropriation account is hereby created in the Department of Natural Resources and Environmental Control, Division of Water, to be known as the "Wastewater Management Account." The Management Account shall be expended to create a state revolving loan/grant management account to enhance and supplement public and private wastewater financing. The Water Infrastructure Advisory Council shall set affordability standards for wastewater projects under the direction of the Secretary of Natural Resources and Environmental Control for the use of these moneys and establish an appropriate review and approval process. Upon the request of the Secretary of Natural Resources and Environmental Control, the Secretary of Health and Social Services and the Secretary of Finance subsequent to approval of a wastewater project in accordance with this subsection, funds shall be transferred to the Account for expenditures sufficient to fund the state share of such project. The Secretary of Natural Resources and Environmental Control is authorized to expend funds appropriated from the Twenty-First Century Fund for Wastewater Infrastructure from the Management Account.

There shall be transferred to the Delaware Water Pollution Control Revolving Fund an amount to be determined in accordance with this subparagraph upon both: (i) a determination by the Secretary of Finance and the Secretary of Natural Resources and Environmental Control that there has been enacted a federal Clean Water Reauthorization Act or the federal Fiscal Year 1995 grant of the federal Clean Water Act [33 U.S.C. § 1251 et seq.] has been awarded to the State; and (ii) a request for transfer of funds from the Secretary of Natural Resources and Environmental Control of an amount sufficient to serve as the required state match for the federal/state program.

(4) A special fund is created in the Department of Health and Social Services, Division of Public Health, to be known as the "Drinking Water Management Account." The Management Account shall be expended to create a state revolving loan/grant management account to enhance and supplement public and private water financing. The Water Infrastructure Advisory Council shall set affordability

standards for drinking water projects under the direction of the Secretaries. The Water Infrastructure Advisory Council shall make recommendations and only approve drinking water projects for funding where private sector alternatives have been explored and it is both economical, and in the public interest to do so and meets a public health need. Upon the request of the Secretary of Health and Social Services, subsequent to approval of a water project in accordance with this subsection, funds shall be transferred to the Account for expenditures sufficient to fund the state share of such project. The Secretary of Health and Social Services is authorized to expend funds appropriated from the state revolving fund for water infrastructure from the Management Account.

There shall be transferred to a special fund account, established by the Director of the Office of Management and Budget, an amount to be determined in accordance with this subparagraph upon both: (i) a determination by the Secretary of Finance and the Secretary of Health and Social Services that there has been enacted amendments to the federal Safe Drinking Water Act [42 U.S.C. § 300f et seq.] to provide federal funding for water infrastructure projects; and (ii) a request for transfer of funds from the Secretary of Health and Social Services of an amount sufficient to serve as the required state match for the federal/state program. Upon such federal approval, the Department of Health and Social Services shall have the authority to administer the state revolving loan fund so as to comply with the requirements of the federal Safe Drinking Water Act, 42 U.S.C. § 300f et seq., as amended.

(h) *Resource conservation and development.* — (1) A special fund appropriation account is hereby created in the Department of Natural Resources and Environmental Control, Division of Watershed Stewardship to be known as the "Resource Conservation Account." Funds appropriated from the Twenty-First Century Fund for Resource Conservation and Development shall be dedicated to improve the health of communities by addressing a variety of statewide watershed and drainage issues consistent with the policies of the Cabinet Committee on State Planning Issues.

(2) On or before April 1 of each year, the Department of Natural Resources and Environmental Control, Division of Watershed Stewardship in concurrence with local conservation districts shall establish an application process which includes a definition of eligible match; and shall prioritize and recommend a list of projects to the Joint Legislative Committee on Capital Improvement Programs.

(3) A funding match shall be required of at least 25 percent for resource, conservation and development projects approved by the Joint Legislative Committee on Capital Improvement Programs.

(4) Upon the approval of a list of projects by the Joint Legislative Committee on Capital Improvement Programs and upon the request of the Secretary of the Department of Natural Resources and Environmental Control, funds appropriated from the Twenty-First Century Fund for Resource Conservation and Development shall be transferred to the Resource Conservation Account for expenditures sufficient to fund the State share of such projects.

(5) The Department of Natural Resources and Environmental Control shall submit a quarterly report detailing program activity.

(6) [Repealed.]

(i) *Community redevelopment.* — (1) A special fund appropriation account is hereby created in the Office of Management and Budget to be known as the "Community Redevelopment Account." Funds appropriated from the Twenty-First Century Fund for Community Redevelopment shall be used for community redevelopment, revitalization and investment capital projects which will improve the economic, culture, historical and recreational health of Delaware communities.

(2) The Joint Legislative Committee on the Capital Improvement Program ("the Committee") shall adopt policies and procedures to implement this subsection following the receipt of recommendations by the Office of Management and Budget and Office of the Controller General, including the establishment of an application process, rules for project administration, rules for applicant eligibility and rules for project eligibility. Such rules shall include and define the State match and non-State match requirements. Upon the receipt and review of applications by the Office of Management and Budget with the assistance of the Office of the Controller General, the Committee shall select from the among applicants for the award of funds from the Community Redevelopment Account.

(3) Funds shall only be expended from the Community Redevelopment Account to match funds provided by county and local governments, community-based nonprofit organizations or private sector contributions for such capital projects. Not more than 60 percent of the Account funds shall be awarded to community-based nonprofit applicants and no more than 40 percent of the Account funds shall be awarded to county and local governments. Funds from the Account shall only be expended to provide a state match of not more than 40 percent of project costs. Nonprofit organizations shall have to have been operating for a minimum of 2 years to be considered for Account funds.

(4) No state agency or institution of higher education shall be eligible for funds from the Community Redevelopment Account.

(5) Upon the request of the Co-chairs of the Committee and the Director of the Office of Management and Budget, funds appropriated from the Twenty-First Century Fund for Community Redevelopment shall be transferred to the Community Redevelopment Account to fund projects in accordance with the provisions of this subsection.

(6) The Committee and the Cabinet Committee on State Planning Issues shall receive a list of projects funded and their status on a quarterly basis from the Office of Management and Budget.

(j) *Educational technology.* — (1) A special fund appropriation account is hereby created in the Delaware Center for Educational Technology to be known as the "Educational Technology Account." Funds appropriated from the Twenty-First Century Fund for Educational Technology shall provide computer and telecommunications technology to Delaware's classrooms by wiring schools and funding other 1-time capital-related projects. The Educational Technology Account shall support the goal of providing schoolchildren with the skills necessary to meet the State's academic achievement standards and to succeed in the workforce of the Twenty-First Century.

(2) The Delaware Center for Educational Technology shall be authorized to expend funds appropriated from the Twenty-First Century Fund for Educational Technology upon the following conditions and terms. Funds shall be transferred to the Educational Technology Account upon the written request of the Chair of the Delaware Center for Educational Technology for capital-related expenses incurred to provide technology to Delaware's classrooms. The Chair of the Delaware Center for Educational Technology shall transfer an amount not to exceed $900,000 from funds appropriated from the Twenty-First Century Fund for Educational Technology to the State Board of Education for contractual services and the design and development of educational software resources for the network to meet the instructional and informational needs of educators and students.

(3) Beginning in Fiscal Year 1997 and each subsequent Fiscal Year thereafter, a funding match of at least a 1 (non-state) to 1 (state) ratio shall be required to receive funds appropriated from the Twenty-First Century Fund for Educational Technology. Non-state matching funds shall be defined as a sum of money from sources other than state funds. Non-state match received after July 1, 1995, shall qualify as funding match. Funds may be drawn down from the Educational Technology account prior to matching funds being available.

(4) Except for $500,000 for engineering studies, consulting and planning activities and an amount not to exceed $900,000 for contractual services and design of software resources for the network in the first fiscal year of the enactment of this section, no funds shall be expended pursuant to this subsection unless the Delaware Center for Educational Technology Board has provided a strategic plan, which shall include an expenditure plan for such funds, to the Governor, General Assembly and the State Board of Education no later than 6 months after the establishment of the Center. The Joint Legislative Committee on Capital Improvement Programs shall review and approve such plan. Subsequent to the year of enactment of this section, the Board shall be required to provide an updated strategic plan for the Center's activities to the Governor, General Assembly and the State Board of Education on or before September 1 of each year.

(5) The fund is directed to reimburse the self-insurance fund for the cost of wiring the Dickinson High School.

(k) *Diamond State Port Corporation.* — (1) A special fund appropriation account is hereby created in the Department of State to be known as the "Port Account."

(2) The Corporation as defined in subchapter II of Chapter 87 of this title shall be authorized to expend funds appropriated from the Twenty-First Century Fund for Port of Wilmington-related projects and facilities only upon the following conditions and terms:

a. The Corporation has been established and its directors nominated and confirmed; and

b. The Secretary of State, Secretary of Finance and Director of the Office of Management and Budget have approved a lease or lease/purchase or purchase agreement between the Corporation and the City of Wilmington; and

c. Funds which in any fiscal year in the aggregate do not exceed $2 million shall be transferred from the Twenty-First Century Fund to the Port Account upon the written request of the Chair of the Corporation. For funds to be transferred from the Twenty-First Century Fund to the Port Account which in any fiscal year in the aggregate exceed $2 million, a request by resolution shall be passed by 7 of 9 of the directors of the Corporation, which resolution certifies that the request is in compliance with the Corporation's legislative purpose and function, and shall be transmitted by the Chair of the Corporation to the Secretary of Finance.

(70 Del. Laws, c. 210, §§ 20, 22, 24; 70 Del. Laws, c. 290, §§ 9, 10; 70 Del. Laws, c. 305, § 1; 70 Del. Laws, c. 473, §§ 14(d), (e), 16-21; 71 Del. Laws, c. 150, §§ 16(c), (d), 19; 72 Del. Laws, c. 489, §§ 45-47; 73 Del. Laws, c. 95, § 84(e)(2); 75 Del. Laws, c. 88, § 21(13); 75 Del. Laws, c. 98, § 133; 75 Del. Laws, c. 353, § 81(f), (g); 76 Del. Laws, c. 79, § 17; 76 Del. Laws, c. 186, § 10; 76 Del. Laws, c. 280, § 307(a); 77 Del. Laws, c. 106, § 7; 77 Del. Laws, c. 223, § 6; 77 Del. Laws, c. 236, § 1; 77 Del. Laws, c. 430, §§ 57, 58; 79 Del. Laws, c. 48, § 2; 79 Del. Laws, c. 420, § 1; 81 Del. Laws, c. 1, § 2; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 18; 83 Del. Laws, c. 310, § 1.)

§ 6103. Deposit of state money.

(a) All moneys which belong to the State shall be deposited on day of receipt to the credit of the State Treasurer in the designated depository of the State's funds, with the exception of moneys received after the close of normal banking hours or when an agency receives less than $100 in receipts daily. Those agencies receiving less than $100 in daily receipts shall safely secure such funds and make a deposit when accumulated undeposited receipts exceed $100, or on a weekly basis, whichever occurs first. When moneys are received after the close of normal banking hours, those moneys shall normally be safely secured and deposited on the next business day, except when receipts are of sufficient magnitude to warrant their being deposited after normal banking hours. A report of collections with the appropriate approvals as prescribed in the accounting manual shall be promptly submitted to the State Treasurer.

(b) Notwithstanding any other provisions of the Delaware Code dealing with confidentiality of tax or revenue information, state agencies responsible for collecting such taxes or revenues may receive tax or revenue information electronically from the designated depository of the state's funds or its 3rd-party vendor without regard to such confidentiality statutes so long as such designated depository or vendor has executed an agreement not to disclose such information other than to such state agencies responsible for collecting taxes or revenues and not to use the information other than as authorized by such agency.

(42 Del. Laws, c. 77, § 1; 29 Del. C. 1953, § 6103; 54 Del. Laws, c. 39, § 1; 57 Del. Laws, c. 664; 60 Del. Laws, c. 434, § 1; 61 Del. Laws, c. 468, § 5; 63 Del. Laws, c. 142, § 47; 67 Del. Laws, c. 281, § 50; 69 Del. Laws, c. 387, § 1; 70 Del. Laws, c. 509, § 7.)

§ 6104. Requirement of registration with Selective Service System.

All males born after January 1, 1960, must have registered with the Selective Service System in order to be eligible for any scholarship, loan, grant or any program supported by the General Fund, or any subsequent fund developed by the State to provide educational assistance to residents of the State or any other state.

(65 Del. Laws, c. 505, § 2.)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations

Chapter 62
Capital Investment Fund [Repealed].

§§ 6201-6205. Creation; administration generally; transfer of tax proceeds received from distribution of stock pursuant to a court order enforcing the antitrust laws; custodian and administrator of Fund; investment of moneys in the Fund; reports to General Assembly; expenditure of Fund [Repealed].

Repealed by 74 Del. Laws, c. 367, § 4, effective July 19, 2004.

§§ 6210-6213. Created; initial funding; expenditures; withdrawals from the Fund; reversion of unused funds; idle moneys to be held in Capital Investment Fund [Repealed].

Repealed by 74 Del. Laws, c. 367, § 4, effective July 19, 2004.

Part VI
Budget, Fiscal, Procurement and Contracting Regulations
Chapter 63
Budget Commission and Appropriations
Subchapter I
General Provisions

§ 6301. Definitions.

As used in this chapter:

(1) "Agency" includes every board, department, bureau, commission, person or group of persons or other authority created and now existing or hereafter to be created to execute, supervise, control and/or administer governmental functions under the laws of this State or to perform such other duties as may be prescribed or to whom any moneys are appropriated under any budget appropriation act or supplemental appropriation act or any other act which authorizes and requires any department to collect and/or use any taxes, fees, licenses, permits or other receipts for services or otherwise for the performance of any function of or related to or supported in whole or in part by the laws of this State, and/or created to administer any laws providing for the collection of taxes, fees, permits, licenses or other forms of receipts from any sources whatsoever for the use of the State or any agency of the State, except the judiciary and the courts of the State.

(2) "Anticipated expenditure" includes any items included in the budget which are estimated or proposed to be expended by any agency at any future time.

(3) "Budget" includes the complete financial plan of the State as evidenced by all appropriations and allowances made and estimates of revenue approved by the General Assembly, including, in addition to the general budget of appropriations adopted by the General Assembly and approved by the Governor, all other appropriations and allowances authorized by law which have been or shall be made to any agency of this State which is supported in whole or in part out of the revenues, taxes, licenses, fees, permits, fines and from other sources including any agency which is empowered by statute to collect and expend revenues by the use of special funds by whatever name known whether or not specifically appropriated by the General Assembly, and includes the budgets and the revenues and expenditures of all agencies to which moneys are appropriated by supplementary appropriations or otherwise.

(4) "Expenditures" includes any outlay of public moneys by authority of any law of this State and includes the expenditure of any appropriation authorized by the General Assembly of the State.

(5) "Grant-in-aid" includes an appropriation of the public money from the General Fund for a public purpose to any county, municipality, corporation, private agency or person.

(42 Del. Laws, c. 204, §§ 7, 10; 29 Del. C. 1953, § 6301; 54 Del. Laws, c. 39, § 2; 63 Del. Laws, c. 196, § 1.)

§ 6302. Composition of the Budget Commission.

There shall be a Budget Commission which shall consist of the Governor, the Lieutenant Governor, the Secretary of State, the State Treasurer and the Secretary of Finance.

(42 Del. Laws, c. 204, § 2; 43 Del. Laws, c. 284; 29 Del. C. 1953, § 6311; 54 Del. Laws, c. 39, § 5; 57 Del. Laws, c. 582, § 4; 59 Del. Laws, c. 378, § 9; 65 Del. Laws, c. 219, § 1.)

Subchapter II
Budget Commission

§ 6312. Organization; powers and duties.

(a) The Governor shall be the Chairperson of the Budget Commission. The Budget Commission shall meet upon the call of the Chairperson to review for approval agency requests presented to the Commission as prescribed by the laws of this State.

(b) The Director of the Office of Management and Budget shall serve as the Secretary of the Budget Commission. In said capacity the Director of the Office of Management and Budget shall:

(1) Attend all meetings of the Budget Commission and keep, or cause to be kept a true and complete record of the proceedings of such meetings.

(2) Keep correct and complete records of account, showing accurately at all times the financial condition of the Budget Commission.

(3) Sign all minutes, contracts, agreements and other documents approved by the Budget Commission except in those instances wherein the Chairperson of the Budget Commission signs those documents.

(c) The Budget Commission shall advise the Governor and the Director of the Office of Management and Budget concerning all of the powers and duties vested in the office of the Director of the Office of Management and Budget, specifically including the preparation of the proposed budget as set forth in §§ 6333 and 6334 of this title.

(42 Del. Laws, c. 204, § 3; 29 Del. C. 1953, § 6312; 54 Del. Laws, c. 39, § 3; 69 Del. Laws, c. 64, § 53; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 365, § 1; 75 Del. Laws, c. 88, § 2.)

§§ 6313-6316. General powers and duties; limitation on power to investigate; office created; appointment; salary; bond; employees; employment of assistants; compensation [Repealed].

Repealed by 75 Del. Laws, c. 88, § 3, effective July 1, 2005.

Subchapter III

Budget Appropriation Bill

§ 6331. Data on legislative and judicial expenses.

(a) The Director of the Office of Management and Budget shall determine the actual expenses of each last preceding legislative session.

(b) On or before November 15, annually, estimates of the financial needs of the state judiciary for the ensuing fiscal year shall be furnished to the Director of the Office of Management and Budget by the Clerk of the Supreme Court and certified by him or her. These estimates shall include without change, salaries of the state judiciary as fixed by law; the estimates of other requirements for the state judiciary for the ensuing fiscal year shall be included as designated to the Clerk of the Supreme Court.

(c) All of the data relative to the legislative branch of the government and the state judiciary shall be for the Office of Management and Budget Director's information and guidance in estimating the total financial needs of the State for the ensuing fiscal year, but none of these estimates shall be subject to revision or review by the Director of the Office of Management and Budget and must be included in the budget report as prepared by it.

(37 Del. Laws, c. 81, § 6; Code 1935, § 5404; 42 Del. Laws, c. 204, § 6; 29 Del. C. 1953, § 6331; 54 Del. Laws, c. 39, § 4; 67 Del. Laws, c. 47, § 73; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(13).)

§ 6332. Hearings on estimates; attendance by Governor-elect.

(a) The Director of the Office of Management and Budget shall provide, by the giving of such notice as the Director of the Office of Management and Budget deems necessary, for public hearings on any and all estimates to be included in the budget, which hearings shall be held beginning not later than November 15 of each year. These hearings shall be open to the public and to the press and any citizens or authorized representatives of any organization, or group of citizens, may attend these hearings and be heard upon any subject matter properly in review. The head, or authorized representative, of any agency of the State receiving or asking financial aid may attend and be heard in explanation of any request for financial aid contained in any estimate submitted to the Director of the Office of Management and Budget.

(b) In the years of the gubernatorial election, the Governor-elect may sit at these hearings and ask such questions and require such information upon the estimates under review and revision as the Governor-elect deems proper. The Governor-elect may also prepare a statement of any recommendation or suggestion in connection with the proposed budget and such statement shall be presented to the General Assembly simultaneously with the presentation of the budget bill.

(37 Del. Laws, c. 81, § 7; Code 1935, § 5405; 42 Del. Laws, c. 204, § 6; 29 Del. C. 1953, § 6332; 54 Del. Laws, c. 39, § 4; 67 Del. Laws, c. 47, § 74; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(13).)

§ 6333. Date of completion of estimate review; power of revision.

(a) On or before December 15, annually, the Director of the Office of Management and Budget shall complete a review and revision of the estimates of all agencies of the State asking or receiving financial aid.

(b) The Director of the Office of Management and Budget may, in making the review under subsection (a) of this section, revise, by increasing or decreasing, any estimate submitted to the Director of the Office of Management and Budget, except estimates of the judiciary and the General Assembly. In the report required under § 6334 of this title, the Director of the Office of Management and Budget shall indicate, where each revision is made, together with the reasons for each revision.

(c) The review required under this section shall include the appropriations to the OPEB Fund required under § 5544(c)(2) of this title.

(37 Del. Laws, c. 81, § 8; Code 1935, § 5406; 42 Del. Laws, c. 204, § 6; 29 Del. C. 1953, § 6333; 54 Del. Laws, c. 39, § 4; 67 Del. Laws, c. 47, § 75; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(13); 84 Del. Laws, c. 100, § 2; 84 Del. Laws, c. 469, § 2.)

§ 6334. Contents of budget plan to be submitted upon completion of review; zero-based budgeting.

(a) Upon the completion of the review and revision of estimates of all the agencies of the State, the Director of the Office of Management and Budget shall submit to the Governor an itemized plan for the proposed expenditures of each agency of the State, classified by function and character, and of the estimated revenues and expenditures, for the ensuing fiscal year. Opposite each item of the proposed expenditures the budget shall show, in separate parallel columns, the amounts appropriated for the current fiscal year and the actual expenditures of the immediate preceding fiscal year.

(b) Accompanying the report submitted to the Governor, the proposed budget as prepared by the Director of the Office of Management and Budget shall include:

(1) A statement of the revenues and expenditures for the preceding fiscal year, classified and itemized in accordance with the official budget classification;

(2) A statement of the classified sources of state taxes and other state revenues, together with total amount of revenue derived from each source during the preceding annual period;

(3) A statement setting forth the total funds required to meet the budget for the ensuing fiscal year, together with any proposed plan for financing these requirements and measures, if any, which the Governor may deem necessary or advisable in relation to state revenue;

(4) Such other statements or data as the Governor may think are necessary for a thorough understanding of the State's financial condition and requirements.

(c) The proposed budget plan, as prepared by the Director of the Office of Management and Budget, shall be in the format of a zero-based budget. The characteristics of such format shall include:

(1) The designation of appropriate budget units within all agencies of the State. Such budget units shall consist of a limited coherent group of closely related activities and services falling within a single, currently established agency of the State.

(2) The designation of various alternate levels of activity or service within each budget unit. Each service or activity level shall specify: The proposed expenditure necessary to operate at that level; a concise description of the services or functions to be provided; indicators of quantity and quality of performance of these services or functions and the number, classes and dollar amounts of employees required. Alternative levels of activity or service may vary the quality, the quantity or propose an alternative method of providing a given level or service. At minimum, each budget unit shall indicate at least two activity or service levels. Additional activity or service levels may be proposed if deemed appropriate.

(d) The proposed budget plan under this section shall include the appropriations to the OPEB Fund required under § 5544(c)(2) of this title.

(e) The requirement to submit a budget in the zero-based format is waived for those agencies which will be part of the strategic planning and budgeting process.

(37 Del. Laws, c. 81, § 9; Code 1935, § 5407; 42 Del. Laws, c. 204, § 6; 29 Del. C. 1953, § 6334; 54 Del. Laws, c. 39, § 4; 61 Del. Laws, c. 131, § 1; 67 Del. Laws, c. 47, § 76; 67 Del. Laws, c. 281, §§ 51, 52; 75 Del. Laws, c. 88, § 21(13); 84 Del. Laws, c. 100, § 3; 84 Del. Laws, c. 469, § 3.)

§ 6335. Changes in budget plan by Governor; submission of proposed budget and Budget Appropriation Bill to General Assembly.

(a) (1) The Governor, upon receipt of the report of the Director of the Office of Management and Budget under § 6334 of this title, may make such changes in the report as the Governor may deem necessary or desirable in accordance with the Governor's own best judgment and conclusion and shall submit the budget report as prepared by the Governor based upon the report of the Director of the Office of Management and Budget to each House of the General Assembly, on or before February 1 of each year.

(2) At the same time the Governor submits the proposed budget, the Governor shall submit copies of a tentative bill for all proposed appropriations for the budget, clearly itemized and properly classified for the ensuing fiscal year. This bill shall be known as the "Budget Appropriation Bill."

(3) The Budget Appropriation Bill shall include the appropriations to the OPEB Fund required under § 5544(c)(2)a. and (c)(2)c. of this title. If a Budget Appropriation Bill does not include the appropriation to the OPEB Fund required under § 5544(c)(2)b. of this title, that appropriation must be made in a Supplementary Appropriation Bill under § 6339 of this title.

(4) The Budget Appropriation Bill submitted by the Governor must consider the Benchmark Appropriation and Budget Stabilization Fund requirements, as set forth in § 6533(i) through (*l*) of this title, unless the Governor deems any changes necessary or desirable, in accordance with the Governor's own best judgement and conclusion, and detail the proposed plan for financing these requirements and measures, if any, in relation to state revenue or reserve funding under § 6533(i)(2) of this title. The Governor may explain in the budget report any changes from the Benchmark Appropriation and Budget Stabilization Fund requirements.

(b) The budget itself shall be in such form that it can readily be analyzed. The Budget Appropriation Bill, together with the Governor's message and all data accompanying it, shall be a public document and shall be printed, duplicated or otherwise mechanically reproduced as soon as presented, and copies thereof shall be furnished to each member of the General Assembly, to each state agency and to all of the newspapers published in the State and it shall be given such other publicity as the Governor deems proper. All dollar amounts in the Budget Appropriation Bill shall be stated in thousands of dollars, rounded to the nearest $100.

(37 Del. Laws, c. 81, § 10; Code 1935, § 5408; 29 Del. C. 1953, § 6335; 54 Del. Laws, c. 39, §§ 4, 6; 60 Del. Laws, c. 1, § 1; 62 Del. Laws, c. 68, § 45; 67 Del. Laws, c. 47, § 77; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(13); 84 Del. Laws, c. 100, § 4; 84 Del. Laws, c. 294, § 1; 84 Del. Laws, c. 469, § 4.)

§ 6336. Consideration of the budget and Budget Appropriation Bill by a joint committee of the General Assembly.

The standing committees of each House in charge of the Budget Appropriation Bill shall sit jointly in open session while considering the budget and the Budget Appropriation Bill and they shall begin such joint meetings within 5 days after the budget and the Budget Appropriation Bill have been submitted to the General Assembly by the Governor. This joint committee may cause the attendance of

heads or responsible representatives of the agencies of the State asking for financial aid and compel the furnishing of such information and the answering of such questions as the joint committee shall require, and to these sessions all persons interested in the estimates under consideration shall be admitted with the right to be heard. The Governor, or the Governor's representative, and the Governor-elect shall have the right to sit at these public hearings and be heard on all matters coming before the joint committee.

(37 Del. Laws, c. 81, § 11; Code 1935, § 5409; 29 Del. C. 1953, § 6336; 70 Del. Laws, c. 186, § 1.)

§ 6337. Changes in Budget Appropriation Bill by General Assembly; limitation.

The General Assembly may increase, decrease or eliminate items in the Budget Appropriation Bill in any way that is not contrary to the Constitution of the State, except as hereinafter provided, but neither House shall consider further or special appropriations, except in case of emergency, which fact shall be clearly stated in the appropriation bill therefor, until the Budget Appropriation Bill shall have been finally acted upon by both Houses. No items providing for appropriations for payment of interest or principal due on state debt shall be decreased or eliminated. The total budget appropriation items may not be increased in the aggregate to a point where they would exceed the state revenue from all sources as estimated in the budget.

(37 Del. Laws, c. 81, § 12; Code 1935, § 5410; 29 Del. C. 1953, § 6337; 52 Del. Laws, c. 198.)

§ 6338. Amendment of the Bill by the Governor before final action by the General Assembly.

The Governor may, before final action thereon by the General Assembly, amend or supplement the Budget Appropriation Bill to correct an error or oversight or in case of an emergency, by delivering such an amendment or supplement to both Houses. The amendment or supplement shall thereby become a part of the Budget Appropriation Bill as an addition to the items of the Bill or as a modification or substitution for any item of the Bill such amendment or supplement may affect.

(37 Del. Laws, c. 81, § 14; Code 1935, § 5412; 29 Del. C. 1953, § 6338.)

§ 6339. Supplementary appropriations; limitation.

Any further or special appropriations shall be known as supplementary appropriations. Every such appropriation shall be embodied in a separate bill limited to some single work, object or purpose therein stated and called herein a "Supplementary Appropriation Bill." Each Supplementary Appropriation Bill, shall, by its provisions, provide or designate the source from which the money therein appropriated is to be derived. No Supplementary Appropriation Bill shall be passed, if when added to the appropriations already authorized, the aggregate appropriations exceed in amount the state revenues from all sources as set forth in the budget.

(37 Del. Laws, c. 81, § 13; Code 1935, § 5411; 29 Del. C. 1953, § 6339; 52 Del. Laws, c. 198; 67 Del. Laws, c. 47, § 78.)

§ 6340. Other employment costs (fringe benefits).

(a) There shall be included, immediately following the lines for items which provide for salaries or wages of state employees in any department, division or agency budget, appropriation or supplementary appropriation request or bill, a separate line or item covering other employment costs (fringe benefits) related to such salaries or wages. No appropriation for such other employment costs shall be used or transferred to or for any other purpose.

(b) Other employment costs shall include such costs to the State as federal insurance contributions (Social Security), state retirement plans (employees' pensions), health-care insurance (Blue Cross and Blue Shield), workers' compensation, unemployment insurance and such other fringe benefit plans as may be provided.

(c) Each year, on or before August 1:

(1) The Secretary of Finance shall determine the appropriate rate factor on an average or actual basis for each of the state benefit plans, excluding unemployment insurance; and

(2) The Secretary of Labor shall determine on an average actual, or historical basis, the appropriate rate factor for each state agency, other than the University of Delaware, and the distribution of that rate to each fund pertaining thereto for unemployment insurance and shall prescribe the appropriate procedure for reimbursement thereof; in order that the Director of the Office of Management and Budget may advise each state agency how it shall provide for such other employment costs in their respective budget requests for the ensuing year.

(d) Any department or agency employing personnel who are paid from federal funds or from capital improvement debt appropriations shall pay to the Treasurer of the State from such funds an amount based upon the rate factor for each of the state fringe benefit plans established under subsection (c) of this section applicable to salaries and wages paid to employees from such special funds.

(e) The University of Delaware shall, on a regularly scheduled basis as determined by the Secretary of Finance, pay to the State Treasurer, at a rate determined under this section or otherwise by the Secretary of Finance, such amounts as are necessary to reimburse the State for fringe benefit costs applicable to salaries and wages paid to employees of the University as the term "employee" is defined in §§ 5501(f) and 5505 of this title, or any other fringe benefit costs applicable to the University.

(f) Each state agency, other than the University of Delaware, liable for reimbursement payments in lieu of assessments in accordance with § 3345(c)(2) of Title 19, shall be required to reimburse the Department of Labor for all unemployment insurance reimbursements disbursed by the Department of Labor which arise out of unemployment insurance claims filed by and paid to an employee of such state

agency. Such reimbursement shall be made according to the rate factor and distribution according to agency funds as shall be prescribed by the Secretary of Labor.

(g) In the event any department or agency overpays or has overpaid any fringe benefit costs to the State Treasurer in accordance with subsection (d) of this section, the amount of such overpayment shall be refunded by the State Treasurer, upon certification of the Secretary of Finance.

(h) Other employment costs are reflected within each agency budget for the current fiscal year. These other employment costs shall be calculated and charged to the appropriate funds as determined by the covered payroll and credited to the respective payee funds.

(i) The State Treasurer is hereby directed to collect on each pay cycle all the other employment costs from all funds.

(29 Del. C. 1953, § 6340; 58 Del. Laws, c. 579, § 1; 61 Del. Laws, c. 161, § 1; 63 Del. Laws, c. 391, §§ 1-4; 67 Del. Laws, c. 281, § 53; 73 Del. Laws, c. 310, § 22; 73 Del. Laws, c. 312, § 245; 75 Del. Laws, c. 88, § 21(13); 79 Del. Laws, c. 174, § 1.)

§ 6341. Grants-in-aid.

No appropriation for a grant-in-aid shall be made otherwise than pursuant to an act by the General Assembly, passed with the concurrence of $^3/_4$ of all the members elected to each House.

(63 Del. Laws, c. 196, § 2.)

Subchapter III-A

Capital Appropriations Act

§ 6342. Preparation of annual capital budget.

The Director of the Office of Management and Budget shall prepare, and amend as necessary, a program of state public works, major capital improvement projects and other facilities undertaken or recommended to be undertaken by the State, or any of the authorities or other instrumentalities of the state government. Such program shall be submitted as the annual capital budget to the Governor at such time as it shall be deemed appropriate for submission to the General Assembly. The Director of the Office of Management and Budget shall maintain a report on the status of all capital projects funded by any debt offering issued by the State or by any of the authorities or other instrumentalities of state government.

(63 Del. Laws, c. 189, § 1; 69 Del. Laws, c. 10, § 4; 75 Del. Laws, c. 88, §§ 16(5), 21(13), 27.)

Subchapter III-B

Advanced Planning and Real Property Acquisition Fund

§ 6343. Advanced Planning and Real Property Acquisition Fund.

(a) A nonappropriated special fund is created to be known as the "Advanced Planning and Real Property Acquisition Fund," hereafter referred to in this subchapter as "Fund."

(b) The Fund shall be interest earning with such interest credited to the Fund.

(c) The Fund shall be expended for the advanced planning of proposed public facilities in the State, including, but not limited to, the cost of architectural sketches, general site plans, preliminary engineering, general design services, legal, accounting and consulting services or such other services as may be deemed appropriate. Public facilities shall include public schools, health-care facilities, public safety and correctional institutions, libraries (if co-located) and other public buildings.

(d) The Fund may be expended for earnest money of up to 10 percent for the acquisition of real property (including any options to purchase and any improvements thereon) by state agencies, reorganized school districts and vocational-technical school districts. The Fund may not be expended for highway right-of-way acquisition.

(29 Del. C. 1953, § 4921; 55 Del. Laws, c. 430, § 2; 60 Del. Laws, c. 685, § 1; 63 Del. Laws, c. 179, § 10; 63 Del. Laws, c. 189, § 3(a); 67 Del. Laws, c. 285, § 15(b)-(e); 69 Del. Laws, c. 10, § 7; 74 Del. Laws, c. 367, §§ 5-8.)

§ 6344. Withdrawals from the Fund.

(a) Before any sum is withdrawn from the Fund for advanced planning or advanced real property acquisition, a request shall be made by the state agency, reorganized school district or vocational-technical school district desiring to erect or renovate a public facility or desiring to purchase real property to the Director of the Office of Management and Budget who shall report to the Budget Commission whether the request is consistent with the State's capital program provided for by § 6342 of this title and the State's comprehensive plan and land use and development goals and policies.

(b) If a state agency, reorganized school district or vocational-technical school district requests moneys from the Fund to erect or renovate a public facility, the Director of the Office of Management and Budget must determine that the proposed public facility is consistent with the State's capital program provided for by § 6342 of this title and the State's comprehensive plan and land use and development goals and policies and its construction is likely to be authorized within 3 years. When making this determination, the Director

of the Office of Management and Budget shall consult with the State Planning Coordinator, Office of State Planning Coordination and consider the State's comprehensive plan, state land use and development goals and policies, state facility location plans, facility siting criteria and infrastructure impact assessment standards and any other information that might influence future land use decisions. The Director of the Office of Management and Budget shall also consult with the head of the requesting state agency, reorganized school district or vocational-technical school district. If the Director of the Office of Management and Budget makes such a determination, then the Budget Commission may authorize an expenditure from the Fund to cover the cost of advanced planning for the proposed public facility.

(c) If a state agency, reorganized school district or vocational-technical school district requests moneys from the Fund for real property acquisition, the Director of the Office of Management and Budget must determine that the proposed real property acquisition is consistent with the State's capital program provided for by § 6342 of this title and the State's comprehensive plan and land use and development goals and policies. When making this determination, the Director of the Office of Management and Budget shall consult with the State Planning Coordinator, Office of State Planning Coordination and consider the State's comprehensive plan, state land use and development goals and policies, state facility location plans, facility siting criteria and infrastructure impact assessment standards and any other information that might influence future land use decisions. The Director of the Office of Management and Budget shall also consult with the head of the requesting state agency, reorganized school district or vocational-technical school district. If the Director of the Office of Management and Budget makes such a determination, then the Budget Commission may authorize an expenditure from the Fund to cover the cost of earnest money for the acquisition of real property.

(29 Del. C. 1953, § 4922; 55 Del. Laws, c. 430, § 2; 61 Del. Laws, c. 116, § 88(a); 61 Del. Laws, c. 521, § 1; 63 Del. Laws, c. 179, § 10; 63 Del. Laws, c. 189, § 3(a)-(c); 67 Del. Laws, c. 285, § 15(f)-(h); 69 Del. Laws, c. 10, § 7; 74 Del. Laws, c. 367, §§ 9-11; 75 Del. Laws, c. 88, § 21(13).)

§ 6345. Reversion of unused funds.

Any moneys for advanced planning or for advanced real property acquisition provided by the Budget Commission to a state agency, reorganized school district or vocational-technical school district which shall not be used by the agency or district within 36 months shall be refunded to the Budget Commission to be redeposited in the Fund.

(29 Del. C. 1953, § 4923; 55 Del. Laws, c. 430, § 2; 63 Del. Laws, c. 189, § 3(a); 67 Del. Laws, c. 285, § 15(i); 69 Del. Laws, c. 10, § 7; 74 Del. Laws, c. 367, § 12.)

§ 6346. Reimbursement of the Fund.

(a) Upon the funding of a capital project for which advance planning funds or advance real property acquisition funds have been provided from the Fund, a refund shall be made to the Fund from such funding by the State Treasurer from the appropriation made or other source of funds provided for the public facility or real property.

(b) In the event that a capital project, for which advanced planning funds have been provided from the Fund is not included in a capital improvement act within 3 years, the Budget Commission may declare the project inactive and request the State's bond issuing officers to reimburse the Fund from the Bond Reversion Account, § 7418 of this title notwithstanding.

(c) If federal funds are received as reimbursement for any real property purchased with the Fund, such moneys shall be deposited as a refund to the Fund.

(d) In the event real property is purchased and then plans for utilization of the site are abandoned, the state agency, reorganized school district, or vocational-technical school district, with approval of the Budget Commission, may sell the real property pursuant to Chapter 17 of Title 14 or Chapter 94 of this title, as applicable, and shall deposit the receipts to the Fund.

(29 Del. C. 1953, § 4924; 55 Del. Laws, c. 430, § 2; 62 Del. Laws, c. 407, § 7; 63 Del. Laws, c. 179, § 10; 63 Del. Laws, c. 189, § 3(a); 67 Del. Laws, c. 285, § 15(j)-(l); 69 Del. Laws, c. 10, § 7; 74 Del. Laws, c. 367, §§ 13, 14.)

§ 6347. Authorization for sale of school district bonds.

In the case of a school district, use of funds authorized by this subchapter to purchase real property may constitute authorization for the sale of district bonds by the State after referendum as provided in § 7506 of this title and after the inclusion of said authorization in a subsequent state capital improvement program.

(29 Del. C. 1953, § 4935; 56 Del. Laws, c. 128, § 1; 63 Del. Laws, c. 179, § 11; 63 Del. Laws, c. 189, § 4(a); 69 Del. Laws, c. 10, § 7; 74 Del. Laws, c. 367, § 16.)

§ 6348. Authorization for sale of school district bonds [Transferred].

Transferred by 74 Del. Laws, c. 367, § 15, effective, July 19, 2004.

Subchapter IV

Office of Information Services [Repealed].

§§ 6351-6360. Office of Information Services; powers, duties and functions; communications powers, duties and functions; creation, powers, duties and functions of Chief Information Officer; exemptions from Merit

System; Advisory Committee; information resource coordination; assumption of powers; existing rights of appeal preserved; budgeting and financing [Repealed].

Repealed by 74 Del. Laws, c. 128, § 10, effective July 1, 2003.

Part VI
Budget, Fiscal, Procurement and Contracting Regulations
Chapter 63A
Office of Management and Budget

§ 6301A. Establishment of Office of Management and Budget.

An Office of Management and Budget, referred to in this chapter as "Office," is hereby established.

(75 Del. Laws, c. 88, § 4.)

§ 6302A. Director; appointment; salary; bond; employees and assistants.

(a) The administrator and head of the Office is the Director of the Office of Management and Budget ("Director").

(1) The Director is appointed, confirmed, and holds office as provided in § 10 of Article III of the Delaware Constitution.

(2) The Director is to be paid an annual salary as determined by the General Assembly in the annual appropriations act.

(3) The Director must obtain and retain residency in this State as provided in § 10 of Article III of the Delaware Constitution.

(b) The Director may employ such employees as may be required to carry out the duties of this office and may fix the salaries of such employees within the limitations of the funds appropriated therefore.

(c) In the event of a vacancy in the position of Director, including the death, resignation, temporary incapacity or removal of the incumbent and prior to the appointment of a successor, the Governor may appoint any qualified individual to serve as Acting Director.

(d) The Director may call upon any other state officer for such assistance as the Director may require and may employ such special help as it may require to carry out this chapter. The Director shall fix the compensation of such persons as may be employed to be paid out of such fund as the General Assembly may appropriate for that purpose.

(75 Del. Laws, c. 88, § 4; 84 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 455, § 4; 85 Del. Laws, c. 43, § 1.)

§ 6303A. General powers and duties.

The Director of the Office of Management and Budget shall have the following powers, duties and functions:

(1) To audit, inspect and examine the accounts and the affairs of and the records of any agency of this State at such times as deemed expedient for the supervision of the budget and shall require all agencies to submit estimates showing the amounts and purposes of all anticipated expenditures to be made at the time or period in which such expenditures are to be made by an agency; such estimates of anticipated expenditures to be submitted in such form as the Director may prescribe;

(2) To require such fiscal reports, statements of balances on hand, estimates of receipts and information in any manner pertinent to the fiscal affairs of this State from the Secretary of Finance, Auditor of Accounts or any other agency of the State in such form as the Director shall prescribe for the purposes of this chapter;

(3) To design and install in any agency of this State such accounting records and procedures as shall be adequate for the control of the fiscal affairs of this State and require any agency of this State to follow and comply with the accounting procedures so designed;

(4) To report to the General Assembly and the Attorney General in writing any irregular, illegal or improper financial administration or transaction;

(5) To make recommendations to the General Assembly concerning the control of all state property and of accounts receivable and concerning a system of recording and accounting for the improvement and control of the fiscal practices and the adoption of a fiscal policy by the State;

(6) To consider and approve or disapprove transfers between appropriations contained in the budget as defined in this chapter and for which purpose it is provided that such transfers shall become effective only upon approval of the Director;

(7) To authorize, with the concurrence of the Controller General, special funds that are deemed necessary while the General Assembly is not in session, and until such time as legislation may be introduced at the next session of the General Assembly and acted upon;

(8) To prepare and administer the State's program of public works and major capital improvement projects;

(9) To prepare, and from time to time revise, an inventory listing the State's real property and facilities of all kinds;

(10) To supervise, direct and account for the administration and operation of the Office, its divisions, subdivisions, offices, functions and employees;

(11) To appoint and fix the salary of, with the written approval of the Governor, the following administrators, who may be removed from office by the Director with the written approval of the Governor and who shall have such powers, duties and functions in the administration and operation of the Office as may be assigned by the Director:

a. A Management Services Administrator who shall be qualified by training and experience to perform the duties of the office.

b. A Facilities Management Administrator who shall be qualified by training and experience to perform the duties of the office.

c. A Government Support Services Administrator who shall be qualified by training and experience to perform the duties of the office.

d. An Administrator of Budget Development, Planning and Administration who shall be qualified by training and experience to perform the duties of the office.

(12) To appoint such additional personnel as may be necessary for the administration and operation of the Office within such limitations as may be imposed by law;

(13) To establish, consolidate or abolish such divisions, subdivisions and offices within the Office or transfer or combine the powers, duties and functions of the divisions and other groups within the Office, with the written approval of the Governor, as may deem necessary, provided that all powers, duties and functions required by law shall be provided for and maintained;

(14) To make and enter into any and all contracts, agreements or stipulations, to retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract, consulting, research, technical and other services and facilities, whenever they shall be deemed by the Director necessary or desirable in the performance of the functions of the Office and whenever funds shall be available for such purpose, with the specific requirement that all necessary legal services be provided pursuant to Chapter 25 of this title;

(15) To delegate any of the Director's powers, duties or functions to an individual in paragraph (11) of this section, except the power to remove employees of the Department or to fix their compensation;

(16) To establish and to promulgate such rules and regulations governing the administration and operation of the Office as may be deemed necessary by the Director and which are not inconsistent with the laws of this State;

(17) To maintain such facilities throughout the State as may be required for the effective and efficient operation of the Office;

(18) To adopt an official seal or seals for the Office;

(19) To accept and to receive, in furtherance of the Office's function, funds, grants and services from the federal government or its agencies;

(20) To assume such other powers, duties and functions as the Governor may assign which are not otherwise inconsistent with the laws of this State;

(21) To prepare, in cooperation with the division directors, a proposed budget for the operation of the Office, to be submitted for the consideration of the Governor and the General Assembly. The Office shall be operated within the limitation of the annual appropriation and any other funds appropriated by the General Assembly, with the provision that special funds may be used in accordance with approved programs, grants and appropriations;

(22) To administer and manage a statewide human resource information system, and upon implementation, serve as the administrator of all data and processes supported by the system throughout the State, including all government agencies, school districts, Delaware State University and Delaware Technical and Community College; and

(23) To be responsible for the clerical administration of all state pension funds. The Director of the Office of Management and Budget shall have the authority to recommend to the Governor such changes as may be desirable in the pension system for employees in the classified service.

(75 Del. Laws, c. 88, § 4; 81 Del. Laws, c. 66, § 4.)

§ 6304A. Limitation on power to investigate.

The Director shall not investigate or require reports from the judiciary or from the courts of this State, from any private hospital, from the General Assembly, from any local or special school district respecting locally raised (non-state) revenues, from any fire company, or concerning the burial of indigent veterans, or from Kent and Sussex Fair Association, from the Libraries of Municipalities, from the Delaware Historical Society, from the American Legion, from the United Spanish War Veterans, from the Veterans of Foreign Wars, from Disabled American Veterans, from Paralyzed Veterans of America, from Vietnam Veterans of America or from other similar institutions not directly under the jurisdiction of the administrative or executive authority of this State.

(75 Del. Laws, c. 88, § 4.)

§ 6305A. Exemptions.

The following positions set forth in this section shall be exempt from Chapter 59 of this title:

(1) Director of the Office of Management and Budget;

(2) Management Services Administrator;

(3) Facilities Management Administrator;

(4) Government Support Services Administrator; and

(5) Administrator of Budget Development, Planning and Administration.

(75 Del. Laws, c. 88, § 4; 81 Del. Laws, c. 66, § 5.)

§ 6306A. Management Services.

(a) The Management Services Section of the Office of Management and Budget is hereby established, having the powers, duties and functions as follows:

(1) Administer and coordinate the recordkeeping, fiscal affairs, information technology, statistics, accounting, budgeting, personnel and other general services for the Office, as the Director of the Office of Management and Budget may deem necessary, for the proper, efficient and economical operation of the Office;

(2) Co-ordinate such general services and business administration with departments, agencies and offices of this State, other states and the federal government; and

(3) Perform special studies and reports and direct services of the Office to coordinate the services of the Office with other departments, agencies and offices of this State.

(b) The Management Services Administrator shall assume such other powers, duties, and functions as the Director of the Office of Management and Budget may assign which are not otherwise inconsistent with the laws of this State.

(75 Del. Laws, c. 88, § 4.)

§ 6307A. Facilities management [For applicability of this section, see 81 Del. Laws, c. 267, § 3].

(a) The Facilities Management Section of the Office of Management and Budget is hereby established having powers, duties and functions as follows:

(1) Advise the Director of the Office of Management and Budget on the allocation of existing space in facilities owned or leased by the State among state agencies, boards and commissions;

(2) Advise the Director of the Office of Management and Budget on any need to acquire additional facilities for any state agency, board or commission;

(3) Provide facility maintenance programs, including but not limited to building maintenance, grounds maintenance, security and custodial services.

(b) The Facilities Management Section shall review all building design, construction, and operations for state agencies, including school districts. The purpose of this review is to:

(1) Establish and apply evaluation factors and performance specifications for structural and mechanical functions;

(2) Research and analyze design and construction factors as they relate to economical construction and reliability and maintenance performance;

(3) Advise, recommend and refer to the Governor matters dealing with state building design and construction practice;

(4) Review bidding procedures and study and make recommendations dealing with bid laws;

(5) Make such studies and provide such information as shall cause the selection of the best cost/performance components that will satisfy a particular function;

(6) Review and make recommendations regarding the operation, maintenance and efficiency of the physical plant of state facilities; and

(7) Coordinate a review of construction plans by the Department of Safety and Homeland Security to evaluate the safety and security of newly constructed and renovated schools through the application of Crime Prevention Through Environmental Design (CPTED) principles and to verify compliance with the requirements of § 2306 of Title 14. For a school undergoing a "major renovation," as defined in § 2306 of Title 14, the Facilities Management Section shall coordinate the review required in this paragraph before a certificate of necessity is submitted under § 7510 of this title.

(c) The Facilities Management Section shall be responsible for the performance of all the powers, duties and functions vested in the Office of Management and Budget pursuant to Chapter 4 of this title.

(d) The Facilities Management Section shall be responsible for the design, construction, repairs, and/or renovation of all public buildings for state departments and agencies. In performance of these duties, the Office of Management and Budget shall, in the following areas, consult with the agency for which the project is being or will be completed: pre-design services, architectural plans and preliminary cost estimates, selection and negotiation of professional services, approval of minor capital improvement projects to be bid upon and awarded, approval of final architectural and engineering drawings for major capital projects and approval of change orders greater than or equal to 2 percent of a project cost. For the purpose of this subsection, state departments and agencies shall not include school districts and institutions of higher learning.

(e) The Facilities Management Section shall:

(1) Be the only state agency authorized to rent parking space in the underground facilities located at the Carvel State Building;

(2) At the discretion of the Administrator, approve all proposed contracts for architectural, engineering and construction management services and all architectural, structural and electrical plans, specifications and cost estimates for public building projects to be undertaken by all state departments and agencies. All projects planned, designed, maintained and/or constructed by the Department of Transportation, with the exception of projects for the construction of public buildings, are specifically exempted from the requirements of this subsection;

(3) Negotiate, review and approve all leases and lease renewals on behalf of all state departments and agencies for facilities throughout the State;

(4) Establish statewide policies and standards for all leases including: space allocation, energy efficiency, maintenance, security and custodial services;

(5) Develop an inventory of all state leases and space available in all state facilities; and

(6) Develop a long-term plan to coordinate the State's leasing practices with a comprehensive plan of facilities management and space allocation.

(f) The Facilities Management Administrator shall assume such other powers, duties, and functions as the Director of the Office of Management and Budget may assign which are not otherwise inconsistent with the laws of this State.

(g) For purposes of this section, the terms "state agency" or "state departments or agencies" shall not include institutions of higher education unless otherwise expressly provided.

(75 Del. Laws, c. 88, § 4; 77 Del. Laws, c. 84, § 323; 81 Del. Laws, c. 267, § 2; 83 Del. Laws, c. 270, § 7; 84 Del. Laws, c. 441, § 2.)

§ 6308A. Government Support Services.

(a) As used in this section:

(1) "Duly authorized volunteer fire department" shall mean a volunteer fire department recognized as such by the State Fire Prevention Commission.

(2) "Local government unit" shall mean any municipality incorporated in this State under the authority of the General Assembly and any of the 3 counties.

(3) "State agency" or "agency" shall not include institutions of higher education unless otherwise expressly provided.

(b) The Government Support Services Section of the Office of Management and Budget is hereby established having powers, duties and functions relating to the distribution of surplus property as follows:

(1) The Government Support Services Section may:

a. Acquire from the United States of America, in conformity with the federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. § 484 et seq.) (see now 40 U.S.C. § 541 et seq.);

b. Warehouse such property;

c. Distribute such property within the State to tax-supported medical institutions, hospitals, clinics, health centers, school systems, schools, colleges and universities within the State, to other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges and universities which have been held exempt from taxation under § 501 of the United States Internal Revenue Code of 1954 (26 U.S.C. § 501), to civil defense organizations of the State, duly authorized volunteer fire departments within the State or political subdivisions and instrumentalities thereof, which are established pursuant to state law, and to such other types of institutions or activities as may become eligible under federal law to acquire such property;

d. Receive applications from eligible institutions for the acquisition of federal surplus real property, investigate the same, make recommendations regarding the need of such applicant for the property and otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under § 203(k) of the federal Property and Administrative Services Act of 1949 (40 U.S.C. § 484) (see now 40 U.S.C. § 541 et seq.);

e. Make such certifications, take such action, make such expenditures and enter into such contracts, agreements and undertakings for and in the name of the State including cooperative agreements with any federal agencies providing for utilization by, and exchange between them of the property, facilities, personnel and services of each by the other, and require such reports and make such investigations as may be required by law or regulation of the United States of America in connection with the disposal of real property and the receipt, warehousing and distribution of personal property received from the United States of America.

(2) The Government Support Services Section shall:

a. Act as the responsible agency to operate the surplus commodity program in Delaware, in accordance with the regulations and procedures prescribed by the United States Department of Agriculture. The Office of Management and Budget may take such action, make such expenditures and enter into such contracts, agreements and undertakings for the State to provide for the distribution of available commodities to all eligible recipients in the State who make proper application therefor;

b. Act as the sole state agency to receive, warehouse and distribute food commodities issued by the federal government for use in nonprofit school lunch programs, nonprofit summer camps for children, non-penal, nonprofit, tax-exempt private or public institutions, state correctional institutions and assistance to other needy persons in accordance with § 416 of the Agricultural Act of 1949 (7 U.S.C. § 1431), as amended, and other applicable federal laws and regulations; provided however, that the Office of Management and Budget shall have no control over the administration of the school lunch program beyond receiving, warehousing and distributing such food commodities.

(3) a. The State Treasurer shall maintain, in the name of the Office of Management and Budget, Government Support Services, a special revolving account. There shall be deposited in this special account all moneys received as handling charges for the acquisition, warehousing, distribution or transfer of property of the United States of America as authorized under paragraph (b)(1) of this section.

b. All funds collected by the Government Support Services Section shall be accounted for as provided by law for receipts of state agencies. Such funds shall be used to cover the expenses of the program. In accordance with federal regulations no funds in such special account shall revert to the General Fund of the State. Funds generated by Delaware Surplus Services and deemed to be surplus by the Director of the Office of Management and Budget shall be transferred to the Facilities Management Section for maintenance and restoration of state buildings and grounds maintained by the Facilities Management Section.

(c) The Government Support Services Section shall have the powers, duties and functions relating to the central contracting for materiel and services throughout the State as outlined in § 6908 of this title.

(d) The Government Support Services Section shall not contract for, procure or purchase printed matter, forms, bond paper or pads larger than $8^1/_2$ inches by 11 inches unless such printed matter, forms, bond paper or pads are perforated or otherwise designed to produce finished printed matter or forms not larger than $8^1/_2$ inches by 11 inches.

(e) The Government Support Services Section shall not contract for vertical file cabinets designed to hold completed documents larger than $8^1/_2$ inches by 11 inches.

(f) Each agency may use its existing supply of printed matter, forms, bond paper and pads until the supply is exhausted and each agency may use its existing vertical file cabinets for so long as such cabinets remain serviceable.

(g) This section shall not prohibit the purchase or use of printed matter or forms larger than $8^1/_2$ inches by 11 inches, if the printed matter or forms are to be used to maintain accounting or bookkeeping records, for preparing architectural or engineering drafts or documents or for preparing maps, graphs, posters, charts or art work, or if the printed matter or forms are authorized by the State Archivist and Records Administrator. This section does not prohibit the purchase or use of fan-fold paper designed for use in computer peripheral devices.

(h) The Government Support Services Section shall provide messenger and mail services to state agencies.

(i) The Government Support Services Section shall provide graphics and printing services, including but not limited to printing, duplicating, photography and photocopying, to all state agencies. If appropriate, the Government Support Services Administrator may award a contract in accordance with Chapter 69 of this title. The acquisition of copiers in state buildings which are managed by the Office of Management and Budget, Facilities Management, shall have the approval of the Director of the Office of Management and Budget.

(j) The Government Support Services Section shall provide transportation services to state agencies, including institutions of higher education, through the Office of Fleet Services.

(k) The Government Support Services Section shall provide information services to the general public through a State Information Guide System.

(l) No agency of state government shall procure, purchase or lease any postage meters or equipment for the metering of mail or the affixing of postage without the prior approval of the Government Support Services Section.

(m) The Office of Fleet Services is hereby established within the Government Support Services Section and shall have the following powers, duties and functions. The Office of Fleet Services shall:

(1) Have the administrative, ministerial, budgetary and clerical functions of Fleet Services;

(2) Establish and operate a statewide fleet management system, as established by § 7105 of this title;

(3) Investigate and resolve all citizens' complaints relating to abuse or misuse of all agency/school district owned vehicles;

(4) Recommend to the Director of the Office of Management and Budget appropriate funding levels for all agency/school districts for in-state travel requirements;

(5) Be the sole agency to receive the proceeds from the disposal of vehicles and vehicle parts, including all nongeneral funds except those funds that, as a basis for their authorization, require the proceeds of such disposal to be returned to the original source of the funds; and

(6) Establish an appropriated special fund account to sustain the total cost and operation of the Office of Fleet Services and its function, including staff salaries and the statewide fleet management system.

(n) The Government Support Services Administrator shall assume such other powers, duties and functions as the Director of the Office of Management and Budget may assign which are not otherwise inconsistent with the laws of this State.

(75 Del. Laws, c. 88, § 4; 77 Del. Laws, c. 84, §§ 324, 325.)

§ 6309A. Human Resources Management [Repealed].

(75 Del. Laws, c. 88, § 4; repealed by 81 Del. Laws, c. 66, § 6, eff. July 1, 2017.)

§ 6310A. Benefits and Insurance Administration [Repealed].

(75 Del. Laws, c. 88, § 4; repealed by 81 Del. Laws, c. 66, § 7, eff. July 1, 2017.)

§ 6311A. Budget Development, Planning and Administration.

(a) The Budget Development, Planning and Administration Section of the Office of Management and Budget is hereby established, having the powers, duties and functions as follows:

(1) Oversees the preparation, presentation and implementation of the state's operating and capital budgets;

(2) Directs the adaptation and implementation of effective fiscal and management policies and procedures;

(3) Manages the analysis of federal budgetary and financial issues including the administrative functions of the Delaware State Clearinghouse Committee; and

(4) Provides management direction to the Office of State Planning Coordination on planning policy direction and the analysis of potential impacts.

(b) The Administrator of the Budget Development, Planning and Administration Section shall assume such other powers, duties and functions as the Director of the Office of Management and Budget may assign which are not otherwise inconsistent with the laws of this State.

(75 Del. Laws, c. 88, § 4.)

§ 6312A. Functions prior to July 1, 2005.

The Office of Management and Budget, through appropriate divisions, subdivisions and offices, shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions vested in the Division of Facilities Management, Division of Support Services, Division of Graphics and Printing, and the State Architect within the former Department of Administrative Services immediately prior to July 1, 2005, and which are not otherwise specifically assigned to the Office of Management and Budget by this chapter, excepting only those powers, duties and functions expressly vested in or retained by any such person, department, board, commission or agency.

(75 Del. Laws, c. 88, § 4.)

§ 6313A. Appeals.

Any and all rights of appeal now existing by law, with respect to any act or acts constituting the exercise of any function or functions transferred by this chapter to the Office of Management and Budget or to any division or subdivision thereof, shall continue to exist with respect to such act or acts as hereafter performed by the Office of Management and Budget or by the division, subdivision or office to which such function is transferred, and each such appeal shall be perfected in the manner heretofore provided by law.

(75 Del. Laws, c. 88, § 4.)

§ 6314A. Transfers and continuity.

(a) All books, records, papers, maps, charts, plans and other material including, but not limited to, any equipment in the possession of any agency of the State and used in connection with a function transferred by this chapter to the Office of Management and Budget shall, on July 1, 2005, be delivered into the custody of the said Office. All investigations, petitions, hearings and legal proceedings pending before or instituted by any agency from which functions are transferred by this chapter and not concluded prior to July 1, 2005, shall continue unabated and remain in full force and effect, notwithstanding the passage of this chapter and, where necessary, may be completed before, by or in the name of the Office. All orders, rules and regulations made by any agency from which functions are transferred by this chapter and which govern such functions, and which are in effect on July 1, 2005, shall remain in full force and effect until revoked or modified in accordance with law by the Office. All contracts and obligations of any agency made or undertaken in the performance of a function transferred to the Office by this chapter and being in force on July 1, 2005, shall, notwithstanding this chapter, remain in full force and effect and be performed by the Office.

(b) Employees of any agency whose functions are consistent with and have been transferred to the Office of Management and Budget by this chapter shall continue and be deemed to be the employees of the said Office on July 1, 2005, and, where applicable, with all the benefits accrued as merit employees as of July 1, 2005.

(c) All definitions and references to any commission, board, department, council or agency which appear in any other act or law shall, to the extent that they are consistent with this chapter and in connection with a function transferred to the Office of Management and Budget, be construed as referring and relating to the Office of Management and Budget as created and established by this chapter.

(d) All definitions and references to any director, commissioner, executive secretary, commission, board or council member or other similar person which appear in any other act or law shall, to the extent that they are consistent with this chapter and in connection with a function transferred by this chapter to the Office of Management and Budget, be construed as referring or relating to such person or persons and their powers, duties and functions as established and created by this chapter.

(75 Del. Laws, c. 88, § 4.)

§ 6315A. Misnomer in donation.

Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Office of Management and Budget or any predecessor agency thereof if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey thereby to the Office or to any commission, board, department, authority, council or agency, to which, by this chapter, the powers, duties and functions have been transferred to the Office, the estate or interest therein expressed or described.

(75 Del. Laws, c. 88, § 4.)

§ 6316A. Supremacy.

All other laws or parts of laws now in effect inconsistent with this chapter are repealed, superseded, modified or amended so far as necessary to conform to and give full force and effect to this chapter.

(75 Del. Laws, c. 88, § 4.)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations
Chapter 64
Budget Appropriation Bill Policies and Procedures

§ 6401. Intent.

The intent of this chapter is to establish the policies and procedures for implementation of the Budget Appropriation Bill.

(67 Del. Laws, c. 250, § 1.)

§ 6402. Scope.

This chapter shall apply to all state departments and agencies receiving appropriations as set forth in the Budget Appropriation Bill.

(67 Del. Laws, c. 250, § 1.)

§ 6403. Definitions.

As used in this chapter the terms “department” and “agency” mean those entities receiving an appropriation in the Budget Appropriation Bill.

(67 Del. Laws, c. 250, § 1.)

§ 6404. General provisions.

(a) Nothing contained in any contract entered into, pursuant to Chapter 13 of Title 19, or Chapters 13 and 40 of Title 14, which contract is entered into or renegotiated after July 1, 1973, shall require the payment of moneys for any item, purpose or benefit for which a specific appropriation by the General Assembly has not been made for the current fiscal year or any subsequent fiscal year or any part thereof, during which such contract is effective.

(b) (1) The provisions for salaries in the Budget Appropriation Bill are projected to cover the salaries and wages which shall become due and payable during the fiscal year. All agencies shall stay within their appropriations for salaries as well as positions authorized.

(2) The Budget Appropriation Bill assumes salary savings in all branches of state government. All agencies in the judicial, executive, and legislative branches of state government are directed to continue any and all vacancies within their respective agencies as necessary to remain within their level of funding for salaries and wages.

(c) All agencies/school districts receiving energy funding in the Budget Appropriation Bill must make monthly consumption and/or purchase reports to the Energy Office.

(d) At the close of the fiscal year, all unencumbered appropriated special funds shall revert to the budget unit internal program unit/ holding account, except Title IV-D (ASF) funds, unless otherwise specified.

(e) (1) Where the number of employee positions has been set forth in the salary line appropriation for an agency in § 1 of the Budget Appropriation Bill, such number shall be interpreted to mean equivalent full-time positions. The Office of Management and Budget shall maintain a listing of the employee positions as provided, the salary or wage for each position, and the source of funding. A report of this listing shall be furnished monthly by the Director of the Office of Management and Budget and to the Controller General. The total of such salaries and wages for each agency shall not exceed the agency appropriation therefore and the number of employee positions shall not be changed except as provided in paragraph (e)(2) of this section. During the period when recruit classes for State Police are in training, the total number of employees shall apply only to uniformed personnel authorized for duty.

(2) The number of employee positions authorized as equivalent full-time positions paid by General Fund appropriations and the number of other positions, paid by funds other than General Fund appropriations are reflected in § 1 of the Budget Appropriation Bill within each agency for the fiscal year. No agency shall change the total number of positions within each funding source without prior approval of the Delaware State Clearinghouse Committee; and no agency shall transfer a position between divisions/appropriation units except with the approval of the Delaware State Clearinghouse Committee. All Job Training Partnership Act funds expended for full-time positions shall be employed within the State.

(f) Funds provided in § 1 of the Budget Appropriation Bill may be expended for purposes in which agencies have specifically entered into agreement with the federal government for the reimbursement of such expenses; provided however, that the federal government specifically requires such reimbursement procedures and that the agency has specific authorization in accordance with the provisions of Chapter 76 of this title, Federal Grant and Nonfederal Grant Coordination, to enter into such program; and, provided that such reimbursements be accounted for in conformance with the Budget and Accounting Manual and that such reimbursements be used to fulfill the intent and purposes of § 1 of the Budget Appropriation Bill.

(g) (1) The Budget Appropriation Bill contemplates receipt of federal funds and state special funds for certain programs or functions administered by agencies. Funds herein appropriated in § 1 of the Budget Appropriation Bill to match the federal or state special funds shall be expended only to the extent that federal or state special funds shall have been made available.

(2) Upon being informed that such program or function is terminated or funds therefore are reduced, the head of the agency shall immediately notify, in writing, the people identified in this subsection and promptly:

a. Reduce proportionately the expenditure of funds from the matching general funds of the State appropriated to match such federal or state special funds; and

b. Submit, in writing, to the Governor, Chairperson and Vice Chairperson of the Joint Finance Committee, Controller General, Director of the Office of Management and Budget, and Secretary of Finance a plan describing how each individual program or function will be accomplished, including General Fund operating budget line item expenditure reductions.

(3) Upon notification that the federal or state special funds are reduced or terminated when the General Assembly is duly convened, the Governor or the Joint Finance Committee may propose legislation for consideration by the General Assembly to continue the program or function. In the event the General Assembly does not authorize continuation of the program or function, the Director of the Office of Management and Budget is hereby directed to revert the remaining matching general funds.

(4) Agencies who are recipients of federal funds in support of programs or services, and have indirect costs or any costs identified as a Section II cost, per the Statewide Cost Allocation Plan (SWCAP), shall budget these costs when the application is presented to the Delaware State Clearinghouse.

(5) All agencies or schools receiving federal funds subject to the federal Single Audit Act [31 U.S.C. § 7501 et seq.] shall:

a. Include in program budgets an amount sufficient to cover actual program audit costs incurred by the Office of Auditor of Accounts. The final audit costs will be provided to the agencies and schools by the Office of Auditor of Accounts by August 31 of each calendar year.

b. Process audit cost payment documents (Intergovernmental Vouchers and invoices from accounting firms) within 30 days of receipt of same from the Office of Auditor of Accounts.

(h) The General Assembly finds that through a cooperative agreement between the Division of Child Support Services, Department of Health and Social Services, Family Court of Delaware, and the office of the Attorney General, the federal government has been reimbursing Family Court and the office of the Attorney General for general funds disbursed for certain expenses incurred in the delivery of child support services. This section directs that:

(1) The Family Court of Delaware, the office of the Attorney General and the Department of Health and Social Services shall continue such cooperative agreement for the purpose of seeking appropriate reimbursement from the federal government for general and appropriated special funds expended for certain expenses incurred in the delivery of child support services by Family Court and the office of the Attorney General.

(2) Upon receipt of such reimbursement from the federal government, the Family Court of Delaware, the office of the Attorney General and the Department of Health and Social Services shall credit such reimbursements to a special fund account as established by the Director of the Office of Management and Budget.

a. This fund shall be utilized for determining the next fiscal year's appropriated special funds appropriation for Family Court, the office of the Attorney General and any other agency receiving Title IV-D Funds. In the event that an amount in this fund represents a recovery based on the Statewide Cost Allocation Plan, then such amount shall not be considered for appropriation.

b. The balance of the special fund account not appropriated for the next fiscal year shall revert to the General Fund prior to December 31.

(i) All state agencies and departments that own land shall inform the Director of the Office of Management and Budget, the Controller General, and the General Assembly, quarterly, as to any and all developments relating to the possible new use, lease or sale, of any portion of said land. This section shall not apply to lands owned by the Department of Transportation that are intended for transportation purposes except as provided in § 137 of Title 17.

(j) Any employee eligible for termination pay whose regular pay was from special funds shall have termination pay paid from special funds. If the employee's regular pay is from both General Funds and special funds, termination pay shall be on a pro rata basis. The intent of this section is that if any school district charges their local share to Division III — Equalization Funds, that for termination pay purposes only, these funds are considered special funds. Exceptions to this method of payment must have the approval of the Director of the Office of Management and Budget and the Controller General. All agencies shall absorb termination pay within the appropriations set forth in the Annual Appropriations Act.

(67 Del. Laws, c. 250, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 132, § 33; 75 Del. Laws, c. 88, §§ 20(6), 21(13), 25(2), 35; 76 Del. Laws, c. 280, §§ 11-13; 80 Del. Laws, c. 234, § 25; 81 Del. Laws, c. 66, § 57.)

§ 6409. Judicial.

The fiscal year in which bills are received will be the factor in determining the chargeable fiscal year for the Administrative Office of the Courts for payments to court-appointed, noncontract attorneys for billings that span multiple fiscal years.

(67 Del. Laws, c. 250, § 1.)

§ 6410. Executive department.

(a) In the event that the amount authorized in the appropriated special fund budget in § 1 of the Budget Appropriation Bill for the Office of Management and Budget, Pensions for Contractual Services (investment expenses) is insufficient, the appropriated special fund

budget may be amended to adjust for such insufficiency upon request of the Board of Pension Trustees and approved by the Director of the Office of Management and Budget and the Controller General.

(b) Any agency with classified full-time equivalent positions filled or unfilled paid from funds other than those appropriated from the General Fund of the State shall pay to the Office of Management and Budget and the Department of Human Resources, from the special funds, a prorated share of the expense of the Office of Management and Budget and the Department of Human Resources, as approved by the Director of the Office of Management and Budget and the Controller General. Such payments shall be used by the Office of Management and Budget and the Department of Human Resources to supplement the funds appropriated to the Office and Department from the General Fund of the State in the annual Appropriations Act.

(c) The sums appropriated in a fiscal year to Criminal Justice Council for criminal justice planning grants to state agencies to provide funds to match grants from the federal government, which are not disbursed on June 30 of the fiscal year appropriated, shall continue to be available on a matching basis for the life of each criminal justice program grant, or for 3 fiscal years, whichever first occurs. Any unexpended funds appropriated from the General Fund of the State which remain unexpended or unencumbered shall revert to the General Fund of the State.

(67 Del. Laws, c. 250, § 1; 69 Del. Laws, c. 64, § 50; 75 Del. Laws, c. 88, §§ 20(6), 21(13); 82 Del. Laws, c. 64, § 69.)

§ 6411. Department of Technology and Information.

All agencies are directed to remit payment for services rendered by the Department of Technology and Information within 30 days of receipt of invoice. Services may include, but are not limited to, postal metering, distribution supplies, telecommunication and telephone services, professional services, and data processing services.

If a prompt payment problem exists, the Department of Technology and Information may require all agencies and school districts receiving services to make monthly estimated payments toward their invoice. The estimated payments should be equal to the average of the last three months of reconciled payments or based on a schedule established by the department. The department will continue to be responsible for the actual payments to telephone companies and other vendors. In addition, the department will be responsible for the reconciliation of accounts with the user agencies and school districts.

(76 Del. Laws, c. 280, § 116.)

§ 6420. Department of State [Repealed].

Repealed by 72 Del. Laws, c. 91, § 73.

§ 6425. Department of Finance.

(a) The Department of Finance, Division of Revenue, is authorized to maintain an appropriated special fund dedicated to the collection of delinquent taxes. The positions authorized to be funded through this account and all associated expenditures made from this account shall be for the purpose of collection of delinquent taxes. All collections on cases which have been referred to the Division's Bureau of Tax Collections shall be deposited to this special fund until the amount deposited shall reach $350,000. Unencumbered balances on June 30 of each fiscal year, in excess of $50,000, shall be deposited into the General Fund.

(b) The Director of the Division of Revenue shall submit to the Controller General a report detailing expenditures from this account and revenues generated as a result of expenditures from the account. Said report shall be submitted by January 1 of each year for the preceding fiscal year.

(67 Del. Laws, c. 250, § 1.)

§ 6435. Department of Health and Social Services.

(a) If, at any time during the fiscal year, there should be a temporary delay in receiving federal matching funds for the TANF Program within the Department of Health and Social Services, such funds as may be required to assure the timely distribution of the public assistance checks shall be advanced and shall be paid by the State Treasurer from the General Fund. The Department of Health and Social Services shall promptly reimburse the General Fund upon receipt of the federal matching funds. However, there shall not be an advance of funds for the purpose described above, if all such previous advancements have not been fully reimbursed.

(b) The Division of Substance Abuse and Mental Health is able to bill for additional Medicaid revenue due to a waiver of the Institution for Mental Diseases exclusion, as part of the Medicaid Managed Care waiver. This additional revenue shall be deposited to the General Fund, and the Division shall make every effort to ensure that these bills are submitted to the appropriate entities in an expeditious manner.

(c) The Division of Social Services is permitted to use Title XIX Federal Programs (Medicaid) funds when necessary to reimburse the federal government for its portion of overpayments not collected within 60 days of identification. When such overpayments are collected, the funds shall be deposited back into the Division's Medicaid Non-State account.

(d) The Division of Social Services is authorized to establish bank accounts to advance funds from the Employment and Training Program to clients or vendors in a timely manner. These advances are to be for supportive services or welfare diversion services in the nature of clothing and transportation allowances and other services to advance client self-sufficiency, as proposed in Delaware's A Better Chance Welfare Reform Program.

(e) Members of the Council on Hispanic Affairs shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties not to exceed $500 annually.

(f) The Division of State Service Centers is authorized to collect and deposit tenant user fees from its 14 facilities throughout the State to the holding account entitled Facility Reimbursement. These fees are charged to partially offset the costs of service center operations.

(g) Appropriations for emergency assistance within the Division of State Service Centers may be used for programs of longer than 30 days' duration.

(h) Notwithstanding any other provisions of the Delaware Code, state employee recognition funds may be used pursuant to existing guidelines to include the recognition of volunteers and other nonstate employees at the discretion of the Secretary of the Department of Health and Social Services.

(67 Del. Laws, c. 250, § 1; 73 Del. Laws, c. 310, § 16; 76 Del. Laws, c. 280, § 166; 81 Del. Laws, c. 367, § 5.)

§ 6436. Delaware Health Statistics Program.

Section 1 of the Budget Appropriation Bill provides an appropriation in appropriated special funds and 3 positions in health planning (35-01-30) for the purpose of operating a Delaware Health Statistics Program which would collect, maintain and analyze health-related data to assist the health community in planning, administering and evaluating the quality, quantity and appropriate combination of health services.

Revenues for the purpose of funding this Program shall be derived from the sale of copies of vital statistics records for birth, death and marriage certificates and shall be deposited in a holding account. In February 1986, the Department of Health and Social Services, under a separate provision, raised the fee for such records. Notwithstanding the provisions of § 6102 of this title and § 3132 of Title 16, the Internal Program Unit shall be allowed to retain and expend only the portion of the fee above the amount of $2.50 per copy up to the appropriation limit. The balance shall continue to be deposited to the General Fund.

(68 Del. Laws, c. 84, § 107; 70 Del. Laws, c. 149, § 218.)

§ 6437. Department of Natural Resources and Environmental Control.

The Division of Fish and Wildlife is authorized to establish, maintain and administer:

(1) An interest-bearing, nonappropriated special fund known as the Delaware Marsh Management and Maintenance Trust, as allowed by conditions of the DNREC/PSE&G Settlement Agreement of March 23, 1995, and further allowed by the subsequent Settlement Agreement of June 24, 2001. The interest income from this trust account will be dedicated to implement the Settlement Agreement's provisions to enhance or restore tidal wetlands habitats for coastal fish and wildlife resources along Delaware Bay and River in Delaware, and to maintain such tidal wetlands habitat enhancements or restoration in perpetuity, as partial compensation for natural resource losses caused by past, ongoing and future operation of the PSE&G Salem Nuclear Generating Station.

(2) A nonappropriated special fund for administration of the dedicated interest earned on the fund established above, with said dedicated interest to be expended to help support or implement compensatory tidal wetlands habitat enhancements or restorations and associated maintenance activities referred to in paragraph (1) of this section.

(76 Del. Laws, c. 280, § 254.)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations
Chapter 64A
Bond and Capital Improvement Act Policies and Procedures

§ 6401A. Intent.

The intent of this chapter is to establish the policies and procedures for implementation of the Annual Bond and Capital Improvement Act.

(72 Del. Laws, c. 489, § 25.)

§ 6402A. Scope.

This chapter shall apply to all state departments and agencies receiving appropriations as set forth in the Annual Bond and Capital Improvement Act.

(72 Del. Laws, c. 489, § 25.)

§ 6403A. Definitions.

As used in this chapter the terms "department" and "agency" shall mean those entities receiving an appropriation in the Annual Bond and Capital Improvement Act.

(72 Del. Laws, c. 489, § 25.)

§ 6404A. Department of Safety and Homeland Security.

(a) The State Police shall have the primary authority to enforce traffic laws on all highways of the State, defined by the Department of Transportation as either full access control or partial access control, including but not limited to Route 1, Route 141 and the Puncheon Run Connector from Route 1 to Route 13, within municipalities in the State unless the State Police have, by specific signed agreement, authorized another jurisdiction to enforce traffic laws on such highways.

(b) Notwithstanding Chapters 63 and 69 of this title or any other statutory provision to the contrary, the Department of Safety and Homeland Security, Division of Communications is hereby granted exclusive authority to enter into agreements with private telecommunications companies to lease or license space for communication facilities on telecommunications towers and other facilities constructed for the 800 MHz Digital Trunked Radio System. The revenues received by the Department of Safety and Homeland Security Division of Communications under these agreements shall be deposited in a special fund and used for maintenance or other expenses associated with the 800 MHz Digital Trunked Radio System.

(72 Del. Laws, c. 489, § 25; 73 Del. Laws, c. 95, § 83; 73 Del. Laws, c. 224, § 8; 73 Del. Laws, c. 312, § 213; 74 Del. Laws, c. 110, § 138; 74 Del. Laws, c. 128, § 7; 77 Del. Laws, c. 427, §§ 1, 2.)

§ 6405A. Department of Transportation.

(a) Any funds appropriated from any source to the Department of Transportation shall be accounted for by program category as specified in the Section 1 Addendum of the Annual Bond and Capital Improvement Act. Amounts indicated for individual projects in the "Supplemental Information for Transportation Projects" are the Department's best estimates of cost, but may vary depending on bid results and project designs. The descriptions and limits are general in nature and are to be used only for project identification purposes. It is the intent of the General Assembly that the Department of Transportation make all reasonable efforts to ensure the timely completion of projects subject to the limitation of the total funds available in each program.

(b) The Department is directed to continue inspecting the condition of bridges and pavements in the State and to use the Road System Program funds made available by the Annual Bond and Capital Improvement Acts and the Bridge Program, the Rehabilitation and Reconstruction Program, and the Pave and Rehabilitation Program funds made available by previous acts to ensure the bridge repairs and replacements and pavement resurfacings and rehabilitations are carried out in an expeditious manner based on the Department's priority and management systems.

(c) It is the intent of the General Assembly that the Co-Chairs of the Joint Legislative Committee on the Capital Improvement Program shall be delegated the responsibility of approving modifications to the list of paving and rehabilitation projects in the "Road System" portion of the "Supplemental Information for Transportation Projects" when the Department of Transportation needs such modifications. These changes may be made subject to the Co-Chairs' approval, when:

(1) The Department has completed or determined that it has sufficient funds on hand to complete projects in the program category; or

(2) When projects so listed cannot be constructed in the construction season covered by the Annual Bond and Capital Improvement Act because of conflicting public works projects in progress or scheduled, or for other compelling reasons; and

(3) Funds appropriated to the Road System program category are available for use on additional or other projects fitting within that category.

In modifying the list, the Department must substitute the next suitable paving and rehabilitation project or projects from the most recently approved Department of Transportation Capital Transportation Program or based on the Department's Road System priority and management systems. A copy of the changes should be forwarded to the Director of the Office of Management and Budget and Controller General.

(d) Any funds appropriated from the Community Transportation Fund (XX/00) of the "Supplemental Information For Transportation Projects" attached hereto may be designated for Greenways having a transportation component as long as those Greenways will be dedicated to public use. Legislators may designate moneys to be appropriated into a general pooled account to be used statewide, or may reserve moneys for Greenways projects to be designated at a later time, or may designate specific sums of moneys to specific Greenways projects. For the purposes of this section, a project shall be deemed to have a "transportation component" whenever it involves walkways, pathways, bikeways, trails or other routes for the movement of people or goods. Project estimates shall be prepared by the Department of Natural Resources and Environmental Control (DNREC) and processed through the Department of Transportation's (DOT) Community Transportation Fund procedure for inclusion in the Capital Improvement Act by the General Assembly. Funds appropriated through an Annual Bond and Capital Improvement Act will be funded from the Transportation Trust Fund and transferred to DNREC by DOT. DNREC will be responsible for the design, rights-of-way purchasing, construction and maintenance of such Greenways and establishing a process similar to DOT's process for administering the Community Transportation Fund. The Delaware Transportation Authority shall have the authority to use its powers granted under Chapter 13 of Title 2 to acquire property for Greenways projects having a transportation component dedicated to public use, and to transfer the property so acquired to the Department of Natural Resources and Environmental Control or to a local government accepting responsibility for the projects' development, ownership and operation.

(e) The Department of Transportation is hereby authorized to explore and/or construct feasible alternatives to traffic signals, including, but not limited to, geometric design changes to intersections or crossovers, in the vicinity of those locations where traffic signals may currently exist or otherwise be considered as warranted.

(f) The Delaware Transit Corporation ("DTC") administers a program to provide assistance to certain qualifying agencies for the transportation of the elderly, persons with disabilities, and thereafter for others needing transportation services, under the provisions of 49 U.S.C. § 5310 ("5310 Program"). The 5310 Program requires the qualifying agencies to agree to comply with the program's rules and regulations, and the agencies compete for funding in an annual certification/approval process. The normal match of federal funds to other funds is on an 80/20 funds basis. The following provisions shall apply in the DTC's administration of the 5310 Program.

(1) In ranking applicants for the 5310 Program, enhanced scoring of the applications will be given first to those qualifying applicants emphasizing the replacement of their existing fleet, and second to those qualifying applicants who provide a contributing share commitment larger than the normal nonfederal ratio, thus expanding the leverage provided by the federal funds available for the 5310 Program. These additional funds shall not be used as a replacement for Transit System funds or federal funds for this program, but shall be applied to this program in addition to the amount authorized in the Annual Bond and Capital Improvement Act.

(2) In administering the 5310 Program, the DTC shall take steps to assure that the qualifying applicant agencies use these vehicles first for program related needs, then to meet the transportation needs of elderly persons and persons with disabilities who do not participate in the agencies' programs, and finally for other local transportation needs, as required by federal regulations. In keeping these commitments and providing DTC-originated trips beyond the qualifying agencies program needs, those agencies receiving funds from the Kent/Sussex reimbursable line (55-06-01-85-83) Kent and Sussex Transportation shall be reimbursed at a rate of twice the applicable DTC fare. All other agencies providing such DTC-originated trips shall be reimbursed at a rate of 3 times the applicable DTC fare. Agencies providing such trips will be responsible for collection of and accounting for fares in accordance with DTC guidelines. Receipt of such fares and reimbursement to the qualifying agencies shall occur on a monthly basis between DTC and the agencies.

(72 Del. Laws, c. 489, § 25; 73 Del. Laws, c. 95, §§ 84(e)(2)-(4); 75 Del. Laws, c. 88, § 21(13); 83 Del. Laws, c. 37, § 29.)

§ 6406A. Department of Education.

(a) Purchase orders and change orders for school construction projects which are coded to a different school construction project line within the applicable school district will be approved upon review and determination by the Department of Education and Office of Management and Budget that full compliance of § 2.4.3B(1) and (2) of the State of Delaware School Construction Manual has been met. All such purchase orders or change orders must reference the appropriate projects, lines of authorization and appropriate section of the School Construction Manual.

(b) The Department of Technology and Information is prohibited from establishing or maintaining state-supported e-mail addresses for public school students except as may be deemed necessary by the local school district. This section shall not preclude local school districts from providing student access to e-mail with local discretionary funds either through their own e-mail server or through a contract with the Department of Technology and Information.

(72 Del. Laws, c. 489, § 25; 74 Del. Laws, c. 308, § 12; 75 Del. Laws, c. 88, § 21(13).)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations

Chapter 65
Budget and Fiscal Regulations for State Agencies

§ 6501. Definitions.

(a) As used in this chapter, the term “agency” shall have the same meaning as defined in § 6301 of this title.

(b) As used in this chapter the term “agency agent” shall mean an authorized official of the agency or the architect or construction manager designated pursuant to the public works contract documents.

(c) As used in this chapter, the term “date of submission” shall mean either 2 days after the document is postmarked by the United States Postal Service or the date the agency agent receives the hand-delivered document, verified by the agency agent’s receipt or the date affixed to the document by the agency agent’s facsimile machine.

(d) As used in this chapter, term “final completion” shall mean final completion of the work as described in the public works contract documents.

(e) As used in this chapter, the term “reasonable evidence” shall mean “information from a reliable source.”

(f) As used in this chapter, the term “Secretary of Finance” shall mean the Secretary of Finance or a duly authorized designee.

(29 Del. C. 1953, § 6501; 57 Del. Laws, c. 741, § 1A; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 364, §§ 1, 2.)

§ 6502. Annual estimates of expenditures.

(a) On or before November 15, annually, each agency shall report to the Director of the Office of Management and Budget on official blanks furnished for such purpose, an estimate in itemized form showing the amount needed for the ensuing fiscal year.

(b) Any organization, body, committee or person intending to request an appropriation from the General Assembly for any particular object or purpose, or for any expenditure, shall present such request to the Director of the Office of Management and Budget on official estimate blanks furnished for such purpose on or before November 15, annually. In case of any organization, body or committee making such request, the request shall be made by some person duly authorized therefor and shall be sworn to by the person making the same.

(37 Del. Laws, c. 81, § 2; Code 1935, § 5400; 29 Del. C. 1953, § 6502; 51 Del. Laws, c. 198; 54 Del. Laws, c. 39, § 4; 67 Del. Laws, c. 47, § 79; 75 Del. Laws, c. 88, § 21(13); 77 Del. Laws, c. 327, § 14; 78 Del. Laws, c. 78, § 14.)

§ 6503. Form of estimate blanks.

(a) On or before September 1, annually, the official estimate blanks, which must be used in making the reports required by § 6502 of this title, shall be furnished by the Director of the Office of Management and Budget to each of the boards, commissions, agencies receiving or asking financial aid from the State.

(b) The estimate blanks shall be uniform and shall clearly designate the kind of information to be given thereon. They shall provide for an itemized statement of the amount of money considered necessary for the proper maintenance, extension or improvement of the agency during the ensuing fiscal year. It shall also show the actual revenues and expenses for the prior fiscal year of such reporting agency and the amounts by which the estimates for the fiscal year of the succeeding annual period are larger or smaller than the corresponding items of expenditures for the prior year, with full explanation of such changes in the estimates. All the salaries fixed by law shall be included without change in the itemized statement.

(c) The estimate blanks shall contain such other information and provide for such classification of accounts as may be justified by modern accounting practices and deemed necessary by the Director of the Office of Management and Budget to fully and clearly explain the needs and purposes of any estimated expenditure.

(d) The Director of the Office of Management and Budget shall furnish to each budget unit a complete set of forms to be used by the budget unit to present its budget. The Director of the Office of Management and Budget shall furnish instructions on the proper method of completing the forms and shall provide consultation as requested by any budget unit.

(37 Del. Laws, c. 81, § 3; Code 1935, § 5401; 29 Del. C. 1953, § 6503; 54 Del. Laws, c. 39, § 4; 61 Del. Laws, c. 131, § 2; 67 Del. Laws, c. 47, § 80; 75 Del. Laws, c. 88, § 21(13).)

§ 6504. Accounting of receipts and expenditures.

Each agency shall keep a detailed account of all receipts and expenditures under such appropriate headings, classifications and arrangements as may be prescribed by the Director of the Office of Management and Budget and used in the budget estimates. All bills, statements, letters, vouchers and documents pertaining to these receipts and disbursements shall be preserved and systematically filed by each agency.

(37 Del. Laws, c. 81, § 16; Code 1935, § 5414; 42 Del. Laws, c. 204, § 6; 29 Del. C. 1953, § 6504; 54 Del. Laws, c. 39, § 4; 75 Del. Laws, c. 88, § 21(13).)

§ 6505. Payment of appropriations; limitations.

(a) The moneys appropriated in the Budget Appropriation Bill shall be paid by the State Treasurer from the General Fund except as otherwise provided by law.

(b) Nothing contained in Titles 14 and 31 shall be construed as authorizing appropriations or expenditures of General Fund moneys during any fiscal year in excess of or other than the amount set forth in the Budget Appropriation Bill or as may be authorized in supplementary appropriation acts enacted by the General Assembly.

(c) No funds appropriated by the Budget Appropriation Bill or otherwise available to an agency of this State shall be expended except for purposes necessary to carry out the functions of such agency; no funds shall be expended for purposes such as gratuities, greeting cards, flowers and tickets to athletic events when unrelated to the agency's function; no funds shall be expended for parking tickets or other traffic violations; and the Secretary, Department of Finance, shall, in executing the Secretary's duty under § 6518 of this title, refuse to approve any such expenditures. Any agency affected by this section shall have the right of appeal to the Budget Commission. No agency or school district shall use credit cards registered in the name of the employee, agency, school district or State which could create an obligation of the State, except:

(1) Contract credit cards authorized by the Secretary of Finance and distributed to state employees may be used for duly authorized travel expenses and purchases made by state agencies and school districts pursuant to policy and procedures as established by the Secretary of Finance;

(2) Telephone credit cards to approved employees, elected officials and public members of boards and commissions under a program established and administered by the Government Support Services, Office of Management and Budget, pursuant to policy and procedures as established by the Secretary of Finance; and

(3) Oil company credit cards having received prior approval by the Secretary of Finance.

(d) Moneys appropriated in a grant-in-aid bill shall be paid in installments of 25 percent each quarter of the fiscal year, in accordance with administrative procedures established by the Secretary of Finance and the Treasurer of the State; provided, however, in the event the line item amount appropriated in a grant-in-aid bill is $6,000 or less, such amount shall be paid on an annual basis. The General Assembly may make exceptions to the installment requirement by adding epilogue language to the grant-in-aid bill.

(37 Del. Laws, c. 81, § 17; Code 1935, § 5415; 29 Del. C. 1953, § 6505; 54 Del. Laws, c. 39, § 4; 62 Del. Laws, c. 68, § 44; 64 Del. Laws, c. 109, § 1; 65 Del. Laws, c. 137, § 1; 67 Del. Laws, c. 62, § 19; 67 Del. Laws, c. 281, § 98; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 132, § 136; 73 Del. Laws, c. 143, §§ 5, 6; 75 Del. Laws, c. 88, §§ 16(5), 22(4); 75 Del. Laws, c. 350, § 162.)

§ 6506. Limitation of expenditures to appropriations.

No money shall be drawn by any agency from any fund in the State Treasury in excess of the amount appropriated by the General Assembly to the agency.

(37 Del. Laws, c. 81, § 18; Code 1935, § 5416; 29 Del. C. 1953, § 6506.)

§ 6507. Fiscal year.

The fiscal year of all agencies shall begin on July 1 in each calendar year, and end on June 30 of the succeeding calendar year.

(37 Del. Laws, c. 81, § 19; Code 1935, § 5417; 29 Del. C. 1953, § 6507.)

§ 6508. Annual report [Repealed].

Repealed by 66 Del. Laws, c. 303, § 32, effective July 1, 1988.

§ 6509. Agency records, open to audit.

All accounts, records, documents, papers and writings which in anywise pertain or relate to the financial accounts of any agency shall be open to inspection by any certified public accountant selected under Chapters 29 and 63 of this title.

(48 Del. Laws, c. 295, § 4; 29 Del. C. 1953, § 6509; 54 Del. Laws, c. 39, § 7.)

§ 6510. Interference with audit; penalty.

Any member of any agency, or any officer or agent or servant or employee of any agency, who interferes with or prevents, or tries to prevent, any certified public accountant or accountants selected under Chapters 29 and 63 of this title from auditing the accounts, records, documents, papers and writings in anywise pertaining or relating to the financial accounts of the agency, or who refuses to turn over all accounts, records, documents, papers and writings for audit shall be fined not more than $1,000 or imprisoned for not more than 6 months or both.

(48 Del. Laws, c. 295, § 6; 29 Del. C. 1953, § 6510; 54 Del. Laws, c. 39, § 7.)

§ 6511. Payment of funds to fair associations; approval of statement by Secretary of Finance; unexpended appropriations [Repealed].

Repealed by 67 Del. Laws, c. 47, § 81, effective July 1, 1989.

§ 6512. Order or requisition; necessity; form; approval; duplicates.

(a) It shall be unlawful for any agency to create any indebtedness or incur any obligation for personal services, work or labor or for property, materials or supplies, except by written, printed or electronic requisition or order according to the form or format prescribed by the accounting manual unless specifically exempted therein and bearing the approval or approvals as prescribed by the accounting manual.

(b) The Secretary of Finance shall prepare the form of such orders or requisitions and shall provide a space or means to affix the approval or approvals necessary.

(c) It shall be a breach of duty for any officer to approve any order or requisition in blank and a violation of this subsection shall be a cause for removal from office.

(d) Whenever any agency shall make any order or requisition, such transaction shall be transmitted to the Division of Accounting as prescribed by the accounting manual.

(e) This section shall not apply to the Governor of this State nor to any judiciary department thereof.

(32 Del. Laws, c. 30, § 1; Code 1935, § 425; 29 Del. C. 1953, § 6512; 54 Del. Laws, c. 39, § 5; 56 Del. Laws, c. 461, §§ 1, 2; 57 Del. Laws, c. 482, § 1; 57 Del. Laws, c. 741, § 1D; 59 Del. Laws, c. 381, § 40; 70 Del. Laws, c. 509, § 8.)

§ 6513. Statement of account.

No account or statement of indebtedness for any personal service, work or labor or for property, materials or supplies performed for, or furnished to, any agency shall be valid unless made out on a form prescribed by the Director of the Office of Management and Budget and conforming to § 6515 of this title.

(32 Del. Laws, c. 30, § 2; Code 1935, § 426; 29 Del. C. 1953, § 6513; 54 Del. Laws, c. 39, § 5; 57 Del. Laws, c. 741, § 1E; 75 Del. Laws, c. 88, § 21(13).)

§ 6514. Method of presenting form of indebtedness; exceptions.

(a) The Director of the Office of Management and Budget may indicate to every agency the manner and method in which any and every form of indebtedness, including salaries of officers and employees, shall be presented to the Director of the Office of Management and Budget.

(b) Subsection (a) of this section shall not apply to the Governor of this State or to the judicial department thereof, nor shall this section or § 6513 of this title apply to salaries when the amount of salary is fixed by law.

(32 Del. Laws, c. 30, §§ 3, 4; Code 1935, § 427; 29 Del. C. 1953, § 6514; 54 Del. Laws, c. 39, § 5; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(13).)

§ 6515. Approval of bills or statements of account; voucher or warrant for payment.

(a) No money shall be drawn from the Treasury of this State to pay the salaries and expenses of employees of this State, or to defray the expenses of any agency, or for or on account of any contract for building or repairs, or for property purchased, or for work and labor performed or for materials or supplies furnished to any agency, except upon legitimate itemized bills, invoices or statements presented to, reviewed and approved by an approving official of the agency being charged.

(b) Such obligations shall be paid only upon processing of the appropriate payment transactions as prescribed by the accounting manual, unless specifically exempted therein, and bearing the approval or approvals as prescribed by the accounting manual.

(c) If the payment transaction involves no violation of this chapter or of any State statute, the Division of Accounting shall cause the transaction to be approved and released for disbursement processing.

(d) For the payment of salaries, pensions or any other obligations for which bills, invoices or statements are not renderable, the Secretary of Finance shall process a payment transaction, which shall be approved by him or her, directing and authorizing the payment of the amounts due and payable.

(e) Nothing in this chapter shall apply to the payment of principal or interest on any obligation of this State.

(32 Del. Laws, c. 30, § 5; Code 1935, § 428; 29 Del. C. 1953, § 6515; 54 Del. Laws, c. 39, § 5; 56 Del. Laws, c. 461; 57 Del. Laws, c. 482, § 2; 57 Del. Laws, c. 741, §§ 1D, 1F; 58 Del. Laws, c. 422, § 2; 68 Del. Laws, c. 290, § 27; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 509, § 9.)

§ 6516. Payment of bills or statements of account.

(a) The approval of any bill, invoice or statement by the Secretary of Finance, or the presentation of any payment transaction approved by him or her, shall be considered full authority for the payment of the same by the State Treasurer.

(b) All checks shall be drawn in consecutive numerical order. The Secretary of Finance shall keep records of expenditures of all state agencies so that the amount and nature of all such expenditures may be readily ascertained.

(c) The Secretary of Finance shall periodically verify that the State Treasurer has drawn no checks other than those that have been accounted for in the manner provided in this section.

(d) In the event that the State shall, within 30 days of the later of the presentment of a valid invoice or bill on which a state agency (as defined in this chapter) is liable to make payment or the receipt of the goods or services reflected in such invoice or bill, fail to make

payment on such invoice or bill, the vendor presenting such invoice or bill may require the payment of interest by such state agency; provided, however, that:

(1) Presentment is deemed made when an invoice or bill is received by that agency, provided that the invoice or bill is received in a form consistent with the State Accounting Manual and regulations issued by the Director of the Office of Management and Budget and the Secretary of Finance.

(2) The vendor may not require interest with respect to any portion of such invoice or bill if such portion is controverted on reasonable grounds by the state agency, provided that the agency notifies the vendor in writing, within the 30-day period specified in this subsection, of the reason or reasons for controverting the invoice or bill.

(3) A vendor may require that interest under this subsection commence from the end of the 30-day period and continue until payment. All interest charges under this chapter shall be paid by the agency receiving the goods or services from the vendor. Such interest shall be calculated by the vendor in dollar amounts and expressly billed as such to the agency receiving goods or services from the vendor.

(4) A vendor may require that interest under this subsection accrue on the unpaid balance at a rate not to exceed an annualized rate of 12 percent.

(5) Agencies liable for interest payments under this subsection shall be authorized to make such payments from amounts appropriated for "contractual services" in the event an unencumbered balance shall exist in such line. In the case of agencies of public or higher education, such payment shall be made from local funds or state general funds not restricted to another purpose. The Office of Management and Budget shall establish procedures according to which interest payments under this subsection are recorded separately from other expenditures for contractual services.

(6) The requirement that interest payments be made by the agency receiving goods or services be imposed upon a different agency when, in the sound discretion of the Director of the Office of Management and Budget and the Controller General, the receiving agency demonstrates that some other agency or agencies bear greater responsibility for causing the delay which occasioned the payment of interest, in which case the responsible agency or agencies shall reimburse the receiving agency for interest charges.

(e) The Secretary of Finance shall transmit to the Controller General on January 15 and July 15 of each year a report which provides the following information:

(1) The name of any state agency which has, within the past 6 months, paid interest to a vendor in accordance with subsection (d) of this section;

(2) The number of such interest payments made by each agency; and

(3) The total amount of interest paid by each agency.

(f) For public works contracts as defined by § 6902 of this title, the following shall apply:

(1) The agency agent, by mutual agreement, may make progress payments on contracts of less than 90 days and shall make monthly progress payments on all other contracts as provided for in this paragraph.

The agency agent shall approve or disapprove an estimate of the work submitted for payment within 7 days from the date of submission of the written application for payment. If the agency agent approves the estimate of work, such estimate shall be certified for payment. If the agency agent disapproves the estimate of work, the agency or the agency agent shall issue a specific written finding within 21 days from the submission of the applicant for payment setting forth those items in detail in the estimate of the work that are not approved for payment under the contract. The agency may withhold 150% of the amount of expenses the agency reasonably expects to incur, as approved by the Director of the Office of Management and Budget, in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before 21 days after the estimate of work is certified and approved. If the approval of a federal agency is required, the payment shall be deemed timely if the payment is made within 10 days of a required federal agency's approval.

(2) An agency agent, contractor or subcontractor may decline to approve and certify a billing or estimate or a portion of a billing or estimate for any of the following reasons:

a. Unsatisfactory job progress;

b. Defective construction work of materials not remedied;

c. Disputed work or materials;

d. Failure to comply with material provisions of the contract;

e. Third-party claims filed or reasonable evidence that a claim will be filed;

f. Failure of the contractor or subcontractor to make timely payments for labor, equipment or materials;

g. Damage to the agency, contractor or subcontractor;

h. Reasonable evidence that the construction cannot be completed for the unpaid balance of the construction contract; or

i. Retainage of funds.

(3) The retainage, as allowed by § 6962(d)(5) of this title, shall be retained by the agency as a guarantee for complete performance of the contract, to be paid to the contractor within 60 days after completion or filing notice of completion of the contract or within 30 days of a required federal agency's final approval or certification. Retention of payments by an agency longer than 60 days after final completion and acceptance requires a specific written finding by the agency of the reasons justifying the delay in payment. Such

written finding shall be furnished by the agency within 10 days after completion or filing notice to the contractor or within 10 days of the required federal agency's final approval or certification. No agency may retain any moneys after 60 days in an amount exceeding 150% of the necessary amount to pay the expenses the agency reasonably expects to incur in order to pay or discharge the expenses determined by the agency in the finding justifying the retention of moneys.

(4) If a progress payment to a contractor is delayed by more than 21 days after the date of the agency agent's approval or the final payment to a contractor is delayed by more than 60 days after the date of the final submission, the contractor may require the payment of interest by such agency, except for periods of time during which payment is withheld pursuant to paragraph (f)(2) of this section, beginning on the twenty-second day for progress payments and on the sixty-first day for final payment; provided, however, that:

a. Presentment is deemed made when an invoice or bill is received by that agency or agency agent, provided that the invoice or bill is received in a form consistent with the State Accounting Manual and regulations issued by the Director of the Office of Management and Budget and the Secretary of Finance. Such forms shall be included in the project's bid documents.

b. The contractor may not require interest with respect to any portion of such invoice or bill if such portion is controverted on reasonable grounds by the state agency or agency agent, provided that the agency notifies the contractor in writing, within the 21-day period for progress payments or 60 days for final payments, of the reason or reasons for controverting the invoice or bill.

c. A vendor may require that interest under this subsection commence from the end of the 21-day period for progress payments or the 60-day period for final payment and continue until payment. All interest charges under this chapter shall be paid by the agency receiving the goods or services from the contractor. Such interest shall be calculated by the contractor in dollar amounts and expressly billed as such to the agency receiving goods or services from the contractor.

d. A contractor may require that interest under this subsection accrue on the unpaid balance at a rate not to exceed 2% above the prime interest rate as established by the Federal Reserve.

e. Agencies liable for interest payments under this subsection shall be authorized to make such payments from amounts appropriated for "contractual services" in the event an unencumbered balance shall exist in such line. In the case of agencies of public or higher education, such payment shall be made from local funds or state general funds not restricted to another purpose. The Office of Management and Budget shall establish procedures according to which interest payments under this subsection are recorded separately from other expenditures for contractual services.

f. Interest payments to be made by the agency receiving goods or services may be imposed upon a different agency when, in the sound discretion of the Director of the Office of Management and Budget and the Controller General, the receiving agency demonstrates that some other agency or agencies bear greater responsibility for causing the delay which occasioned the payment of interest, in which case the responsible agency or agencies shall reimburse the receiving agency for interest charges.

(5) The agency, contractor or subcontractor may change the time periods outlined in this subsection only if:

a. Prior written approval is given by the Director of the Office of Management and Budget;

b. The public works contract specifically provides in a clear and conspicuous manner for a later payment defined by a specific number of days after certification and approval; and

c. All plan documents, including bid plans and construction plans, shall permanently display, in clear and conspicuous type, the following legend or substantially similar language:

NOTICE OF EXTENDED PAYMENT PROVISION

This contract allows the agency, contractor and subcontractor to make payment within _____ days after certification and approval of billings and estimates. Such changes shall also be indicated in a clear and conspicuous manner by contractors and subcontractors on all contracts with subcontractors and material suppliers.

(6) An agency may change the time period to certify and approve a billing or estimate only if:

a. Prior approval is given by the Director of the Office of Management and Budget;

b. The public works contract specifically provides in a clear and conspicuous manner for an extended time period within which a billing or estimate shall be certified or approved, defined by a specific number of days after the agency has received the billing or estimate; and

c. All plan documents, including bid plans and construction plans, shall include, in clear and conspicuous type, the following legend or substantially similar language:

NOTICE OF EXTENDED CERTIFICATION AND APPROVAL PERIOD PROVISION

This contract allows the agency to certify and approve billings and estimate within _____ days after the billings and estimates are received from the contractor.

Such changes shall also be indicated in a clear and conspicuous manner by contractors and subcontractors on all contracts with subcontractors and material suppliers.

(7) The contractor shall pay the contractor's subcontractors or material suppliers and each subcontractor shall pay the subordinate subcontractors or material supplier within 21 days of receipt of each progress payment, unless otherwise agreed to in writing by the parties, the respective amounts allowed the subordinate or subcontractor or material supplier on account of the work performed by

subordinate contractors and material suppliers, to the extent of each subordinate subcontractor's or material suppliers interest therein, except that no contract for public works may materially alter the rights of any contractor, subcontractor, subordinate subcontractor or material supplier to receive prompt and timely payment as provided under this subsection or Chapter 35 of Title 6. If a progress or final payment to a subordinate subcontractor or material supplier is delayed by more than 21 days after receipt of a progress or final payment by the contractor or subcontractor, the subordinate subcontractor or material supplier may require payment of interest by the contractor or subcontractor except for periods of time during which payment is withheld pursuant to paragraph (2) of this section, beginning on the twenty-second day, provided, however, that:

a. Presentment is deemed made when an invoice or bill is received by that contractor or subcontractor, provided that the invoice or bill is received in a form consistent with the contractor's or subcontractor requirements.

b. The subcontractor or material supplier may not require interest with respect to any portion of such invoice or bill if such portion is controverted on reasonable evidence by the contractor or subcontractor, provided that the contractor or subcontractor notifies the vendor in writing within the 21-day period specified in this subsection of the reason or reasons for controverting the invoice or bill.

c. A subordinate subcontractor or material supplier may require that interest under this subsection commence from the end of the 21-day period and continue until payment. All interest charges under this chapter shall be paid by the contractor or subcontractor and shall not be charged to any state agency. Such interest shall be calculated by the subordinate subcontractor or material supplier in dollar amounts and expressly billed as such to the contractor or subcontractor.

d. A subordinate subcontractor or material supplier may require that interest under this subsection accrue on the unpaid balance at a rate not to exceed 2% above the prime interest rate as established by the Federal Reserve.

(8) In any action or arbitration brought to collect payments or interest under this subsection, the arbitrator or court shall award damages equal to the amount that is determined by the arbitrator or court to have been wrongfully withheld. An amount shall not be deemed to have been wrongfully withheld to the extent it bears a reasonable relation to the value of any disputed amount or claim held in good faith by the agency contractor or subcontractor against whom the contractor, subcontractor of material supplier is seeking to recover payment.

(32 Del. Laws, c. 30, § 6; Code 1935, § 429; 29 Del. C. 1953, § 6516; 54 Del. Laws, c. 39, § 5; 55 Del. Laws, c. 352; 57 Del. Laws, c. 741, § 1D; 58 Del. Laws, c. 422, § 1; 64 Del. Laws, c. 19, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 509, § 10; 73 Del. Laws, c. 364, § 3; 75 Del. Laws, c. 88, §§ 16(5), 21(13).)

§ 6517. Secretary of Finance to safeguard and systematize expenditure.

The Secretary of Finance may make such requirements as will tend to safeguard or systematize the expenditure of the State's money; but the Secretary of Finance shall make no requirement that will unnecessarily interfere with the prompt payment of the amounts due, and under no circumstances shall the Secretary of Finance cause the payment of salaries of state officers to be delayed beyond the date upon which the same are due, nor shall the Secretary of Finance have the authority to countersign the checks of the Treasury Department.

(32 Del. Laws, c. 30, § 7; Code 1935, § 430; 29 Del. C. 1953, § 6517; 54 Del. Laws, c. 39, § 5; 57 Del. Laws, c. 741, § 1D; 70 Del. Laws, c. 186, § 1.)

§ 6518. Examination of bills and accounts by Secretary of Finance; grounds for disapproval.

(a) The Secretary of Finance shall examine all bills, statements, accounts and demands against the State and the Secretary of Finance may require affidavits that articles have been furnished, services rendered and expenses incurred, as claimed. The Secretary of Finance shall refuse to approve any bill or statement of indebtedness which has not been presented to the Secretary of Finance in conformity with this chapter, or which would more than exhaust the appropriation from which it must be paid, or which is not in accordance with the contract under which the indebtedness was created or where the agency shall have refused to furnish the Secretary of Finance with any information or data that the Secretary of Finance may require for the execution of the Secretary's duties, or where the order or requisition, or bill or statement of indebtedness involves any transaction or item not in accordance with law. The Secretary of Finance shall have no right to refuse approval except on the grounds specified.

(b) Nothing in this section shall apply to the Governor of this State or to the judicial department thereof, or to the principal or interest of any obligation of the State.

(32 Del. Laws, c. 30, § 8; Code 1935, § 431; 29 Del. C. 1953, § 6518; 54 Del. Laws, c. 39, § 5; 57 Del. Laws, c. 741, § 1D; 70 Del. Laws, c. 186, § 1.)

§ 6519. Expenditures not to exceed appropriations.

(a) No order or requisition shall be made, nor any engagement entered into, nor shall any expense be incurred by any agency which will result in an expenditure of money in excess of the appropriation made to such agency. No obligation incurred by any officer or employee in violation of this section shall impose any liability upon the State.

(b) Notwithstanding subsection (a) of this section, school districts and colleges may requisition, on or after March 1, school supplies or capital outlay items for the following school year with the provision that the obligations thus incurred shall not be due and payable until after July 1 of the next fiscal year. In the case of capital outlay items, the purchasing agency must demonstrate that the item is needed

at the outset of the school year and that it cannot be obtained in time unless it is ordered before the close of the fiscal year prior to the year in which it is actually needed. This exception to subsection (a) of this section shall be permitted under the rules and regulations of the Director of the Office of Management and Budget.

(c) Notwithstanding any other provision of law, the State may advance, from time to time, from the General Fund to the Department of Transportation for its corporate purposes an amount reasonably expected to be reimbursed to the State by or on behalf of the Department of Transportation within 2 weeks of any such advance or by written agreement between the Secretary of Finance and the Secretary of Transportation. However, under any circumstances, the Department of Transportation shall fully reimburse all funds advanced prior to the end of the fiscal year. The Secretary of Finance is hereby authorized on behalf of the State to enter into contracts or other arrangements with the Department of Transportation to provide for such advances and reimbursement. Any such contracts or arrangements shall take into account the availability of amounts in the General Fund to meet the obligations of the State for the purposes to be met from appropriations by the General Assembly.

(d) Notwithstanding any other provisions of law, the State, in order to comply with the federal Cash Management Improvement Act of 1990 (Public Law 101-453, dated October 24, 1990), may advance funds from the Treasury to state agencies participating in federal assistance programs, where participation in such programs has been authorized in accordance with Chapter 76 of this title. Any advances and reimbursements made pursuant to this subsection shall be in compliance with rules and regulations of the Director of the Office of Management and Budget.

(e) Notwithstanding any provisions of law to the contrary, if during the course of a fiscal year, any reorganized local school district is unable to meet its obligation to fund the local share of semimonthly payroll due to either delayed receipt of property tax collectibles or previous expenditure of all available revenues, the Secretary of Finance and Director of the Office of Management and Budget, with the consultation of the Controller General, are authorized to release the unfunded payroll by covering the local liability with general funds. Such a use of general funds shall be contingent upon the reorganized local school district submitting to the Secretary of Finance a letter of agreement, signed by the district superintendent and president of the local board of education, which stipulates that the district will repay the state General Fund in full, including an amount for interest defined as the average rate of return on state investments during the period of the loan. Such repayment shall be made by means of a tax anticipation note or other means available to the district and shall be accomplished prior to releasing the next regular payroll. The provisions of this section shall not apply to obligations other than payroll. The provisions of this section may be utilized only once by each reorganized local school district during the course of any 1 fiscal year and may not be utilized for the June 30th payroll.

(32 Del. Laws, c. 30, § 9; Code 1935, § 432; 29 Del. C. 1953, § 6519; 57 Del. Laws, c. 341; 65 Del. Laws, c. 88, § 1; 66 Del. Laws, c. 85, § 284; 66 Del. Laws, c. 303, § 26; 66 Del. Laws, c. 360, § 55; 68 Del. Laws, c. 290, §§ 28, 234; 69 Del. Laws, c. 64, § 292; 75 Del. Laws, c. 88, § 21(13).)

§ 6519A. Expenditures to firms that discriminate on basis of sex prohibited.

No order or requisition shall be made, nor any engagement entered into, nor shall any expense be incurred by any agency which will result in an expenditure of money to any person or firm that directly or indirectly refuses, withholds from or denies to any person on the basis of sex full and equal accommodations, facilities, advantages or privileges. No obligation incurred by any officer or employee in violation of this section shall impose any liability upon the State.

(64 Del. Laws, c. 135, § 1.)

§ 6520. Advances to agencies; regulation and security.

(a) No greater sum than is necessary to meet expenses then incurred shall be drawn from the Treasury of this State for or on account of any agency. An agency which is authorized to expend any moneys on behalf of this State may, however, have money advanced to it from the State Treasury, in such sums and subject to such rules and regulations as the Secretary of Finance may determine; provided however, that the amount advanced from the General Fund to any agency at any 1 time shall not exceed $5,000.

(b) To secure such an advance, the head of the agency desiring the same must certify in duplicate to the Secretary of Finance what amount is needed, that it is needed for immediate use and, as specifically as may be, the purposes for which the expenditure is required. The Secretary of Finance and the State Treasurer shall deal with such certificates in the same manner as with bills or statements of indebtedness as provided in this chapter.

(c) In case of any such advance, the person or official making the certificate shall within 30 days after receipt of an advance file with the Secretary of Finance and the State Treasurer a detailed statement of the amounts expended with vouchers therefor and all advances so made shall be accounted for.

(32 Del. Laws, c. 30, § 10; 37 Del. Laws, c. 51, § 1; Code 1935, § 433; 29 Del. C. 1953, § 6520; 54 Del. Laws, c. 39, § 5; 55 Del. Laws, c. 63; 57 Del. Laws, c. 741, § 1D; 67 Del. Laws, c. 322, § 1.)

§ 6521. Use of unexpended appropriations to meet unpaid requisitions.

The Secretary of Finance during the last month of the fiscal year may set aside, from unexpended appropriations, a sum sufficient to pay all bills for which requisitions have been issued in accordance with this chapter during the fiscal year, but which remain unpaid. No

such sum shall be set aside for the purpose of paying state employees' salaries or wages which do not become due and payable until the next fiscal year. Funds so set aside shall not lapse or revert at the end of such fiscal year and shall continue to be available in the fiscal year following until reverted by the Secretary of Finance. In no instance shall such funds continue beyond June 30 of the fiscal year following.

(32 Del. Laws, c. 30, § 10; Code 1935, § 433; 29 Del. C. 1953, § 6521; 53 Del. Laws, c. 105; 54 Del. Laws, c. 39, § 5; 57 Del. Laws, c. 741, § 1D; 60 Del. Laws, c. 113, § 56; 60 Del. Laws, c. 289, § 9.)

§ 6522. Disposal of spoiled checks.

If a check of the State Treasurer is spoiled and becomes useless, a note of such fact shall be made on the stub thereof and the check shall be cancelled and handed to the Secretary of Finance, who shall file the same with the bills and vouchers and shall enter the same in a book, as provided in § 6516 of this title with respect to bills and statements of indebtedness.

(32 Del. Laws, c. 30, § 11; Code 1935, § 434; 29 Del. C. 1953, § 6522; 54 Del. Laws, c. 39, § 5; 57 Del. Laws, c. 741, § 1D.)

§ 6523. Accounting of receipts, expenditures and property; access to books and records.

The Secretary of Finance shall keep a distinct account, under appropriate heads, of all receipts and expenditures of state moneys. The Secretary of Finance shall keep a like account of all state property and of all debts and obligations due to and from the State. For such purposes the Secretary shall have free access to the books and papers, documents and records of the several state agencies receiving or expending any state money.

(32 Del. Laws, c. 30, § 12; Code 1935, § 435; 29 Del. C. 1953, § 6523; 54 Del. Laws, c. 39, § 5; 57 Del. Laws, c. 741, § 1D; 70 Del. Laws, c. 186, § 1.)

§ 6524. Statement of property under agency control.

Every agency shall furnish the Secretary of Finance annually with a distinct statement of all qualifying property of the State under the control or jurisdiction of the agency, and the cost price of such property. Such statement shall be prepared in accordance with instructions set forth in the Budget and Accounting Policy Manual, and shall be certified by the head of the agency making the same.

(32 Del. Laws, c. 30, § 13; Code 1935, § 436; 29 Del. C. 1953, § 6524; 54 Del. Laws, c. 39, § 5; 57 Del. Laws, c. 741, § 1D; 67 Del. Laws, c. 281, § 54.)

§§ 6525, 6526. Payroll statement; stamping audited vouchers [Repealed].

Repealed by 70 Del. Laws, c. 509, §§ 11, 12, effective July 12, 1996.

§ 6527. Delinquencies to be reported by Secretary of Finance.

Upon the discovery of any delinquency in any agency, the Secretary of Finance shall forthwith report the same to the General Assembly, the Director of the Office of Management and Budget and the Attorney General who shall thereupon take appropriate action.

(Code 1852, § 534; Code 1915, § 508; 32 Del. Laws, c. 30, § 18; Code 1935, §§ 414, 442; 29 Del. C. 1953, § 6527; 54 Del. Laws, c. 39, § 5; 57 Del. Laws, c. 741, § 1G; 75 Del. Laws, c. 88, § 21(13).)

§ 6528. Transfer of funds.

(a) No transfer of funds from 1 item of account to another on the books of any agency shall be made without the approval of the Director of the Office of Management and Budget.

(b) No transfer of appropriated general funds from 1 item of account to another on the books of any agency shall be made without the approval of the Director of the Office of Management and Budget and the Controller General.

(c) Appropriated general funds shall remain within the department or agency to which appropriated and shall not be transferred for use by another department or agency, except as provided by law or within the provisions of subsection (d) of this section.

(d) Appropriated general funds may be transferred within a department or agency of the State, subject to the authority and limitations set forth in Part VI of this title, and the approval by the Controller General, except that approval by the Controller General is not required on transfers from the Budget Commission; provided, however, that no funds may be transferred into appropriations for "personnel costs," "salaries" or "salaries and wages" from appropriations for nonsalary items. Funds appropriated by the Budget Appropriation Bill for "contingency funds" shall not be used for the payment of a line-item salary, except as otherwise specifically provided by law and for the sole purpose of maintaining the salary schedule set forth for school employees in Chapter 13 of Title 14.

(e) The provisions of subsection (d) of this section are waived with respect to the Department of Technology and Information. Requests from the Secretary of the Department of Technology and Information for transfer of unexpended funds appropriated to personnel costs to "contractual services — equipment rental" may be made upon approval of the Director of the Office of Management and Budget and the Controller General.

(f) In the event the appropriation set forth by the Budget Appropriation Bill to any department or agency is excessive or inadequate, the Director of the Office of Management and Budget, with concurrence of the Controller General, is authorized to transfer funds among the various departments for:

(1) Specific nonroutine requirements, which shall be documented and controlled through separate accounts within the Office of Management and Budget contingencies.

(2) Personnel costs to meet overall state personnel cost requirements. Such transfers shall be fully documented.

(3) Matching funds and public education funds where extended educational components may be administered within other departments or agencies.

(g) Agencies having appropriated special funds in § 1 of the Budget Appropriation Bill and only 1 holding account may directly deposit funds into their appropriation lines, not to exceed the total appropriation for each line contained in § 1 of the Budget Appropriation Bill. Any additional receipts must be deposited in the holding account.

(h) Transfers among the various appropriated special fund appropriation lines, excluding those in subsection (f) of this section and from a holding account into an expenditure account, require the approval of the Director of the Office of Management and Budget and Controller General.

(i) Agencies completing organization restructuring approved in § 1 of the Budget Appropriation Bill or any other legislation authorizing such organizational changes are hereby authorized to transfer funds between organizational units. These transfers shall not require the approval of the Director of the Office of Management and Budget or Controller General.

(j) All General Fund and appropriated special fund transfers requested by public education require the approval of the Director of the Office of Management and Budget and Controller General.

(32 Del. Laws, c. 30, § 16; Code 1935, § 439; 29 Del. C. 1953, § 6528; 54 Del. Laws, c. 39, § 5; 62 Del. Laws, c. 68, § 43; 66 Del. Laws, c. 303, § 27; 67 Del. Laws, c. 47, § 82; 67 Del. Laws, c. 281, § 55; 70 Del. Laws, c. 274, § 2; 70 Del. Laws, c. 509, §§ 13-16; 74 Del. Laws, c. 68, § 72; 74 Del. Laws, c. 128, § 9; 75 Del. Laws, c. 88, § 21(13).)

§ 6529. Control of agency expenditures.

The Director of the Office of Management and Budget is hereby empowered and directed to exercise, subject to the approval of the Governor, such control over the monthly and/or quarterly rates of agency expenditures of funds appropriated to such agency as the Director of the Office of Management and Budget may deem necessary to assure the effective and continuous operation of the various agencies during the fiscal year. The authority of the Director of the Office of Management and Budget under this section shall apply to local and special school districts insofar as they administer funds supplied by the State, but not with regard to funds raised locally.

(29 Del. C. 1953, § 6529; 54 Del. Laws, c. 39, § 8; 57 Del. Laws, c. 234, § 2; 57 Del. Laws, c. 741, § 1H; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(13).)

§ 6530. Other employment costs (fringe benefits).

The Secretary of Finance and the Director of the Office of Management and Budget shall promulgate such budgetary, accounting, funding and reporting rules and regulations as shall be necessary to implement § 6340 of this title.

(29 Del. C. 1953, § 6530; 58 Del. Laws, c. 579, § 2; 75 Del. Laws, c. 88, § 21(13).)

§ 6531. Reimbursement for cost of goods and services provided.

(a) All state agencies and departments which provide goods and services to any other state agency, state department or to any other governmental agency, person, corporation, partnership or business organization on a reimbursement basis shall be reimbursed in amounts which shall not be less than the full cost of such goods and services. If, however, the Governor, or the Governor's designate, after receiving a written request from an agency or department, shall indicate to such agency or department that such reimbursement for the full cost of goods or services provided is not in the best interest of the State, then reimbursement for the full cost of any goods or services provided shall not be required until June 30 of the next odd year. This section shall not apply to specialized transportation authorities created pursuant to Chapter 17 [repealed] of Title 2.

(b) "Full cost" is defined as purchase or out-of-pocket costs including other employment costs plus overhead costs, computed in accordance with accepted governmental accounting principles, as prescribed by the Secretary of Finance.

(29 Del. C. 1953, § 6531; 58 Del. Laws, c. 579, § 2; 61 Del. Laws, c. 457, § 2; 62 Del. Laws, c. 92, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6532. Cost-of-living salary supplements [Repealed].

Repealed by 61 Del. Laws, c. 116, § 86(b), effective July 1, 1977.

§ 6533. Limitation on appropriations; advisory benchmark; Budget Stabilization Fund.

(a) The following terms, as used in this section, shall be defined as follows:

(1) "Appropriation" shall include automatic appropriations and continuing appropriations. An automatic appropriation shall be deemed made when any of the funds so appropriated are expended. A continuing appropriation shall be deemed made on the effective date of the first expenditure of funds so appropriated, notwithstanding the fact that the appropriation may be made continuing by virtue of a later act preventing the reversion of the appropriation.

(2) “Automatic appropriation” shall mean an appropriation which specifies no fixed dollar maximum amount, that amount being determined upon the occurrence of a stated future condition.

(3) “Budget Act” shall mean the Budget Appropriation Bill duly enacted according to §§ 6335 through 6338 of this title, approved by the Governor, and any amendatory legislation.

(4) “Budget Reserve Account” as used in subsection (b) of this section shall mean the Budget Reserve Account as of the close of the fiscal year next preceding the year in which the appropriation, supplemental appropriation or Budget Act described in that subsection is enacted.

(5) “Continuing appropriation” shall mean the unencumbered balance of any General Fund appropriation which, once established, is automatically renewed in any succeeding fiscal year without further legislative action.

(6) “General Fund” shall be as defined in § 6102 of this title.

(7) “Revenue anticipation bonds or notes” shall mean notes or bonds issued by the State in anticipation of the receipt by the State of taxes and revenues payable to the State and to the payment of which the State has pledged its full faith and credit, to the extent that the proceeds of such bonds or notes are deposited in the General Fund.

(8) “Supplemental appropriation” shall mean an appropriation provided by a Supplementary Appropriation Bill pursuant to § 6339 of this title.

(b) No appropriation, supplemental appropriation or budget act shall cause the aggregate General Fund appropriations enacted for any given fiscal year to exceed 98 percent of the estimated General Fund revenue for such fiscal year from all sources, including estimated unencumbered funds remaining at the end of the previous fiscal year. An act approved pursuant to Article VIII, § 3 of the Delaware Constitution of 1897, shall not be considered an appropriation for the purpose of this section. Estimated unencumbered funds are calculated by taking the estimated General Fund cash balance at the end of the fiscal year less estimated revenue anticipation bonds or notes, estimated encumbrances, estimated continuing appropriations and the amount of the Budget Reserve Fund as established in subsection (d) of this section at the end of said fiscal year. The amount of said revenue estimate and estimated unencumbered funds remaining shall be determined by the most recent joint resolution approved from time to time by a majority of the members elected to each House of the General Assembly and signed by the Governor.

(c) Notwithstanding subsection (b) of this section, any portion of the amount between 98 and 100 percent of the estimated General Fund revenue for any fiscal year as estimated in accordance with subsection (b) of this section may be appropriated in any given fiscal year in the event of emergencies involving the health, safety or welfare of the citizens of the State, such appropriations to be approved by $^{3}/_{5}$ of the members elected to each House of the General Assembly.

(d) There is hereby established a Budget Reserve Account within the General Fund. Within 45 days after the end of any fiscal year, the excess of any unencumbered funds remaining from the said fiscal year shall be paid by the Secretary of Finance into the Budget Reserve Account; provided, however, that no such payment will be made which would increase the total of the Budget Reserve Account to more than 5 percent of only the estimated General Fund revenues as set by subsection (b) of this section. The excess of any unencumbered funds shall be determined by subtracting from the actual unencumbered funds at the end of any fiscal year an amount which together with the latest estimated General Fund revenues is necessary to fund the ensuing fiscal year’s General Fund budget including the required estimated supplemental and automatic appropriation for said ensuing fiscal year less estimated reversions. The General Assembly by three-fifths vote of the members elected to each House may appropriate from the Budget Reserve Account such additional sums as may be necessary to fund any unanticipated deficit in any given fiscal year or to provide funds required as a result of any revenue reduction enacted by the General Assembly.

(e) There is hereby established a Revenue Refund Account within the Office of the State Treasurer. Prior to depositing receipts and moneys of this State to the credit of the State Treasurer in the General Fund, the State Treasurer and the Secretary of Finance shall determine the appropriate refund amounts by major categories and pay same into the Revenue Refund Account.

(1) [Repealed.]

(2) The State Treasurer shall prepare and issue reports periodically, upon request, as follows:

a. Estimates of refund disbursements for the current fiscal year and next succeeding fiscal year by major categories for use by the Delaware Economic and Financial Advisory Council (or its successor entity) and/or members thereof; and

b. Status of Revenue Refund Account by major categories at the close of business for each month for use by the Secretary of Finance, the Director of the Office of Management and Budget, and the Controller General.

(f) No appropriation or supplemental appropriation enacted for any given fiscal year for grants-in-aid in the aggregate shall:

(1) Exceed 1.2 percent of the estimated net state General Fund revenue estimated in March for such fiscal year from all sources; and

(2) Cause the aggregate state General Fund appropriations enacted for any given fiscal year to exceed 98 percent of the estimated net state General Fund revenue for such fiscal year from all sources, including estimated unencumbered funds remaining at the end of the previous fiscal year.

The term “estimated net state General Fund revenue” means the estimated gross state General Fund revenue less estimated revenue refunds.

(g) Any appropriation for municipal street aid shall not be subject to the limitation in subsection (f) of this section.

(h) After the end of each fiscal year, the Director of the Office of Management and Budget shall transfer the appropriation to the OPEB Fund required under § 5544(c)(2) of this title.

(i) A Benchmark Appropriation is established, and is to be calculated for a fiscal year as the sum of the product of the Benchmark Index for the fiscal year and the sum of the previous fiscal year's Budget Act and appropriations for grants-in-aid and the appropriation to the OPEB Fund, required under § 5544(c)(2) of this title, plus an amount not to exceed 1% of the previous fiscal year's Budget Act, but only to the extent that the amount is directed as a supplemental appropriation to the bond and capital improvements act for the fiscal year.

(1) The Benchmark Index must be comprised of relevant indicators of growth in the State's economy and initially be comprised of equal weightings of the 3-year average from the current and 2 preceding fiscal years of all of the following:

a. Delaware personal income growth.

b. Delaware population growth, plus the growth in the implicit price deflator for state and local government purchases.

(2) The Benchmark Index must be estimated and reported to the Governor and General Assembly by the Delaware Economic and Financial Advisory Council in December and May of each fiscal year. The report must include a statement of existing reserve funding available, including all of the following:

a. The balance in the Budget Reserve Account, established under § 6 of Article VIII of the Delaware Constitution.

b. The 2% set-aside, as determined by the 98% appropriation limit under § 6 of Article VIII of the Delaware Constitution.

c. The balance that was allocated to the Budget Stabilization Fund that is established under subsection (k) of this section.

(3) The Delaware Economic and Financial Advisory Council shall review the impacts of, and recommend changes to, the calculation of the Benchmark Index with a report to the Governor and General Assembly not later than October 31 of the fiscal year of a general election for the Governor of this State.

(j) Except as provided under § 6335(a)(4) of this title, aggregate General Fund appropriations in the Budget Appropriation Bill required to be submitted by the Governor under § 6335(a) of this title, and supplemental appropriations for grants-in-aid, may not exceed the product of 1 plus the Benchmark Index and the sum of aggregate General Fund appropriations in the prior year's Budget Act plus supplemental appropriations for grants-in-aid.

(k) A Budget Stabilization Fund is established as a reserve account. Deposits to and appropriations and withdrawals from the Budget Stabilization Fund are authorized as follows:

(1) Whenever estimated unencumbered funds are projected to be negative during the current fiscal year, the General Assembly, by joint revenue resolution approved from time to time by a majority of the members elected to each House of the General Assembly and signed by the Governor under § 6(b) of Article VIII of the Delaware Constitution or act, may subtract funds from the Budget Stabilization Fund and include the funds in a revision of estimated unencumbered funds.

(2) The Director of the Office of Management and Budget shall transfer to the Budget Stabilization Fund the unencumbered balance at the end of each fiscal year in excess of the 2% set-aside, as determined by the most recent joint revenue resolution for the fiscal year under § 6 of Article VIII of the Delaware Constitution and this section.

(3) For purposes of the Budget Appropriation Bill required under § 6335(a) of this title, whenever the 98% limit under § 6 of Article VIII of the Delaware Constitution for the subsequent fiscal year is more than the Benchmark Appropriation for the fiscal year, the excess is considered "extraordinary revenues" available for allocation only to the Budget Stabilization Fund, nonrecurring expenditures, or reducing long-term liabilities. The distribution of extraordinary revenues and any such changes may be detailed in the report and the Budget Appropriation Bill as required under § 6335(a) of this title.

(4) For purposes of the Budget Appropriation Bill required under § 6335(a) of this title, whenever the 98% limit under § 6 of Article VIII of the Delaware Constitution for any given fiscal year is less than the Benchmark Appropriation for the fiscal year, the report and the Budget Appropriation Bill required under § 6335(a) of this title must detail whether and how much funding is proposed to be subtracted from the Budget Stabilization Fund and included in estimated unencumbered funds when determining the joint revenue resolution approved from time to time by a majority of the members elected to each House of the General Assembly and signed by the Governor under § 6(b) of Article VIII of the Delaware Constitution.

(*l*) Notwithstanding subsection (k) of this section, deposits to and appropriations and withdrawals from the Budget Stabilization Fund solely for the report and the Budget Appropriation Bill required under § 6335(a) of this title to be proposed and submitted by the Governor are limited as follows:

(1) A deposit is not required when the balance of the Budget Stabilization Fund is at or above 5% of only the estimated State General Fund revenues, as determined under subsection (b) of this section.

(2) A deposit may not be made that would increase the balance of the Budget Stabilization Fund to more than 7% of only the estimated State General Fund revenues.

(3) Appropriations and withdrawals from the Budget Stabilization Fund for any given fiscal year may not exceed 50% of the balance of the Budget Stabilization Fund.

(61 Del. Laws, c. 411, § 1; 62 Del. Laws, c. 235, §§ 1, 2; 63 Del. Laws, c. 196, § 3; 65 Del. Laws, c. 87, § 79; 66 Del. Laws, c. 87, § 4; 66 Del. Laws, c. 345, § 17; 75 Del. Laws, c. 88, § 21(13); 83 Del. Laws, c. 290, § 1(8); 83 Del. Laws, c. 323, § 1; 84 Del. Laws, c. 100, § 5; 84 Del. Laws, c. 294, § 2; 84 Del. Laws, c. 298, § 19.)

§ 6534. Revenue estimates.

(a) The Governor shall submit to all members of the General Assembly and the Controller General an estimate of anticipated General Fund revenues by major categories for the current and next immediate fiscal year. Such report shall be made not later than October 25, December 25, March 25, May 25, and June 20.

(b) (1) Anticipated General Fund revenue estimate figures must be reported as net, i.e., anticipated refunds for overpayments of taxes and fees required by Delaware state law must be subtracted by major categories for the current and next immediate fiscal year from gross estimates of anticipated General Fund revenues.

(2) The Secretary of Finance shall report such revenue refund disbursements on all financial statements issued by the Department of Finance. Further, estimates of fiscal year revenues and disbursements prepared by the Delaware Economic and Financial Advisory Council (or its successor entity) shall follow this procedure.

(3) The Delaware Economic and Financial Advisory Council shall review the report described in § 8305(6)b. of this title and shall, based on such review and any other information as the Council deems appropriate, approve by majority vote no later than May 25 of the year following the issuance by the Division of Revenue of the report an estimate of the revenue loss to the State caused by tax preferences as that term is defined in § 8305(6) of this title.

(62 Del. Laws, c. 68, § 47; 64 Del. Laws, c. 324, § 1; 65 Del. Laws, c. 87, § 95; 68 Del. Laws, c. 241, § 2; 82 Del. Laws, c. 226, § 1.)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations
Chapter 66
Contracts With Public Library System

§ 6601. State library policy.

It is hereby declared to be the policy of the State, as part of its provision for public education, to promote the establishment and development of public library service throughout the State and its political subdivisions.

(64 Del. Laws, c. 400, § 1.)

§ 6602. Contracting for library services.

(a) In order to encourage the maintenance and development of proper standards, including personnel standards, hours of operation, library materials, collection standards and interlibrary resource sharing, and to provide for the development of statewide public library service, the Delaware Division of Libraries may contract with any public library, including privately incorporated public libraries or public library systems established pursuant to Chapter 8 of Title 9, which qualifies under standards established by the Division with the approval of the Delaware Council on Libraries, to provide library services.

(b) The formula for services purchased by the Division of Libraries shall be as follows for fiscal year 2012 and in each succeeding fiscal year:

(1) Forty percent of the total funds appropriated under this chapter shall be allocated among each of the contracting public libraries based upon actual expenditures, exclusive of state or federal funds, for public library services by such contracting public library and by the political subdivision or subdivisions operating or participating in the public library or public library system in the most recently completed fiscal year or in the case of a newly-constructed or renovated public library project based upon expenditures in the current fiscal year subject to adjustment for actual expenditures at fiscal year end, as determined by the Division of Libraries and Delaware Council on Libraries; and

(2) Forty percent of the total funds appropriated under this chapter shall be allocated among each of the contracting public libraries on a per capita basis for persons served by the public library or public library system as determined by the Division of Libraries with the approval of the Council on Libraries; and

(3) Ten percent of the total funds appropriated under this chapter shall be allocated to the Division of Libraries to fund statewide library services, cooperative planning and evaluation services, and to enable public libraries and public library systems to meet standards established by the Division of Libraries with the approval of the Council on Libraries; and

(4) Up to 10% of the total funds appropriated under this chapter may be allocated to fund countywide and/or regional public library services provided through anchor public libraries approved by the Division of Libraries and Council on Libraries. The Division of Libraries may with the approval of the Council on Libraries use any portion of the funds set aside pursuant to this subsection to temporarily assist a contracting public library impacted by changes to the funding allocations as a result of a decennial census or the addition or expansion of a contracting public library. Any funds not allocated under this subsection shall be distributed to the contract public libraries on the same pro-rata basis as funds are allocated pursuant to paragraphs (b)(1) and (2) of this section to enable contract public libraries to improve collections, staffing or other priorities as mutually agreed by each public library and the Division of Libraries with the approval of the Council on Libraries.

(c), (d) [Repealed.]

(64 Del. Laws, c. 400, § 1; 71 Del. Laws, c. 110, § 1; 72 Del. Laws, c. 93, § 1; 75 Del. Laws, c. 350, § 152; 78 Del. Laws, c. 172, § 1.)

§ 6603. Limitation on expenditures.

(a) In no case shall the Division pay, for the services received, more than was expended, exclusive of state and federal aid, by the political subdivision or organization operating the library.

(b) If in any year the state appropriations to the Division for services under this chapter are not sufficient to meet the cost of approved contracts for services or state appropriations exceed the formula designated in § 6602(b) of this title, the Division shall prorate the available funds in such manner so that each public library or public library system shall receive its proportionate share.

(c) In the event that no moneys are appropriated for the purpose of this chapter in any year, no public library or public library system shall have any claim to any other moneys appropriated to the Division.

(64 Del. Laws, c. 400, § 1.)

§ 6604. Requirements for contracting with Division.

(a) Public libraries or public library systems contracting with the Division must meet, or provide evidence of attempting to meet, minimum standards of operations as established by the Division and approved by the Council. The Division shall publish guidelines for the disposition of library materials purchased with state funds.

(b) A public library or public library system contracting with the Division must adopt and comply with a public library collection development policy as required by § 8734 of this title.

(64 Del. Laws, c. 400, § 1; 85 Del. Laws, c. 218, § 3.)

§ 6605. Standards of eligibility; reports on operation.

The Division shall establish and publish the procedure under which public libraries and public library systems may be eligible to contract with the State and may require reports on the operation of all libraries with which it contracts.

(64 Del. Laws, c. 400, § 1.)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations
Chapter 66A
Library Construction

§ 6601A. Short title.

This chapter shall be known as the "Delaware Public Library Construction Assistance Act."

(67 Del. Laws, c. 412, § 1.)

§ 6602A. Definitions.

As used in this chapter:

(1) "Library construction" includes, but is not limited to, the acquisition, construction, reconstruction, alteration, remodeling or enlargement of library buildings, the acquisition or installation of apparatus or equipment or the acquisition of land required as sites for such buildings, including land or rights in land needed to provide access to sites, and the grading or other improvements of such sites, land or rights in land, including the construction of sidewalks where authorized by law, the construction of any sewers or water mains needed to connect such buildings to any publicly-owned sewer system or water system. The following items are not considered to be included within the definition of "library construction:" Supplies, computers, debt service on loans, maintenance items and operating costs.

(2) "Non-state share" means:

a. A sum of money from sources other than state funds;

b. The fair market value of:

1. Developed and/or undeveloped land not currently used as a public library site but to be used as the location for "library construction" as defined herein, including parking lots; or

2. An existing facility under development not currently used as a public library but to be used as the location for "library construction", as defined herein; or

3. An existing facility and/or land currently used as a public library site, including parking lots, to which deed title was conveyed to the public library governing authority after July 1, 1992.

The aggregate value of the money, lands and facilities described in paragraphs (2)a. and b. of this section, when provided by any source other than the state and matched with the state share, will equal the total cost of the proposed library construction.

(3) "State share" means that maximum sum of money which may be paid from state sources for a library construction project.

(4) "Total cost" means the maximum sum or sums of money which may be spent for a library construction project, provided that nothing contained in this chapter shall prevent any non-state source from increasing said total cost by providing a larger amount from non-state sources than that stated as that non-state share, nor prevent the acceptance and use of any funds appropriated by the Congress of the United States for these purposes.

(67 Del. Laws, c. 412, § 1; 68 Del. Laws, c. 405, §§ 27(a), (b); 82 Del. Laws, c. 244, § 65.)

§ 6603A. Eligibility.

Any public library, including privately incorporated public libraries, the Dover Public Library established pursuant to 60 Del. Laws, c. 158 and public library systems established pursuant to Chapter 8 of Title 9 may be eligible for state assistance in library construction costs, with the state share representing up to 50% of the total cost of such library construction project. State funding of library construction may be requested in phases and could be authorized over more than 1 fiscal year.

(67 Del. Laws, c. 412, § 1; 68 Del. Laws, c. 405, § 27(d); 71 Del. Laws, c. 378, § 31.)

§ 6604A. Review of proposals.

The Department of State, upon receipt of a request for state assistance under this chapter, shall refer each proposal to the Division of Libraries and the Delaware Council on Libraries for their comments. The Division of Libraries and the Delaware Council on Libraries shall provide the Department of State with their comments on each such proposal within 30 days of receipt of the proposal. The Department of State shall forward all proposals and comments to the Director of the Office of Management and Budget. The Director of the Office of Management and Budget shall review all proposals for funding under this chapter and include all proposals as part of the annual capital budget. This review shall include, but not be limited to, a determination of need of the project, scope of the project, total cost of the project, and the availability of the non-state share.

(67 Del. Laws, c. 412, § 1; 68 Del. Laws, c. 405, § 27(c); 69 Del. Laws, c. 10, § 8; 75 Del. Laws, c. 88, § 21(13).)

§ 6605A. Expenditure of funds.

The Director of the Office of Management and Budget, as part of the annual capital budget responsibilities set forth in § 6342 of this title, shall insure that the State share and non-state share on all projects funded under this chapter are expended in conformance with the provisions of this chapter.

(67 Del. Laws, c. 412, § 1; 69 Del. Laws, c. 10, § 9; 75 Del. Laws, c. 88, § 21(13).)

§ 6606A. Retroactivity.

Any library construction project certified by the Delaware Division of Libraries and the Delaware Council on Libraries may proceed with planning, design and other construction expenditures using local funds and any state assistance may be applied retroactively to such costs incurred after the date of such certification, provided however, that certification of such project shall not bind the State to provide assistance.

(78 Del. Laws, c. 76, § 61.)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations

Chapter 66B
Public Library Technology Act [Repealed]

(84 Del. Laws, c. 56, § 1.)

§ 6601B. Short title [Repealed].

(71 Del. Laws, c. 455, § 1; repealed by 84 Del. Laws, c. 56, § 1, effective June 28, 2023.)

§ 6602B. Definitions [Repealed].

(71 Del. Laws, c. 455, § 1; repealed by 84 Del. Laws, c. 56, § 1, effective June 28, 2023.)

§ 6603B. Eligibility for Library Improvement Grants [Repealed].

(71 Del. Laws, c. 455, § 1; 79 Del. Laws, c. 78, § 120; repealed by 84 Del. Laws, c. 56, § 1, effective June 28, 2023.)

§ 6604B. Standards of eligibility [Repealed].

(71 Del. Laws, c. 455, § 1; repealed by 84 Del. Laws, c. 56, § 1, effective June 28, 2023.)

§ 6605B. Review and recommendation of proposals [Repealed].

(71 Del. Laws, c. 455, § 1; 73 Del. Laws, c. 74, § 128; repealed by 84 Del. Laws, c. 56, § 1, effective June 28, 2023.)

§ 6606B. Expenditure of funds [Repealed].

(71 Del. Laws, c. 455, § 1; repealed by 84 Del. Laws, c. 56, § 1, effective June 28, 2023.)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations

Chapter 66C
Delaware Children's Internet Protection Act

§ 6601C. Short title.

This chapter shall be known as the "Delaware Children's Internet Protection Act."

(74 Del. Laws, c. 414, § 1.)

§ 6602C. Purpose.

It is the intent of the General Assembly to establish a cost-effective and efficient way to protect minors who use computers in Delaware public libraries from viewing obscene or pornographic materials on the Internet.

(74 Del. Laws, c. 414, § 1.)

§ 6603C. Definitions.

As used in this chapter:

(1) "Inappropriate materials" means visual depictions which are obscene;

(2) "Minor" means an individual under the age of 18; and

(3) "Obscene" has the meaning defined in § 1364 of Title 11.

(74 Del. Laws, c. 414, § 1.)

§ 6604C. Application.

(a) This chapter applies to libraries in this State which are open to the public and which receive funding from the State or from a county or municipality of the State. It does not apply to the libraries of the University of Delaware, Delaware State University and Delaware Technical and Community College or other institutions of higher education. Public school libraries in the State are exempt from the provisions of the chapter so long as Internet access on their computers is filtered through the State's computer system.

(b) No waivers from the provisions of this chapter shall be permitted by the Delaware Division of Libraries.

(74 Del. Laws, c. 414, § 1.)

§ 6605C. Adoption of acceptable use policies.

(a) A library subject to the provisions of this chapter shall establish and enforce a policy with respect to the acceptable use of its computers for Internet access. The acceptable use policy shall prohibit the use of a library's computers to facilitate an activity which is illegal under local, state or federal law. The acceptable use policy shall prohibit use of a library's computers to access obscene materials. Anonymous use of a library's computers by the public shall be prohibited.

(b) Use of any computer or mobile device at a library shall be governed by the library's acceptable use policy. All libraries shall post notification to patrons advising them to use personal mobile and computing devices in conformity with the library's acceptable use policy when at such library and to place appropriate controls on any devices which may be used by minors for whom they are responsible. All users of library-owned computers must be registered library cardholders.

(c) A minor who, prior to August 19, 2005, has been issued a library card which grants the minor unrestricted access to the Internet on the library's computers, will continue to have the same access after August 19, 2005, subject to the library's acceptable use policy. A parent or guardian of a minor who wants to change the level of Internet access available to minor must sign a new form indicating the level of access the minor is to have.

(d) Libraries shall implement an Internet access management system which provides parents and guardians with choices for their minor's use of library-owned computers. In order for a library card to be issued to a minor, a parent or guardian of the minor must accompany the minor to the library to apply for the card and sign a form indicating whether the minor may have access to the Internet on the library's computers and, if so, the level of access. Subject to the library's acceptable use policy, a parent or guardian may allow the minor to have unrestricted Internet access or may limit such access to content appropriate for minors. Limited access options may include, but need not be limited to, the use of dedicated computers for minors which are filtered or provide access solely to age-appropriate electronic library collections.

(e) A library shall enforce its acceptable use policy through sanctions, which may include suspension or revocation of library privileges. The public libraries of the State shall communicate with one another in order to determine if a potential user has been sanctioned elsewhere in the State.

(f) A copy of the library's acceptable use policy and the penalties for violating the policy must be given to all new library patrons with their library cards. A copy must also be posted in the library's computer area.

(g) Libraries subject to the provisions of this chapter may cooperate to develop uniform standards for acceptable use policies and sanctions for violations of the policies. The libraries may also cooperate to develop a system to communicate with one another about individuals who have been sanctioned for violation of an acceptable use policy.

(74 Del. Laws, c. 414, § 1; 77 Del. Laws, c. 298, §§ 1, 2.)

§ 6606C. Development of databases [Repealed].

Repealed by 77 Del. Laws, c. 298, § 3, effective 90 days after enactment, per § 4 of that act. The act was signed by the Governor on June 15, 2010, and became effective Sept. 13, 2010.

§ 6607C. Liability.

Libraries subject to this chapter and their staffs shall not be liable for inappropriate or unacceptable use of the Internet by library patrons.

(74 Del. Laws, c. 414, § 1.)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations

Chapter 67

Suggestions of Financial Benefit to State [Repealed].

§§ 6701-6704. State Employee Suggestion Awards Committee; Employee Suggestion Program; responsibilities of Committee; persons eligible to receive monetary awards; procedure for submission of suggestions; adoption of suggestions [Repealed].

Terminated.

Part VI
Budget, Fiscal, Procurement and Contracting Regulations

Chapter 68
State Purchases and Supplies [Repealed].

§§ 6801-6807. Definitions; general powers and duties of the Department; powers and duties relating to distribution of surplus property; powers and duties relating to central purchasing; service charges; payment by state agencies, local government units or duly authorized volunteer fire departments; special fund [Repealed].

Repealed by 63 Del. Laws, c. 195, § 2F effective July 1, 1981.

Part VI
Budget, Fiscal, Procurement and Contracting Regulations
Chapter 69
State Procurement
Subchapter I
General Provisions

§ 6901. Purpose.

The purpose of this chapter is to:

(1) Create a more efficient procurement process to better enable the State to obtain the highest quality goods, materials and services at the best possible price, thereby maximizing the purchasing value of public moneys; and

(2) Create a single forum in which the procurement needs of state agencies and the technical and legal requirements of the Government Support Services are addressed simultaneously so as to increase mutual understanding, respect, trust and fair and equitable treatment for all persons who deal with the state procurement process.

(70 Del. Laws, c. 601, § 2; 73 Del. Laws, c. 143, § 5; 75 Del. Laws, c. 88, § 22(4).)

§ 6902. Definitions [For application of this section, see 82 Del. Laws, c. 36, § 3].

For purposes of this chapter:

(1) "Agency" means every board, department, bureau, commission, person or group of persons or other authority which directly receives moneys under any budget appropriation act or supplemental appropriation act and which was created and now exists or hereafter is created to:

a. Execute, supervise, control and/or administer governmental functions under the laws of this State; and/or

b. To perform such governmental functions under the laws of this State, or to perform such other duties as may be prescribed; and/or

c. To collect and/or use any taxes, fees, licenses, permits or other receipts for service or otherwise for the performance of any function or related to or supported in whole or in part by the laws of this State; and/or

d. To administer any laws providing for the collection of taxes, fees, permits, licenses or other forms of receipts from any sources whatsoever for the use of the State or any agency of the State.

"Agency" shall include Delaware Technical and Community College and the Delaware State University but shall not include any local government unit or agency receiving only grants-in-aid appropriations from the State and no other appropriations, as described herein, the University of Delaware, volunteer ambulance/rescue companies, volunteer fire departments and the Delaware Transit Corporation. Nothing in this paragraph shall be deemed to exempt any entity that is otherwise required to comply with § 6960 of this title.

(2) "Agency head" means the top official in an agency whether elected, appointed or otherwise. The agency head may delegate duties under this chapter to a designee within the agency.

(3) "Agency official" means any employee, consultant, person in the category of other personal service or any other person receiving compensation from the State, its agencies, municipalities, political subdivisions or school boards.

(4) "Compensation" means the total amount paid by an agency for professional services, including reimbursed expenses, unless otherwise stated in the contract.

(5) "Contractor" means any person, partnership, firm, corporation, nonprofit agency or other business association who has a contract with an agency.

(6) "Covered agency" means any agency except school districts, Delaware Technical & Community College, the Delaware State University and the Legislative Branch of State government.

(7) "Craft training program" means an apprenticeship program approved by and registered with any state apprenticeship agency or the United States Department of Labor.

(8) "Custom fabrication" means the offsite fabrication, assembly, or other production of nonstandard goods or materials, including components, fixtures, or parts thereof, specifically for a public works project. Such goods and materials shall include those used in only the following trades or systems:

a. Plumbing or pipe fitting systems, including heating, ventilating, air-conditioning, refrigeration systems, sheet metal or other duct systems.

b. Electrical systems.

c. Mechanical insulation work.

d. Ornamental iron work.

e. Commercial signage that does not attempt or appear to direct the movement of traffic on highways or roadways or interfere with, imitate, or resemble any official traffic sign, signal or device.

(9) "Director" means, for the purposes of this chapter, the Director of the Office of Management and Budget, except as provided by § 6960 of this title, in which case it shall mean the Secretary of the Department of Labor.

(10) "Disadvantaged business enterprise" means a business that has been certified by either the Delaware Office of Supplier Diversity, as a minority, women, veteran, service-disabled veteran, or individual with a disability business or by the Delaware Department of Transportation as a disadvantaged business enterprise.

(11) "Electronic bid" means the bidder, in response to an advertised invitation to bid, submits all documentation, except for information and documents specified in the invitation to bid, only through an electronic process to an identified secure electronic mail account that will not be opened by the Office or an agency until the close of the bidding period. In this process, no hard copy documentation shall be submitted to the Office or an agency prior to the award of the contract.

(12) "Electronic procurement advertising system" means the advertising system on which all state agencies must submit public notice of bid solicitations, other solicitations, and awarded contracts subject to the public advertising requirements of this chapter.

(13) "Electronic submission" means the vendor, in response to an advertised request for proposal, submits all documentation, unless specified in the request for proposal, only through an electronic process to an identified secure electronic mail account that will not be opened by the Office or an agency until the close of the request for proposal submittal period. In this process, no hard copy is to be submitted to the Office or an agency after the close of the request for proposal submittal period unless specifically requested by the Office or agency.

(14) "Firm" means a person, organization, partnership, limited partnership, corporation, association, nonprofit agency or other business association.

(15) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.

(16) "Labor supply ratio" means the number of skilled crafts persons per unskilled workers employed on a public works project. Any person who has completed a federal apprenticeship program, an apprenticeship program approved by the Delaware Department of Labor under Chapter 2 of Title 19, or has otherwise documented 8 years of experience in a particular craft, is deemed to be a skilled crafts person for the purposes of this definition.

(17) "Lifecycle costing analysis" means the contracting agency's evaluation of costs associated with the cost of acquisition, the cost of energy consumption required for operation, the cost of maintenance and the cost of consumables that affect the State's overall cost of ownership of equipment or public works projects. Such evaluation is used by the contracting agency or project architect or project engineer for the development of contract specifications.

(18) "Local government unit" means any municipality incorporated in this State under the authority of the General Assembly and any of the 3 counties.

(19) "Materiel" means materials, equipment, tools, supplies, or any other personal property, but does not include real property or electric, gas, water, telephone or similar utilities.

(20) "Nonstandard goods or materials" means goods or materials manufactured or prefabricated to specifications for a particular project or for 1 or a limited number of customers.

(21) "Office" means the Office of Management and Budget; as provided in § 6960 of this title, "Department" shall mean the Department of Labor.

(22) "On-line bidding method" means a procurement process in which the Office or an agency receives vendors' bids electronically over the Internet as either a substitute for a hard copy bid submission or in a real-time, competitive bidding event.

(23) "Professional services" means services which generally require specialized education, training or knowledge and involve intellectual skills. Examples of professional services include, but are not limited to, engineering, environmental engineering, environmental monitoring, land surveying, landscape architecture, geology, architectural, archaeologists, architectural historians, historians, educational consultants, management, medical, teaching, planning, computer information management, financial, accounting, auditing, construction management and arbitration services. Professional services subject to the provisions of § 2507 of this title or which require compliance with Delaware Supreme Court Rule 52 or a substantially similar rule of another state shall not be included in this definition and shall not be subject to this chapter.

(24) "Public building" means any edifice or building which is or is to be constructed, reconstructed, altered or repaired pursuant to a public works contract. It does not mean the act or process itself of constructing, reconstructing, altering or repairing.

(25) "Public funds" means funds of the State, of any agency within the State, of any public school district, of or from the United States government or of or from any department or representative body thereof.

(26) "Public works contract" means construction, reconstruction, demolition, alteration and repair work and maintenance work paid for, in whole or in part, with public funds.

(27) "Reverse auction" means an on-line procurement method through which all of the following occur:

a. A vendor submits a bid or proposal to provide the lowest price or most advantageous offer on goods or professional or nonprofessional services in response to an invitation to bid, request for proposals, or other solicitation, through real-time electronic competitive bidding.

b. During the bidding process, vendor prices are revealed to all participants, without revealing the vendor's identity.

c. A vendor has the opportunity to lower the vendor's bid or proposal prices for the duration of the time period established for the auction.

(28) "Section" means the Section of Government Support Services in the Office of Management and Budget.

(29) "Third tier contractor" means a firm that has contracted with a subcontractor to provide services and/or materiel in connection with a public works contract.

(30) "User group" means 2 or more agency or nonagency representatives, one of whom shall be an agency representative who provides technical advice to the Government Support Services concerning the requirements of certain materiel and nonprofessional services contracts. Nonagency representatives shall be limited to expected users of the materiel and/or services being procured and/or persons having technical expertise deemed necessary by the agency. In no event shall nonagency representatives be affiliated with a vendor or prospective vendor of the contract.

(31) "Volunteer ambulance/rescue companies" means a volunteer ambulance or rescue company certified as such by the State Fire Prevention Commission.

(32) "Volunteer fire department" means a volunteer fire department recognized as such by the State Fire Prevention Commission.

(33) "Z score" means a calculation used to assess a bidder's fiscal health. The calculation is based on the following weighted ratios: return on total assets, sales to total assets, equity to debt, working capital to total assets, and retained earnings to total assets.

(29 Del. C. 1953, § 6901; 54 Del. Laws, c. 106, § 2; 61 Del. Laws, c. 386, § 1; 62 Del. Laws, c. 306, § 1; 66 Del. Laws, c. 298, § 1; 70 Del. Laws, c. 601, § 3; 71 Del. Laws, c. 4, § 1; 71 Del. Laws, c. 309, §§ 1-3; 72 Del. Laws, c. 133, § 2; 73 Del. Laws, c. 143, § 5; 73 Del. Laws, c. 416, §§ 1-3; 73 Del. Laws, c. 438, § 1; 74 Del. Laws, c. 359, § 1; 74 Del. Laws, c. 373, § 1; 74 Del. Laws, c. 419, §§ 1, 2; 75 Del. Laws, c. 88, §§ 16(5), 22(4); 78 Del. Laws, c. 288, § 1; 81 Del. Laws, c. 298, § 1; 82 Del. Laws, c. 36, § 1; 83 Del. Laws, c. 129, § 3; 84 Del. Laws, c. 124, § 1; 84 Del. Laws, c. 466, § 2; 84 Del. Laws, c. 489, § 1; 84 Del. Laws, c. 513, § 1; 85 Del. Laws, c. 93, § 1.)

§ 6903. Violations and penalties.

(a) Any person, who, with intent to avoid compliance with this chapter, wilfully fragments or subdivides any contract for the purchase of materiel, nonprofessional services, public works or professional services, shall be subject to the penalties listed in this section.

(b) Each contract entered into by an agency for professional services shall contain a prohibition against contingency fees as follows:

(1) The firm offering professional services swears that it has not employed or retained any company or person, working primarily for the firm offering professional services, to solicit or secure this agreement by improperly influencing the agency or any of it employees in any professional service procurement process;

(2) The firm offering the professional service has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement; and

(3) For the violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

(c) Any agency official who offers to solicit or secure, or solicits or secures, any agency or central contract and in connection therewith is paid any fee, commission, percentage, gift or any other consideration, shall be subject to the penalties listed in this section.

(d) Any individual or firm who offers, agrees or contracts to improperly influence any agency or its employees in the procurement of any agency or central contract and who is paid or is to be paid a fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or the making of an agency or central contract, shall be subject to the penalties listed in this section.

(e) Any individual or firm offering materiel and/or services which shall offer to pay to an agency official, representative or employee or is paid any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of any agency or central contract shall be subject to the penalties listed in this section.

(f) Except for § 6960 of this title, for which the penalties and remedies enumerated in that section shall apply, any individual or firm which commits a violation of this chapter, as listed in this section, shall be punished by a fine of not less than $1,000 and not more than $2,000 or by imprisonment for not more than 6 months, or both, and upon a second or subsequent conviction thereof, shall be punished by a fine of not less than $2,000 and not more than $5,000 or by imprisonment for not more than 1 year, or both. The Superior Court for the State shall have exclusive original jurisdiction over offenses listed in this section.

(g) The remedies and penalties provided for in this section are not exclusive and shall be in addition to any other procedures, rights or remedies which exist with respect to any other provisions of law including but not limited to state and/or federal criminal prosecutions or common law or statutory actions brought by private parties and/or the provisions and penalties defined in Chapter 58 of this title.

(70 Del. Laws, c. 601, § 4; 71 Del. Laws, c. 4, §§ 2-4.)

§ 6904. Exceptions.

(a) If any provision of this chapter conflicts or is inconsistent with any statute, rule or regulation of the federal government applicable to a project or activity, the cost of which is to be paid or reimbursed in whole or in part by the federal government, and due to such

conflict or inconsistency the availability of federal funds may be jeopardized, such provision shall not apply to such project or activity. If any provisions of this chapter conflict or are inconsistent with Chapter 40 of Title 31, the provisions of Chapter 40 of Title 31 shall prevail and govern.

(b) This chapter shall not apply to any purchase of materials or services from the federal government or from the government of the State including any agency of the State, as defined in § 6902 of this title.

(c) This chapter shall not apply to contracts for the transportation of school children. Such contracts shall be submitted to the Secretary of Education through the Department of Education Transportation Office for approval.

(d) This chapter shall not apply to any purchase of library materials such as books, periodicals, subscriptions and software by libraries of any agency, nor shall this chapter apply to the purchase of services by libraries of any agency pursuant to Chapter 66 of this title.

(e) If no state contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency's contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties.

(f) Where, because of changed situations, unforeseen conditions, strikes or acts of God, a change order is determined to be necessary and is requested by the agency and not specified in the agency's solicitation or advertisement for bids and in the contract, as awarded, the awarding agency may issue a change order setting forth the change, addition or extra work required to be undertaken by the contractor on a contract, which shall not:

(1) Be subject to the competitive bidding requirements of this chapter; or

(2) Invalidate the contract; provided, that such change is within the scope of the contract as set forth in the standard specifications, special provisions or similar publication of the agency.

(g) All material required by any agency shall be purchased, except where hereinafter provided, and all work of a nonprofessional nature, except as hereinafter provided, which is not to be performed by employees of the agency shall be performed under a contract entered into pursuant to this subchapter and after competitive bidding as provided for in this section except that an agency may purchase material or contract for work to be performed without competitive bidding in the following instances:

(1) When the purchased material will be used by the Delaware Industries for the Blind within the Department of Health and Social Services as raw material for goods and services which the program manufactures and provides for resale or the purchased material will be used by the Business Enterprise Program of the Division for the Visually Impaired as supplies to operate the vending stands in the program;

(2) When material or services are on the procurement list published by the commission for the purchase of products and services of the blind and other severely disabled individuals those materiel or services shall be purchased in accordance with the procedure described in § 9605 of Title 16; or

(3) Where the purchased material or work which is the subject of the contract is necessary to enable the Department of Natural Resources and Environmental Control to engage in the preservation of the beaches of the Atlantic Ocean and Delaware Bay shoreline of Delaware in accordance with the Beach Preservation Act, Chapter 68 of Title 7. Notwithstanding the foregoing, any such purchase must be approved by the Budget Commission prior to the commencement of any purchase of material or work.

(h) This chapter shall not apply to purchases of historical artifacts or art for the purpose of public display.

(i) A contract may be awarded without competition if the agency head, prior to the procurement, determines in writing that there is only 1 source for the required contract. Sole source procurement shall not be used unless there is sufficient evidence that there is only 1 source for the required contract and no other type of goods or service will satisfy the requirements of the agency. The agency shall examine cost or pricing data prior to an award under this subsection. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the agency for the sole source procurement shall be included in the agency's contract file.

(j) This chapter shall not apply to any purchase of educational materials and supplies by post-secondary educational institutions participating in and benefiting from special educational discount and cooperative programs.

(k) This chapter shall not apply to the Wilmington Housing Authority in the procurement of goods and/or services when such goods and/or services are provided by primarily Wilmington Housing Authority resident-owned businesses.

(*l*) This chapter shall not apply to the office of the Commissioner of Elections or the several departments of elections in the purchase of material or work which is the subject of the contract and which is necessary to enable the Department of Elections to conduct a primary, general, special election or voter registration pursuant to Title 15.

(m) This chapter shall not apply to the Department of Education in the procurement of goods and/or services from the Data Service Center, University of Delaware, Delaware State University and Delaware Technical and Community College.

(n) This chapter shall not apply to contracts entered into by the Board of Pension Trustees, authorized pursuant to § 8308(c)(5) of this title, with respect to the procurement of financial services, including advisory, management and investment services relating to any fund administered by the Delaware Public Employees' Retirement System.

(o) [Repealed.]

(70 Del. Laws, c. 601, § 4; 71 Del. Laws, c. 4, § 5; 71 Del. Laws, c. 132, § 368; 71 Del. Laws, c. 378, § 112; 73 Del. Laws, c. 310, § 23; 76 Del. Laws, c. 80, § 67; 82 Del. Laws, c. 248, § 2; 82 Del. Laws, c. 248, § 3; 83 Del. Laws, c. 54, § 378.)

§ 6905. Failure to comply with contract; new award; supervision.

If any firm entering into a contract under the authority of this chapter neglects or refuses to perform or fails to comply with the terms thereof, the agency which signed the contract may terminate the contract and proceed to award a new contract in accordance with this chapter or may require the surety on the performance bond to complete the contract in accordance with the terms of the performance bond.

(29 Del. C. 1953, § 6906; 54 Del. Laws, c. 106, § 2; 70 Del. Laws, c. 601, § 4.)

§ 6906. Rental and purchase of motor vehicles; exceptions.

(a) Notwithstanding the provisions of this title, all passenger vehicles, including sedans, station wagons, passenger and utility vans, off-road vehicles, police-type cars and station wagons and trucks rated 10,000 GVW or less purchased for State use by any agency/school district must be approved by the Director of the Office of Management and Budget and purchased by contracts administered by the Government Support Services. All other vehicles purchased for State use by any agency/school district must be purchased from contracts administered by the Government Support Services.

(b) Notwithstanding the provisions of this title, the purchase of special purpose vehicles by any agency/school district in excess of the restrictions set forth in subsection (a) of this section, without the written approval of the Director of the Office of Management and Budget and the Controller General, is prohibited.

(c) Used vehicles employed by any agency for undercover operations may be purchased by negotiation rather than by competitive bidding as provided in this section, provided that the negotiated prices are approved by the Director of the Office of Management and Budget and the Controller General.

(d) Except for the Governor's car, cars rented while on out-of-state business and those cars leased by the Government Support Services, no agency/school district may lease passenger vehicles except from the Government Support Services.

(e) Passenger vehicles may not be transferred from one agency/school district to another agency/school district without the approval of the Director of the Office of Management and Budget.

(f) The procurement of vehicles by the New Castle County Police shall be exempt from the provisions of this section.

(g) The procurement of vehicles by Sussex County shall be exempt from the provisions of this section.

(69 Del. Laws, c. 136, § 1; 69 Del. Laws, c. 277, § 1; 70 Del. Laws, c. 601, § 3; 71 Del. Laws, c. 4, § 9; 73 Del. Laws, c. 143, §§ 5, 6; 75 Del. Laws, c. 88, §§ 16(5), 21(13), 22(4), 28, 29.)

§ 6907. Emergency procedures and critical need for professional services.

(a) An agency head may waive any or all provisions of this chapter to meet the critical needs of the agency as required by emergencies or other conditions where it is determined to be in the best interest of the agency. The agency head may determine an emergency condition exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against. An emergency condition creates an immediate and serious need for materiel and/or nonprofessional services that cannot be met through normal procurement methods for the protection of public health, safety or property.

(1) Any procurement pursuant to this subsection shall be limited to those materials and/or nonprofessional services necessary to satisfy the emergency.

(2) Any public works project contracted pursuant to this subsection shall be subject to § 6960 of this title.

(3) Any public works project contracted pursuant to this subsection shall be subject to § 6962(d)(4)b. of this title.

(4) A copy of each emergency determination processed under this procedure shall be kept on file by the agency.

(b) In addition to the waiver provisions provided for in subsection (a) of this section, an agency head may waive any or all provisions of subchapter VI of this chapter to meet a critical need of the agency as required by an emergency or other condition where it is determined to be in the best interest of the agency. The agency head may determine a critical need exists by reason of conditions or contingencies that could not reasonably be foreseen and guarded against. A critical need creates a need for professional services that cannot be met through normal procurement methods.

(1) Any procurement pursuant to this subsection shall be limited to those professional services necessary to satisfy the critical need.

(2) A copy of each critical need determination processed under this procedure shall be kept on file by the agency.

(70 Del. Laws, c. 601, § 5.)

§ 6908. Section powers and duties.

(a) In addition to the powers and duties prescribed by other sections in this chapter, the Section shall do all of the following:

(1) Review and recommend improvements to the State's procurement process.

(2) Function as the contracting agent in central or joint contracting for state agencies provided, that, at a minimum, all contracts are awarded in conformance with the requirements of this chapter. The Section is required to meet or exceed the requirements of the agencies.

(3) Function as a resource for state agencies by providing, on request, procurement information and assistance.

(4) Serve as a clearinghouse for procurement information for materiel and services for both agencies and vendors.

(5) Promulgate rules and regulations to effect this chapter. Such rules and regulations shall be promulgated according to the Administrative Procedures Act in Chapter 101 of this title and shall be approved by the Contracting and Purchasing Advisory Council.

(6) Establish procedures through which all public works contracts, which are paid in whole or in part through public funds, include provisions requiring the contractor, its agents, and employees to implement a mandatory drug testing program for all employees or agents working on the job site in nonclerical positions. Provisions governing mandatory drug testing shall be incorporated into all public works contracts and the rules governing the administration of such tests by the contractor shall be promulgated by the Director pursuant to this subsection.

(7) Administer on behalf of all agencies the State's centralized procurement computer system or software that is used for contract development, solicitation, evaluation, and contract administration, including public posting of notice of awarded agency contracts. The Section may, with written approval of the Director, authorize an agency to operate, with approved integration, a separate bidding or contract administration platform provided that all information is readily shared with the statewide portal managed by the Section. The announcement of bid solicitations, other solicitations, and associated notices for the required duration on a site designated by the Section satisfies the public notice and advertisement requirements of this chapter.

(8) Assume such other powers, duties, and functions as the Director of the Office may assign which are not otherwise inconsistent with the laws of this State.

(b) The Section shall not charge any agency any fee for central contracting services. The Section Director may charge any agency of this State, local government unit or volunteer fire departments within the State, for which the Section makes purchases, supplies, contractual services or to which it distributes materiel a reasonable service charge. The Section shall deposit such charges into a special account to be used to effectuate the purposes of the Section.

(70 Del. Laws, c. 601, § 5; 75 Del. Laws, c. 88, §§ 16(5), 22; 75 Del. Laws, c. 283, § 1; 81 Del. Laws, c. 298, § 2; 84 Del. Laws, c. 489, § 2.)

§ 6909. Special requirements for contracts involving environmental statutes.

All contracts covered under this chapter shall make provisions for all federal and state anti-pollution, conservation and environmental statutes, rules and regulations and county ordinances which will be involved in the execution of the contract.

(70 Del. Laws, c. 601, § 5; 74 Del. Laws, c. 419, § 3.)

§ 6909A. Lifecycle costing analysis.

(a) In the case of small and large public works contracts awarded under § 6961, § 6962 or § 6965 of this title, the contracting agency shall require the project architect or project engineer to perform lifecycle costing analysis on equipment, systems, materiel and design elements for public works projects when said equipment, systems, materiel and design elements have the potential to reduce operating, maintenance or energy costs over the useful life of the public works project. On the basis of said analysis, the project architect or the project engineer shall incorporate in the public works contract specifications the equipment, systems, materiel, and design elements for the public works project that have the lowest total cost of ownership and operation over the useful life of the public works project. The use of lifecycle costing analysis may be waived by the agency head, in writing, if any of said equipment, systems, materiel or design elements are not appropriate for lifecycle costing analysis.

(b) In the case of contracts awarded under §§ 6922, 6923, 6924, 6925, 6933, 6934 and 6938 of this title, the contracting agency shall perform lifecycle costing analysis on equipment that has the potential to reduce operating, maintenance or energy costs over the useful life of the equipment. On the basis of said analysis, the contracting agency shall incorporate specifications in the contract for equipment that has the lowest total cost of ownership and operation over the useful life of the equipment. The use of lifecycle costing analysis may be waived by the agency head, in writing, if the equipment is not appropriate for lifecycle costing analysis. In the case of central contracts, and public works contracts awarded by the Office, only the Director may waive the use of lifecycle costing analysis.

(74 Del. Laws, c. 419, § 4; 75 Del. Laws, c. 88, § 16(5).)

§ 6909B. Fair background check practices.

The State shall include in all formal solicitations a section stating the State does not consider the criminal record, criminal history, credit history, or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law, and vendors doing business with the State are encouraged to adopt similar policies.

(79 Del. Laws, c. 227, § 3.)

Subchapter II
Central Contracting

§ 6910. Applicability.

(a) This subchapter shall apply to all covered agencies as defined in § 6902(6) of this title.

(b) Any organization, entity or person designated as the recipient of grant-in-aid shall be entitled to purchase material, nonprofessional services, or professional services under any central contract negotiated by the Section during the fiscal year for which aid is appropriated, provided that all of the following apply:

(1) The organization, entity, or person received an appropriation of at least $100,000.

(2) The organization, entity, or person has a staff of at least 5 people.

(c) Any bona fide nonprofit organization, entity, or person who is under contract with the State to provide goods or services shall be entitled to purchase materials, nonprofessional services, or professional services under any central contract negotiated by the Section during the fiscal year for which said nonprofit contract is in effect, provided that either of the following apply:

(1) The organization, entity, or person is a bona fide § 501(c)(3) [26 U.S.C. § 501(c)(3)] organization under the United States Internal Revenue Code.

(2) The organization, entity, or person is a member in good standing of the Delaware Alliance for Nonprofit Advancement or a Delaware registered nonprofit corporation.

(d) Any organization, entity, or person who is a participant in the Business Enterprise Program sanctioned by Division of the Visually Impaired (DVI) shall be entitled to purchase material, nonprofessional services, or professional services under any central contract negotiated by the Section, provided that the participant holds a valid license issued by DVI.

(e) Any municipality, political subdivision, or local government unit within the State shall be entitled to purchase material, nonprofessional services, or professional services under any central contract negotiated by the Section.

(70 Del. Laws, c. 601, § 5; 71 Del. Laws, c. 409, § 1; 73 Del. Laws, c. 388, § 1; 74 Del. Laws, c. 419, § 3; 75 Del. Laws, c. 88, § 22; 79 Del. Laws, c. 225, § 1; 82 Del. Laws, c. 179, § 1.)

§ 6911. Authority and responsibilities.

(a) The Section shall act as the exclusive contracting agent for all purchases of materiel and nonprofessional services and may act as the exclusive contracting agent for professional services not subject to the small purchasing procedures made by contracting agencies and as outlined in this subchapter and made by 2 or more covered agencies except for lodging and interstate and international travel and except as provided for in subsection (d) of this section.

(b) The Section shall have the following responsibilities for central contracts:

(1) Assembling the bid specification package;

(2) Conducting the advertising, bidding and awarding of each contract;

(3) Resolving disagreements between vendors and agencies; and

(4) Assuring that vendors and products meet the requirements of awarded contracts.

(c) Each agency that participates in a central contract shall have the following responsibilities for the materiel or service purchased under that contract:

(1) Providing and approving commodity specifications;

(2) Participating in user groups by requiring that appropriate covered agency staff attend user group meetings, as described in § 6912 of this title; and

(3) Providing information concerning contract effectiveness to the Section.

(d) Covered agencies shall exclusively use central contracts. A covered agency head may exempt the agency from a central contract only when all of the following conditions are met by the covered agency head:

(1) Demonstration that participation in a central contract would negatively impact the operations of the covered agency. However, operations, as used in this subsection, shall not include the fiscal impact to the covered agency;

(2) Demonstration that the covered agency has attempted to negotiate the specifications with the Section prior to the covered agency head exempting the materiel or service; and

(3) Demonstration that the exemption is an exception to the covered agency's use of a central contract rather than a common practice.

Any exemption issued by an agency head under this subsection shall not be a blanket exemption but shall only apply to an individual central contract.

(e) The Administrator of the Section may waive the requirement that a covered agency use a state contract in the event the Administrator deems such a waiver is in the best interest of the State.

(70 Del. Laws, c. 601, § 5; 74 Del. Laws, c. 419, § 3; 75 Del. Laws, c. 88, § 22; 75 Del. Laws, c. 89, § 157; 84 Del. Laws, c. 489, § 3.)

§ 6912. Covered agency user groups.

(a) The Section shall establish, convene and chair user groups for the purchase of a materiel or service or group of materiel and/or services by a central contract or contracts. Convention of a user group may include, but is not limited to, a formal meeting, electronic mail among user group members and/or a teleconference among user group members. The method by which the user group convenes shall be agreed to by all user group members.

(b) The Section shall provide reasonable opportunity for each covered agency to participate in a user group if that covered agency anticipates the purchasing of materiel or service or services or a group of materiel and/or services under a specific central contract to be written and bid. A covered agency not participating in a user group shall not be grounds for an exception to the use of that central

contract. A user group shall perform at least the following functions for the materiel or service or group of materiel and/or services to be purchased by a central contract:

(1) Make recommendations on the contents of the contract;

(2) Rate vendors, materials and/or services;

(3) Rate the effectiveness of the contract; and

(4) Qualify a materiel and/or service.

(70 Del. Laws, c. 601, § 6; 74 Del. Laws, c. 419, § 3; 75 Del. Laws, c. 88, § 22.)

§ 6913. Contracting and purchasing advisory council.

(a) There is established a Contracting and Purchasing Advisory Council to consist of all covered agency heads or their designee and 1 additional member representing all public school districts. The Section director shall be a nonvoting member of the Council.

(b) The Director of the Office shall be the Council Chair.

(c) The purpose of the Council is to advise as to the effectiveness of and make recommendations for changes to the State's procurement laws, policies and practices to the Director of the Office and the Section director.

(d) The Council shall be responsible for:

(1) Recommending procurement policy and administrative procedures to the Director. The Director shall elicit the Council's comments before issuing policy statements, policy changes, administrative procedures or administrative changes regarding this chapter;

(2) Reporting annually to the Governor by December 31 of each year concerning the effectiveness of the State's procurement processes. This report shall include recommended changes to the State's procurement laws as may be necessary to improve the State's overall effectiveness;

(3) Reviewing vendor concerns regarding the overall procurement process and recommending appropriate action relating to these concerns; and

(4) Setting the dollar amount thresholds required in this chapter. When setting these dollar amount thresholds, the Council shall take into consideration operational issues and inflation. Nothing in this subsection shall affect the amounts set in § 6960 of this title.

(e) A Contracting and Purchasing Committee shall also be established. The Section director shall appoint representatives to the Committee, with the approval of the Council. The Section director shall chair the Committee. The Committee shall staff the Council, monitor the effectiveness of the State's procurement process, recommend changes to the procurement process, policies and procedures and any other duties deemed necessary by the Council.

(70 Del. Laws, c. 601, § 7; 74 Del. Laws, c. 419, § 3; 75 Del. Laws, c. 88, §§ 16(5), 22; 83 Del. Laws, c. 56, § 33(b); 84 Del. Laws, c. 489, § 4.)

§ 6914. Delegation of centralized contracting authority.

The Section may delegate its centralized contracting authority for specific materials and/or services or groups of materials and/or services to another covered agency with the covered agency's concurrence.

(70 Del. Laws, c. 601, § 7; 74 Del. Laws, c. 419, § 3; 75 Del. Laws, c. 88, § 22.)

§ 6915. Exceptions.

(a) In a contract for professional services, public works or nonprofessional services, where the contract includes items that are a part of a central purchasing contract, those items shall not be subject to the purchasing requirements of this title.

(b) If a service or a materiel is a component part of a specific project that is part of another contract, then the requirements of this subchapter shall not apply.

(c) This section is not intended to allow agencies to avoid the use of central purchasing contracts by contracting with a vendor under the auspices of procuring a good or service when the sole or partial purpose of such a contract is to procure from that vendor another good or service that is on a central purchasing contract.

(70 Del. Laws, c. 601, § 7; 74 Del. Laws, c. 419, § 3.)

§§ 6916-6921.

Subchapter III

Materiel and Nonprofessional Services

§ 6922. Small purchase procedure.

(a) *Applicability.* — Any state contract for which an agency is a party for materiel or nonprofessional services, whose annual probable cost is less than the threshold amount or amounts set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title, may be made under small purchase procedures established by the Director.

(b) *Procedure.* — The Director, with the approval of the Contracting and Purchasing Advisory Council, shall provide for a simplified administrative process for obtaining competitive prices for small purchases. The procedure shall incorporate the procedures identified

as lifecycle costing analysis as specified in §§ 6902 and 6909A(b) of this title. This procedure shall be in writing and distributed to all agencies.

(70 Del. Laws, c. 601, § 7; 74 Del. Laws, c. 419, § 5; 75 Del. Laws, c. 88, § 16(5).)

§ 6923. Competitive sealed bidding.

(a) *Applicability.* — Any state contract except for lodging and interstate and international travel and for which an agency is a party for materiel or nonprofessional services, whose annual probable cost is greater than the threshold amount or amounts set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title, shall be made only through the use of competitive sealed bids.

(b) *Advertising requirements.* — (1) If the probable cost of the materiel or nonprofessional services estimated to annually exceed the threshold amount or amounts set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title, the procurement shall be made only after public announcement and the receipt of sealed bids as provided for in this subchapter. The announcement for such bids shall be published for 2 consecutive weeks unless a shorter advertisement period has been approved by the Section director. Public advertising shall require electronic publication accessible to the public in a manner prescribed pursuant to § 6902(12) of this title for 2 consecutive weeks unless a shorter advertisement period has been approved by the Section director.

(2) The advertisement for bids shall state the name of the procuring agency, indicate with reasonable accuracy the character, quantity and location of the work or the character and quantity of materiel, the time and place for the opening of bids and where the specifications or descriptions may be obtained. The advertisement shall also state that the agency may extend the time and place for opening of bids from that described in the advertisement, on not less than 2 calendar days' notice, unless special circumstances apply as determined by the Section director.

(c) *Bid openings.* — (1) Bids shall be opened publicly at the time and place designated in the invitation to bid. The main purpose of the bid opening is to reveal the name(s) of the bidder(s), not to serve as a forum for determining the low bidder(s). The disclosure of additional information, including prices, shall be at the discretion of the procuring agency until such time that the responsiveness of each bid has been determined.

(2) The contract shall be awarded within 30 calendar days of the bid opening to the lowest responsive and responsible bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation to bid, except that in the case of a public school district and its board or designee or the Department of Education, the contract shall be awarded within 60 days thereafter.

(3) The bids, bid summaries and bid tabulations shall not be open for public inspection until after receipt of a fully executed contract. Bids shall be unconditionally accepted without alteration. Bids shall be evaluated based on the requirements set forth in the invitation to bid. No criteria may be used in bid evaluations that are not set forth in the invitation to bid. After bid opening, no corrections in bid prices or other provisions of bids prejudicial to the interests of this State or fair competition shall be permitted.

(d) *Vendor eligibility.* — (1) A firm may be required to have a valid State of Delaware business license prior to the execution of an agency contract.

(2) Vendors are responsible for reviewing all public advertisements which announce the invitation to bid for an agency contract.

(3) To supplement the contract public notice, the agency may compile and maintain a prospective vendors list. Inclusion of the name of a person shall not indicate whether the firm is responsible concerning a particular procurement or otherwise capable of successfully performing a contract.

(4) Firms desiring to be included on the prospective vendors list shall notify the agency. Upon notification, the agency shall provide the firm with a means to register its interest in competing for future formal procurement opportunities. The firm shall complete the vendor registration form and return it to the agency. A vendor registration list shall not be used as a means to restrict competition.

(5) No cause of action shall accrue from any good faith effort to contact and distribute invitations to bid, amendments to invitations to bid as well as all correspondence utilizing the agency's vendor eligibility list.

(6) [Repealed.]

(e) *Invitation to bid.* — (1) The agency shall make available invitations to bid at least 14 days before the time and date of the bid opening, unless a shorter time is deemed necessary for a particular procurement as determined in writing by the agency.

(2) The invitation to bid shall include the following:

a. Instructions and information concerning the bid submission requirements, including the time, date and place set for bid opening and any other special information;

b. The description, specifications, evaluation criteria, delivery or performance schedule and inspection and acceptance requirements for the contract; and

c. The contract terms and conditions, including, but not limited to, warranty and bonding or other security requirements, as applicable.

(3) If the invitation to bid incorporates documents by reference, the invitation to bid shall specify where such documents may be obtained or reviewed.

(4) An invitation to bid may require the submission of bid samples, descriptive literature and technical data and may require inspection or testing of a product before award.

(5) A copy of the invitation to bid shall be made available for public inspection at the agency.

(f) *Pre-bid conferences.* — An agency may conduct a pre-bid conference within a reasonable time but not less than 7 days before a bid opening to explain the requirements of an invitation to bid. An agency may require mandatory attendance by bidders at such pre-bid conferences to qualify as a responsible and responsive bidder. Statements made at the pre-bid conference shall not be considered amendments to the invitation to bid unless a written amendment is issued pursuant to subsection (g) of this section.

(g) *Amendments to invitations to bid.* — (1) An amendment to an invitation to bid shall be issued to:

a. Make changes in the invitation to bids;

b. Correct defects or ambiguities in the invitation to bid; and/or

c. Change the date, place or time of the bid opening.

(2) Amendments to invitations to bid shall be made publicly available.

(3) [Repealed.]

(h) *Withdrawal of bids.* — (1) A bidder may withdraw its bid at any time before bid opening if the withdrawal is received in writing before the bid opening at the location designated in the invitation for bids for receipt of bids. A bidder or its authorized representative may withdraw its bid in person if, before the bid opening, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.

(2) All documents concerning a withdrawal of a bid shall be retained in the appropriate procurement file.

(3) After a bid opening, a firm may request in writing that its respective bid be withdrawn. Such a request may be allowed only upon the approval of the agency. If withdrawal of a bid after bid opening is permitted or denied, the agency shall prepare a written determination showing that the request was permitted or denied along with the reasons for such determination.

(i) *Late bids and late modifications.* — (1) A bid or withdrawal of a bid is late if it is received at the location designated in the invitation to bid for receipt of bids after the time and date set for bid opening.

(2) Bidders submitting bids or withdrawals of bids that are late shall be notified as soon as practicable and the bid shall be returned unopened.

(3) Documentation concerning a late bid or late withdrawal of a bid shall be retained in the appropriate procurement file.

(j) *Receipt, opening and recording of bids.* — (1) Except as provided in paragraph (j)(2) of this section, each bid shall be time stamped upon receipt and stored by the agency unopened in a secure place until the time and date set for bid opening. Bids received electronically shall remain unopened by the agency until the time and date set for the bid opening.

(2) An envelope that is not marked as a bid or does not identify the bidder or solicitation may be opened solely for the purpose of identification. Record shall be made on the envelope of the reason for opening it, the date and time it was opened, the solicitation to which the bid responded and the signature of the person who opened the envelope. The envelope shall be resealed and retained in the procurement file.

(3) Bids shall be opened publicly and in the presence of 1 or more witnesses at the time, date and location designated in the invitation. Bid information shall be disclosed at the public opening pursuant to paragraph (c)(1) of this section. The bid information made available at the public opening shall be recorded on a bid abstract. The name of the required witness shall also be recorded. The bid abstract shall be available for public inspection.

(4) Bids shall not be available for public inspection before receipt of a fully executed contract pursuant to paragraph (c)(3) of this section. After contract award, the bids shall be available for public inspection, except to the extent that withholding of information is permitted by Chapter 100 of this title or otherwise permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions. The bidder shall include with this designation a statement that explains and supports the firm's claim that the bid items identified as confidential contain trade secrets or other proprietary data.

(k) *Bid evaluation and award.* — (1) The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and evaluation criteria set forth in the invitation to bid. If the invitation to bid so provides, award may be made by individual line item, by group of line items, by county, zone or any other way designated by the agency or for the aggregate total of all line items; otherwise award shall be made in lump sum. A formal contract shall be executed with the successful bidder within 20 days after the award of the contract.

(2) A contract may be awarded to a firm other than the lowest responsible and responsive bidder if, in the opinion of the agency, the interests of the State shall be better served by awarding the contract to some other bidder provided the agency head makes a written determination of the reason or reasons for granting the contract to a firm other than the lowest responsible and responsive bidder.

(3) A product acceptability evaluation may be conducted to determine whether a bidder's product meets the bid specifications. Any bidder's offer that does not meet the bid specifications shall be rejected as nonresponsive.

(4) Bids shall be evaluated to determine which bidder offers the lowest cost to the agency in accordance with the evaluation criteria set forth in the invitation to bid. Only objectively measurable criteria that are set forth in the invitation to bid shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, energy cost, ownership cost and other identifiable costs. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible, the evaluation

factors shall be reasonable estimates based upon information the agency has available concerning future use. Prior unsatisfactory performance on a State contract by a bidder may be included in the evaluation criteria to determine if a bidder is responsible.

(5) A contract may not be awarded to a bidder submitting a higher quality item than that designated in the invitation for bids unless the bidder is also the lowest bidder as determined under this section. The agency may seek clarification of a bid, but negotiations are not permitted with any bidder.

(6) If 2 or more responsible firms bid an equal amount and such amount is the lowest bid, the agency may award the contract to any 1 of them or reject all bids consistent with the provisions of this section.

(7) A record showing the basis for determining the successful bidder shall be retained in the agency procurement file.

(8) A written notice of award shall be sent to the successful bidder. For procurement greater than the threshold amount or amounts set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title, each unsuccessful bidder shall be notified of the award. Notice of award shall be made available to the public.

(*l*) *Only 1 bid received.* — (1) If only 1 responsive bid is received to an invitation for bids, an award may be made to the single bidder if the agency determines that:

a. The price submitted is fair and reasonable and other prospective bidders had reasonable opportunity to respond; or

b. There is not adequate time for re-solicitation.

(2) If only 1 responsive bid is received and the bid is rejected, the agency may:

a. Solicit new bids; or

b. Cancel the proposed procurement.

(m) *Cancellation of invitation to bid.* —

An invitation to bid or other solicitation may be canceled or any or all bids may be rejected in whole or in part if it is in the best interest of the State. The reasons for the cancellation or rejection shall be made part of the procurement file.

(1) If an invitation to bid or other solicitation is canceled prior to the opening of bids, a notice of cancellation shall be publicly posted and made available to all bidders.

(2) Any bids that have been received shall be returned unopened to the bidders.

(3) Any electronic bids received shall be deleted by the agency and notice of the cancellation sent to those bidders.

(n) *Rejection of individual bids.* — A bid may be rejected if:

(1) The bidder is determined to be nonresponsive pursuant to subsection (o) of this section; or

(2) The bid is nonresponsive or not responsible in accordance with subsection (k) of this section; or

(3) It is otherwise not advantageous to the State.

Bidders whose bids are rejected under this section shall be notified in writing about the rejection. Record of the rejection shall be made part of the procurement file.

(o) *Responsiveness of bidders.* — An agency shall determine that a bidder is responsive before awarding a contract to that bidder. Factors to be considered in determining if a bidder is responsible include:

(1) The bidder's financial, physical, personnel or other resources, including subcontracts;

(2) The bidder's record of performance and integrity;

(3) Whether the bidder is qualified legally to contract with the State; and

(4) Whether the bidder supplied all necessary information concerning its responsiveness.

The agency may establish specific responsibility criteria for a particular procurement. Specific responsibility criteria shall be set forth in the solicitation. If an agency determines that a bidder is nonresponsive and/or, not responsible the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be promptly sent to the affected bidder. The final determination shall be made part of the procurement file.

(p) *Electronic bid submission.* — (1) If the Office or an agency determines that an electronic bid submission is advantageous, the Office or the agency may use electronic bidding to obtain bids for the purchase of goods and nonprofessional services.

(2) The solicitation must designate that the procurement method will be an electronic bid submission, a schedule of bid activities, and an electronic mail account to which the bidding response must be sent.

(3) The Section's or the agency's representative and a witness shall open the e-mail account immediately after the closing date and time; record the vendors that submitted bids, the date and time submitted, the bids, and associated prices; and prepare a bid tabulation of all responsive vendors for review.

(q) *Reverse auction.* —

(1) When the Section determines that a reverse auction is advantageous, the Section may use the reverse auction bidding method to obtain bids for the purchase of goods and nonprofessional services.

(2) The solicitation must designate both an opening date and time and a closing date and time. The closing date and time need not be a fixed point in time but may remain dependent on a variable or variables specified in the solicitation. At the opening date and time,

the Section must begin accepting real-time, on-line bids. The solicitation must remain open until the closing date and time, as may be determined by a variable or variables specified in the solicitation.

(3) The Section may require bidders to register before the opening date and time and, as part of that registration, to agree to any terms, conditions or other requirements of the solicitation.

(4) a. Following receipt of the first bid after the opening date and time, all bid prices must be posted electronically to the Internet and updated on a real-time basis. At any time before the closing date and time, a bidder may lower the price of its bid, as long as its bid price is less than the then-current bid. A bidder's lowest bid price supersedes the bidder's prior higher bid price. Bid prices may not be increased any time after the opening date and time. All bids are binding and may not be withdrawn unless the bid price entered by the bidder is entered incorrectly. If a price entered by the bidder is in error, the bidder must correct the bid within the time period and manner specified in the solicitation.

b. After the Section closes the bid, the bidder may request, in writing via an electronic mail message to the Section as specified in the solicitation, that its respective bid be withdrawn. Such a request may be allowed only upon the approval of the Section. If withdrawal of a bid after the Section closes the bid is permitted or denied, the Section shall prepare a written determination showing that the request was permitted or denied along with the reasons for such determination.

c. If the lowest responsive bid is withdrawn after the closing date and time, the Section may cancel the solicitation or reopen on-line real time bidding to all preexisting bidders by giving notice to all preexisting bidders of both the new opening date and time and the new closing date and time. Notice that electronic bidding will be reopened must be given as specified in the solicitation.

(5) Receipt and safeguarding of bids. Other than price, any information provided to the Section by a bidder must be safeguarded as required by § 6923(j)(4) of this title.

(r) *On-line bidding method. —*

If the Office or an agency determines that an on-line bidding method is beneficial, the Office or the agency may use an on-line bidding method to obtain and evaluate bids for the purchase of goods and nonprofessional services.

(70 Del. Laws, c. 601, § 7; 71 Del. Laws, c. 4, §§ 6, 7; 71 Del. Laws, c. 378, § 113; 73 Del. Laws, c. 416, §§ 4, 5; 75 Del. Laws, c. 88, § 16(5); 75 Del. Laws, c. 89, § 157; 78 Del. Laws, c. 288, § 2; 81 Del. Laws, c. 298, § 3; 82 Del. Laws, c. 36, § 1; 84 Del. Laws, c. 124, § 1; 84 Del. Laws, c. 489, § 5; 84 Del. Laws, c. 513, § 1.)

§ 6924. Competitive sealed proposal; request for proposal procedure.

(a) *Applicability. —* When the agency head makes a determination that the use of competitive sealed bidding is either not practical or not in the best interest of the State, a contract may be entered into through competitive sealed proposals. The determination to use competitive sealed proposals may be made if it is necessary to:

(1) Use a contract other than a fixed-price type;

(2) Conduct oral or written discussions with offerors concerning technical and price aspects of their proposals;

(3) Afford offerors an opportunity to revise their proposals;

(4) Compare the different price, quality and contractual factors of the proposals submitted;

(5) Award a contract in which price is not the determining factor; or

(6) The agency is unable to draft specifications in sufficient detail to be applicable to competitive sealed bidding.

(b) *Advertising requirements. —* (1) Proposals shall be solicited through a request for proposal which shall be issued and shall include the location where proposals are to be received and the date and time the proposals are to be opened.

(2) Adequate public notice of the request for proposals shall be given in the same manner as provided in § 6923(b) of this title.

(3) Proposals shall be opened publicly at the time and place designated in the request for proposals. The name of each offeror and such other relevant information as is specified in the request for proposals shall be read publicly and recorded in accordance with the request for proposal promulgated by the agency. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation.

(4) The request for proposals shall state the relative importance of price and other evaluation factors.

(5) Offerors intending to submit proposals may be afforded an opportunity for discussion for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Negotiations may be conducted with responsible offerors who submit proposals found to be reasonably likely to be selected for award. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and amending proposals, and such amendments may be permitted after submissions and before award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(6) The award shall be made in writing to the responsible offeror or offerors whose proposal is determined to be the most advantageous to the State taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. (The award of a contract for goods and/or services may be made upon criteria which do not include price. The contract file shall contain the basis on which the award is made.)

(c) *Request for proposals. —* (1) A request for proposals shall set forth those factors listed in § 6923(e) of this title that are applicable and shall also state:

a. The type of materiel or services required and a description of the work involved;

b. The type of contract to be used;

c. That offerors may designate as trade secrets or proprietary data portions of the proposals;

d. That discussions may be conducted with offerors who submit proposals determined to be likely to be selected for award;

e. The minimum information that the proposal must contain; and

f. The closing date and time for receipt of proposals.

(2) A request for proposals shall be issued at least 14 calendar days before the closing date and time for receipt of proposals unless a shorter time is determined necessary in writing by the agency.

(3) Notice of the request for proposals shall be issued in accordance with § 6923(b) of this title.

(4) Vendor lists compiled and maintained in accordance with § 6923(d) of this title may serve as a method for soliciting competitive sealed proposals.

(5) Amendments to requests for proposals shall be made in accordance with § 6923(g) of this title.

(d) *Pre-proposal conferences.* — Pre-proposal conferences may be convened in accordance with § 6923(f) of this title.

(e) *Late proposals or late withdrawals.* — (1) A proposal received after the closing date and time for receipt of proposals is late and shall not be considered. A best and final offer received after the closing date and time for receipt of best and final offers is late and shall not be considered.

(2) No offeror shall be permitted to make a modification to its original proposal after the date and time for the receipt of proposals and before negotiations start pursuant to subsection (g) of this section.

(3) A modification of a proposal resulting from an amendment issued after the closing date and time for receipt of proposals or a modification of a proposal resulting from discussions during negotiations shall be considered if received by the closing date and time set forth in the amendment or by the closing date and time for submission of best and final offers, whichever is applicable. If the modifications described in this subsection are received after the respective date and time described in this subsection, the modifications are late and shall not be considered by the agency.

(f) *Evaluation of proposals.* — (1) Each agency shall establish written administrative procedures for the evaluation of the proposals.

(2) For the purpose of conducting negotiations, the agency shall determine, in accordance with subsection (g) of this section, that proposals are either likely to be selected for award or unacceptable. A determination that a proposal is unacceptable shall be in writing, state the basis of the determination and be retained in the procurement file. If the agency determines that an offeror's proposal is unacceptable, the agency shall notify that offeror of the determination and that the offeror shall not be afforded an opportunity to modify its offer.

(g) *Negotiations with individual offerors.* — All agencies shall have a right to negotiate with individual offerors after their proposals are opened. The agency shall establish a committee, procedures and schedules for conducting negotiations. Disclosure of 1 offeror's price to another and any information derived from competing proposals is prohibited.

(h) *Best and final offers.* —

The agency shall reserve the right to seek best and final offers and if choosing to do so the agency shall issue a written request for best and final offers. The request shall set forth the date, time, and place for the submission of best and final offers. The request for best and final offers shall inform offerors that, if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer. Best and final offers shall be requested only once, unless the agency makes a written determination that it is advantageous to the State to conduct further negotiations or change the State's requirements.

(i) *Mistakes in proposals.* — Prior to the time and date set for receipt of best and final offers, any offeror with whom negotiations have been held may withdraw the offer or correct any mistake by modifying the offer.

(j) *Contract award.* — (1) The contract shall be awarded within 90 days of the closing date and time advertised in the request for proposals. The agency shall award a contract to the offeror whose proposal is determined in writing to be most advantageous to the State, based on the factors set forth in the request for proposals. The determination shall explain the basis of award.

(2) The agency shall notify each unsuccessful offeror in writing of the award.

(3) After receipt of a fully executed contract, the proposals shall be open for public inspection in accordance with § 6923(j)(4) of this title.

(4) A formal contract shall be executed with the successful firm within 20 days after the award of the contract.

(k) *Cancellation of requests for proposals.* —

(1) A request for proposals or other solicitation may be canceled in whole or in part if it is in the best interest of the State. The reasons for the cancellation shall be made part of the procurement file.

(2) If a solicitation is canceled prior to the opening of proposals, a notice of cancellation shall be publicly posted and available to all offerors, and any proposals that have been received shall be returned unopened to the offerors.

(3) If proposals have been received electronically, the files must be deleted by the agency and notice sent to those offerors.

(*l*) *Rejection of individual proposals.* — A proposal or quotation may be rejected for 1 or more of the following reasons:

(1) The person responding to the solicitation is determined to be nonresponsive or not responsible pursuant to subsection (m) of this section;

(2) It is unacceptable;

(3) The proposed price is unreasonable; or

(4) It is otherwise not advantageous to the State.

Offerors whose proposals are rejected under this section shall be notified in writing about the rejection. Record of the rejection shall be made part of the procurement file. The reasons for the rejection shall be stated in the determination.

(m) *Responsibility of offerors.* — An agency shall determine that an offeror is responsible before awarding a contract to that offeror. Factors to be considered in determining if an offeror is responsible include:

(1) The offeror's financial, physical, personnel or other resources, including subcontracts;

(2) The offeror's record of performance and integrity;

(3) Whether the offeror is qualified legally to contract with the State;

(4) Whether the offeror supplied all necessary information concerning its responsibility; and

(5) Any other specific criteria for a particular procurement which an agency may establish; provided, that the criteria shall be set forth in the solicitation and is otherwise in conformity with state and/or federal law.

If an agency determines that an offeror is nonresponsive or not responsible, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be promptly sent to the affected offeror. The final determination shall be made part of the procurement file.

(n) *On-line bidding method.* —

If an agency determines that an on-line bidding method is beneficial, the agency may use an on-line bidding method to obtain and evaluate proposals for the purchase of goods and nonprofessional services.

(70 Del. Laws, c. 601, § 7; 71 Del. Laws, c. 4, § 8; 84 Del. Laws, c. 489, § 6.)

§ 6925. Sole source procurement.

(a) A contract may be awarded for materiel or nonprofessional services without competition if the agency head, prior to the procurement, determines in writing that there is only 1 source for the required materiel or nonprofessional service. Sole source procurement shall not be used unless there is sufficient evidence that there is only 1 source for the required material or service and that no other type of material or service will satisfy the requirements of the agency. The agency shall examine cost or pricing data, which shall include lifecycle costing analysis as specified in §§ 6902 and 6909A(b) of this title if the sole source offers more than 1 type or variety of equipment, prior to an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the agency stating the basis for the sole source procurement shall be included in the agency contract file. Textbooks and related instructional materials are sole source purchases.

(b) An agency seeking a sole source procurement shall prepare written documentation citing the existence of a sole source condition. The document shall include the specific efforts made to determine the availability of any other source and an explanation of the procurement need. The agency may, for confirmation, submit this documentation to the Section for review and comment prior to the intended date of award.

(c) The agency shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the agency. The agency shall enter into a formal contract stating the terms and conditions of the procurement.

(70 Del. Laws, c. 601, § 7; 74 Del. Laws, c. 419, § 6; 75 Del. Laws, c. 88, § 22.)

§ 6926. Multiple source contracting.

An agency may award a contract for a particular materiel or nonprofessional service to 2 or more firms if the agency head makes a determination that such an award is in the best interest of the State. If such a determination is made, the advertisement shall include a notification of the right of the agency to make such an award and the criteria upon which such an award shall be based.

(70 Del. Laws, c. 601, § 7.)

§ 6927. Bid and contract security.

(a) *Bid bonds.* — For the purchase of materiel and nonprofessional services, in accordance with § 6923 of this title, the agency or a representative delegated by the agency may, at their discretion, require that bids be accompanied by:

(1) A deposit of either a good and sufficient bond to the State for the benefit of the agency involved; such bonds shall be issued with a corporate surety authorized to do business in this State, the surety shall be approved by the agency, and the bond form used shall be the standard form included as part of the bid documents issued by the Office of Management and Budget for this purpose; or

(2) A security of the bidder assigned to the agency for a sum equal to at least 10% of the bid.

The bid bond or bid security need not be for a specific sum but may be stated to be for a sum equal to 10% of the bid to which it relates. A bid bond or bid security may be stated as a certain stated sum provided that the sum is equal to or greater than 10% of the bid.

Bid or performance bonds shall not be used as a substitute for a determination of bidder responsibility. If a bid is withdrawn at any time before bid opening, any bid security shall be returned to the bidder.

(b) *Loss of bid bond as damages.* — In the event of any successful bidder refusing or neglecting to execute a formal contract and bond within 20 days of awarding the contract, the bid bond or security deposited by the successful bidder shall be taken and become the absolute property of the State for the benefit of the agency as liquidated damages. Such damages shall neither constitute a forfeiture nor a penalty and shall be deposited with the Secretary of Finance. Such moneys pertaining to Department of Transportation contracts shall be deposited in the Transportation Trust Fund. The contracting agency may award the contract to the next lowest responsible bidder or re-advertise for new bids.

(c) *Return of bid bond.* — Upon the execution of a formal contract and performance bond, the bid bond shall be returned to the successful bidder.

(d) *Performance bonds.* — Simultaneous with the execution of the formal contract where required by §§ 6923(k)(1) and 6924(j)(1) of this title, the procuring agency may require the successful bidder to execute a good and sufficient bond to the State for the benefit of the agency. Such performance bonds shall:

(1) Be with a corporate surety authorized to do business in this State;

(2) Be in a sum equal to 100% of the contract award, except as otherwise provided in this subsection; and

(3) Be in the standard form issued by the Office of Management and Budget for this purpose and shall be included in the projects' bid documents.

Contracts for the purchase of material with a value less than the threshold amount(s) established by the Contracting and Purchasing Advisory Council may reduce or waive this bond requirement from the successful bidder. Such reduction or waiver shall be stated in the bid specifications.

(e) *Contents of performance bonds.* — The bond shall be conditioned upon the faithful compliance and performance by the successful bidder of each and every term and condition of the contract and the proposal, plans and specifications thereof. Each term and condition shall be met at the time and in the manner prescribed by the contract and the specifications, including the payment in full to every person furnishing materiel or performing labor in the performance of the contract, of all sums of money due the person for such labor and materiel. The bond shall also contain the successful bidder's guarantee to indemnify and save harmless the State and the agency from all costs, damages and expenses growing out of or by reason of the successful bidder's failure to comply and perform the work and complete the contract in accordance with the contract.

(f) *Invoking a performance bond.* — The agency may, when it considers that the interests of the State so require, cause judgment to be confessed upon the bond. All sums received through confession of judgment shall be deposited with the Secretary of Finance for the credit of the agency. Such moneys pertaining to Department of Transportation contracts shall be deposited in the Transportation Trust Fund. Every person furnishing materiel or performing labor under the contract for which the successful bidder is liable may maintain an action on the bond for the person's own use in the name of the State or the contracting county in any court of competent jurisdiction for the recovery of such sum or sums as may be due such person from the successful bidder, but if the bond so provides, no suit shall be commenced after the expiration of 1 year following the date on which the successful bidder ceased work on the contract, otherwise suits may be commenced at any time within 3 years following the date the last work was done on the contract. No person or surety, in any action brought under this section or on the bond required in this section shall assert as a defense to such action the claim that the bond given pursuant to this section contained a limitation or restriction not provided for by this section.

(g) *Other security for contracts under threshold amount(s).* — Contracts for the purchase of materiel and nonprofessional services valued less than the threshold amount(s) set by the Contracting and Purchasing Advisory Council may contain a waiver of the bond requirement provided that the successful vendor post with the State an irrevocable letter of credit or other suitable or readily collectible financial security for the project. Such letter of credit or other security shall be issued for a term commencing simultaneously with the execution of the formal contract and terminating no later than 3 years subsequent to the date of delivery of such materiel or nonprofessional service or to the extent of the warranty period, whichever is greater. In no event shall such security expire without the express written approval of the State. Such waiver as described in this paragraph shall be stated in the bid specifications.

(h) *Waivers from performance bonds.* — On a contract for the purchase of a materiel or nonprofessional service, the State may, at its discretion, reduce or waive the bond or other form of security. Such waiver shall be stated in the bid specifications.

(i) In the case of bids submitted to agencies other than any county of this State and other than any public school district, wherever security is required under this section, the vendor shall also supply with its bid its taxpayer identification number (i.e., federal employer identification number or Social Security number) or a Delaware business license number and, should the vendor be awarded a contract, such vendor shall provide to the agency the taxpayer identification or Delaware business license numbers of such subcontractors. Such numbers shall be provided on the later of the date on which such subcontractor is required to be identified or the time the contract is executed. The agency shall report to the Division of Revenue each vendor selected for award within 15 days of execution of the contract and each subcontractor within 15 days of such contractor having been identified to the agency or on the date of execution of the contract, whichever is later, unless the Director of the Division of Revenue has notified the agency of criteria according to which, in the Director's discretion, reporting is not required, and the contract meets such criteria.

(70 Del. Laws, c. 601, § 7; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 428, §§ 1, 2; 75 Del. Laws, c. 88, § 16(5).)

§ 6928. Failure to comply with contract.

If any firm entering into a contract under the authority of this chapter neglects or refuses to perform it or fails to comply with the terms thereof, the agency may terminate the contract and proceed to award a new contract in accordance with this chapter or the agency may require the surety on the performance bond to complete the contract in accordance with the terms of the performance bond. Nothing herein shall preclude the agency from pursuing additional remedies as otherwise provided by law.

(70 Del. Laws, c. 601, § 7.)

§ 6929. Contract insurance and contract liability.

In addition to bond requirements as stated in § 6927 of this title, each successful bidder shall purchase adequate insurance for the performance of the contract and, by submission of a bid, agrees to indemnify and save harmless and to defend all legal or equitable actions brought against the State, any agency, officer and/or employee of the State, for and from all claims of liability which is or may be the result of the successful bidder's actions during the performance of the contract. The purchase or nonpurchase of such insurance or the involvement of the successful bidder in any legal or equitable defense of any action brought against the successful bidder based upon work performed pursuant to the contract will not waive any defense which the State, its agencies and their respective officers, employees and agents might otherwise have against such claims, specifically including the defense of sovereign immunity, where applicable, and by the terms of this section, the State and all agencies, officers and employees thereof shall not be financially responsible for the consequences of work performed, pursuant to said contract.

(70 Del. Laws, c. 601, § 7.)

§ 6930. Right to audit records.

An agency shall have the right to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of 3 years from the date of final payment under the prime contract and by the subcontractor for a period of 3 years from the date of final payment under the subcontract.

(70 Del. Laws, c. 601, § 7.)

§ 6931. Procurement of information and telecommunications systems [Repealed].

(70 Del. Laws, c. 601, § 7; repealed by 84 Del. Laws, c. 489, § 7, effective Oct. 9, 2024.)

§ 6932. Maximum practicable competition.

Descriptions or specifications shall not use a brand or trade name except as an indication of the type and quality of materiel and in all such cases shall contain the words "or approved equal." All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the agency's needs and shall not be unduly restrictive.

(70 Del. Laws, c. 601, § 7.)

§ 6933. Authorization for cooperative purchasing.

(a) The Section may, with written approval of the Section director or the Section director's designee, participate in, sponsor, conduct or administer a cooperative or joint purchasing agreement for the procurement of materiel or nonprofessional services with 1 or more public procurement units either within the State or within another state in accordance with an agreement entered into between the participants.

(b) The Section may grant temporary approval to another agency to participate in, sponsor, conduct or administer a cooperative or joint purchasing agreement for the procurement of materiel or nonprofessional services with the written approval of the Section director or Section director's designee.

(70 Del. Laws, c. 601, § 7; 75 Del. Laws, c. 88, §§ 16(5), 22; 77 Del. Laws, c. 327, § 29; 78 Del. Laws, c. 290, § 24(c); 84 Del. Laws, c. 489, §§ 8, 9.)

§ 6934. Purchase of used materiel or equipment.

Any agency may purchase used equipment or other materiel by negotiated purchase, rather than by competitive bidding, as provided in this chapter, if it is demonstrated to the satisfaction of the agency head that the negotiated price is reasonable for the intended use. The contracting agency shall use lifecycle costing analysis as specified in §§ 6902 and 6909A(b) of this title prior to demonstrating to the agency head that the negotiated price is reasonable for the intended use.

(70 Del. Laws, c. 601, § 7; 74 Del. Laws, c. 419, § 7.)

§ 6935. Purchases using federal contracts.

The Section may, with written approval of the Section director or the Section director's designee, enter into negotiations with various manufacturers or distributors and award contracts which will enable agencies and local governments to purchase materiel at prices approved by the General Services Administration of the United States government or its successor.

(70 Del. Laws, c. 601, § 7; 75 Del. Laws, c. 88, § 16(5); 84 Del. Laws, c. 489, § 10.)

§ 6936. Special requirements for financial contracts.

No contract shall be awarded which includes the transportation, handling or storage of moneys, including lawful currency and coin, negotiable and nonnegotiable securities, stocks, bonds, coupons and things of unusual value unless the successful bidder shall have, at the time of the award of the contract, a valid license as required by Chapter 32 of Title 5. At the time of the submission of its bid, the bidder shall provide evidence of possession of such license or evidence that application for such license was made with the State Banking Commissioner and all fees required by such Chapter 32 of Title 5 had been paid.

(70 Del. Laws, c. 601, § 7.)

§ 6937. Purchase of native plants [For application of this section, see 84 Del. Laws, c. 451, § 3].

(a) For purposes of this section:

(1) “Athletic field” means land that is used for athletic events and does not include land that is adjacent to the playing area.

(2) “Cultivar” means a genetic variant of a native species that enhances a particular trait and is maintained by propagation.

(3) “Golf course” means land that is used for playing the game of golf and does not include land that is adjacent to the playing area.

(4) “Historic” means a historic resource as defined in § 1803 of Title 30, a “certified historic property” as defined in § 1812 of Title 30, or property otherwise designated as historic on a landscape plan kept by an agency and available for public review.

(5) “Invasive plant” means a plant on the Invasive Plant List under § 2904 of Title 3.

(6) “Lawn” means an area of short, mown grass.

(7) “Native plant” or “native species” means a plant that occurs naturally in the eastern temperate forest ecoregion of the United States. “Native plant” includes any viable portion of a plant, including seeds.

(8) “Pasture” means land covered with grass and other low plants suitable for grazing animals.

(9) “Secretary” means the Secretary of the Department of Agriculture.

(b) (1) The Secretary shall adopt regulations that maintain a list of native plants that are generally available and appropriate for the needs of agencies.

(2) The Secretary shall adopt regulations under paragraph (b)(1) of this section with the advice of the Department of Natural Resources and Environmental Control and the Delaware Native Species Commission.

(c) (1) Except as provided under this section, an agency shall purchase only native plants in the development of new landscaped areas and in the rehabilitation of existing landscaped areas, including parks and landscaped areas surrounding buildings.

(2) An agency may also purchase any of the following:

a. A cultivar of a native species.

b. A hybrid of a native species, if the hybrid is a cross of 2 native species.

c. A wildlife habitat seed mix consisting of more than 75% native plant seed.

(d) If the plant is not an invasive plant, an agency may purchase a plant that is not allowed under subsection (c) of this section for any of the following purposes:

(1) Land purchased and managed as an historic property.

(2) Appropriate habitats for zoo animals.

(3) Agriculture, including crop fields, pastures, and fruit or vegetable gardens.

(4) Areas maintained as grass or turf, including lawns, athletic fields, golf courses, and a right-of-way along a road. Agencies are encouraged to minimize grass or turf areas and instead, use meadow areas and natural habitats.

(5) Botanical gardens.

(6) Plots used for ecological research.

(7) Flowering annuals and bulbs, within landscape beds.

(8) Any of the following, if approved by the Department of Natural Resources and Environmental Control or the Department of Agriculture:

a. Wildlife plantings for food or habitat.

b. Land where no plants allowed under subsection (c) of this section can thrive.

c. For trees, any of the following:

1. A lack of commercial availability.

2. Maintenance needs of the tree or property.

3. General safety, such as preventing tripping hazards from shallow spreading roots.

(e) (1) If an agency cannot purchase a plant under this section, the agency may not accept a donation of that plant.

(2) This section applies to plants purchased after December 31, 2025, and applies to both new landscaped areas and the rehabilitation of existing landscaped areas.

(3) Notwithstanding paragraph (e)(2) of this section, an agency may maintain plantings that cannot be purchased under this section if the planting was established before January 1, 2026.

(84 Del. Laws, c. 451, § 1.)

§ 6938. Purchase of recycled, reusable and recyclable products.

(a) The State shall have as a goal the maximum feasible purchase of recycled content products and reusable or recyclable products, and the maximum feasible percentage of postconsumer recycled content in its purchases. For any item that is being purchased by the State and for which the U.S. Environmental Protection Agency has developed a Comprehensive Procurement Guideline as required by § 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), it shall be a goal of the State to purchase that item with a recycled content that meets or exceeds the EPA guideline standards.

(b) Prior to initiating a request for procurement of any product, an agency shall review its existing specifications for such product to determine whether recycled content products or reusable or recyclable products are directly or indirectly excluded. The agency must eliminate any such exclusion from its specifications, unless it can demonstrate in writing to the satisfaction of the agency head that the exclusion is either:

(1) Operationally necessary;

(2) Legally mandated; or

(3) *Necessary to avoid excessive cost.* — Excessive cost shall be defined as when the recycled product cost is greater than 5% of the equivalent virgin product cost. Such costs shall include lifecycle costing analysis as defined by §§ 6902 and 6909A(b) of this title.

(c) When requesting any purchase of a product for which the U.S. EPA has established a Comprehensive Procurement Guideline, an agency is required to buy the specified product unless the agency can demonstrate in writing to the satisfaction of the agency head that a product meeting the standards either:

(1) Is not available competitively;

(2) Is not available within a reasonable time frame;

(3) Does not meet appropriate performance standards; or

(4) Is available only at an excessive cost as defined in paragraph (b)(3) of this section.

(d) There is established an interagency work group comprised of 1 representative from the Office of Management and Budget, the Department of Natural Resources and Environmental Control, the Department of Transportation and the Department of Health and Social Services. This work group shall be known as the State Materials Recycling Team (SMRT) and its members shall be appointed by the respective Department heads. The Chair of the SMRT will be selected by the team's membership. The work group's primary purposes shall be:

(1) To educate state agencies about recycling and to promote the purchase of recycled products as called for in this subsection;

(2) To develop a methodology for tracking purchases made in accordance with this section;

(3) To review and assess State agency recycling practices; and

(4) To report to the Governor and the General Assembly on an annual basis its findings and conclusions with respect to the above purposes.

(72 Del. Laws, c. 491, § 1; 74 Del. Laws, c. 419, § 8; 75 Del. Laws, c. 88, § 16(5); 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 19.)

§ 6939. Purchase of energy efficient products.

(a) Agencies shall purchase Energy Star products, as designated by the federal Environmental Protection Agency, when such products are available. The agency may include non-Energy Star rated equipment as an alternate in the bid documents to enable lifecycle costing analysis to be performed as part of the analysis of responsive bids. The agency shall be required to award a contract that includes the procurement of Energy Star rated equipment unless the agency can demonstrate, in writing, to the satisfaction of the Director, that the interests of the state would be better served by procuring non-Energy Star rated equipment.

(b) Prior to initiating a request for procurement of any product, an agency shall review the specifications for such product to determine whether an Energy Star product is available. If an Energy Star product is available, the agency is required to include in its bid specifications the requirement that the product be an Energy Star product unless the agency can demonstrate, in writing, to the satisfaction of the agency head, that a product with an Energy Star rating meets at least 1 of the following criteria:

(1) The product is not available competitively,

(2) The product is not available within a reasonable time frame, or

(3) The product does not meet appropriate performance standards.

The agency may include non-Energy Star rated equipment as an alternate in the bid documents to enable lifecycle costing analysis to be performed as part of the analysis of responsive bids. The agency shall be required to award a contract that includes the procurement of Energy Star rated equipment unless the agency can demonstrate, in writing, to the satisfaction of the Director, that the interests of the state would be better served by procuring non-Energy Star rated equipment.

(74 Del. Laws, c. 416, § 1; 75 Del. Laws, c. 88, § 16(5).)

§ 6940. Service worker protection [For application of this section, see 84 Del. Laws, c.453, § 3].

An agency must comply with the Service Worker Protection Act, Chapter 20 of Title 19, when the agency is an awarding authority or a successor employer to a service contract.

(84 Del. Laws, c. 453, § 2.)

Subchapter IV

Public Works Contracting

§ 6960. Prevailing wage requirements.

(a) The specifications for every contract or aggregate of contracts relating to a public works project in excess of $500,000 for new construction (including painting and decorating) or $45,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of buildings or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Delaware Department of Labor, Division of Industrial Affairs, to be prevailing in the county in which the work is to be performed. As of January 1, 2016, the Delaware Department of Labor, Division of Industrial Affairs shall establish the prevailing wage for each respective craft or class of laborers and mechanics at the same rates established in collective bargaining agreements between labor organizations and their employers, or when collective bargaining agreement rates do not prevail, that govern work of a similar nature and similar crafts or classes of laborers and mechanics for the county where the public works contract will be performed if that particular labor organization's collective bargaining rate prevailed and they participated in the survey, for that particular trade or craft in that particular county for 4 consecutive years. When collective bargaining rates do not apply, the prevailing wage shall be the highest rate of the 4 years. If the agreed rate of pay is designated to be the craft's collective bargaining agreement, the annual rate adjustment will be determined by the collective bargaining agreement rate for each craft and county, each year. When collective bargaining rates do not prevail, the annual rate adjustment shall be the Consumer Price Index-Construction. If the prevailing wage cannot be reasonably and fairly determined in any locality because no such agreements exists or the collective bargaining rate has not prevailed for 4 consecutive years the Department shall use the prevailing wage as established by the Department's annual prevailing wage survey. There will be a 1-time challenge of the prevailing wage rate per cycle as in the Department regulations.

For each respective craft or class of laborers or mechanics, the craft or class whose collectively bargained wages as of January 1, 2015, for that particular labor organization's collective bargaining rate prevailed for that particular trade or craft in that particular county is the prevailing wage rate and whose rate has prevailed for 4 of the last 5 years, or will prevail in the future for 4 consecutive years, shall have their collective bargaining agreement adopted as the prevailing wage rate negotiated by industry standards between workers and employers and the raise be determined by the collective bargaining agreement rate as of September 1 for that craft, county, and year.

All other provisions of this law are to remain unchanged.

(b) Every contract based upon these specifications must contain a stipulation that the employer must pay all mechanics and laborers employed directly upon the site of the work or engaged in any custom fabrication work, regardless of where the work is performed, unconditionally and not less often than once a week and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the specifications, regardless of any contractual relationship which may be alleged to exist between the employer and such laborers and mechanics. The specifications must further stipulate that the scale of wages to be paid must be posted by the employer in a prominent and easily accessible place at the site of the work, and that there may be withheld from the employer so much of accrued payments as may be considered necessary by the Department of Labor to pay to laborers and mechanics employed by the employer the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and rates of wages received by such laborers and mechanics to be remitted to the Department of Labor for distribution upon resolution of any claims.

(c) Every contract based upon these specifications shall contain a stipulation that sworn payroll information, as required by the Department of Labor, be furnished weekly. The Department of Labor shall keep and maintain the sworn payroll information for a period of 6 months from the last day of the work week covered by the payroll.

(d) The Department of Labor shall investigate all claims that the prevailing wage rates as provided for under this section are not being or have not been paid. Upon finding that an employer has not paid or is not paying the prevailing wage rates, the Department of Labor shall notify the employer of the violations by certified mail and make an effort to obtain compliance. Upon failure to obtain compliance within 15 days of receipt of said certified mail, the Secretary may terminate all rights of the employer to proceed with the work under the public construction contract, and the employer shall be responsible for all damages resulting therefrom.

(e) Any employer who knowingly fails or refuses to pay the prevailing wage rates provided for under this section, or who fails to submit payroll reports or post notice of the wage rates which apply to the project shall, for each such violation, be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation. No public construction contract in this State shall be bid on, awarded to or received by any contractor or subcontractor or any person, firm, partnership or corporation in which such employer has an interest who, within 2 years after entry of a judgment pursuant to this chapter, is adjudicated in violation of this chapter in a subsequent

proceeding until 3 years have elapsed from the date of the subsequent penalty judgment. A civil penalty claim may be filed in any court of competent jurisdiction.

(f) Any laborer or mechanic employed by any employer, or the Department of Labor on behalf of any laborer or mechanic employed by any employer, who is paid in a sum less than the prevailing wage rates provided for under this section shall have a right of action against the employer in any court of competent jurisdiction to recover treble the difference between the amount so paid and the prevailing wage rate. Such action may be brought by the Department of Labor in the name and for the benefit of the laborer or mechanic with or without an assignment of the claim from the employee and upon notice to the aggrieved employee, the Department of Labor shall have the power to settle and adjust any such claim to the same extent as would the aggrieved employee. It shall not be a defense to such action that the underpayment was received by the laborer or mechanic without protest. Upon the filing of an action under this section, the employer shall post suitable bond approved by the court for the damages which may be recoverable thereunder. Any judgment entered for plaintiff shall include an award for reasonable attorney's fees and costs of prosecution. The Department of Labor shall not be required to pay the filing fee or other costs of the action or fees of any nature to file bond or other security of any nature in connection with such action or with proceedings supplementary thereto or as a condition precedent to the availability to the Department of any process in aid of such action or proceedings. The Department shall have the authority to join various claimants in 1 preferred claim lien and, in case of suit, to join them in 1 cause of action.

(g) Any wages collected under this chapter, but not claimed by the employee within 1 year from the date of collection, shall be retained by the Department of Labor for enforcement purposes.

(h) No action to recover wages and damages under this section shall be brought after the expiration of 2 years from the accruing of the cause of action.

(i) Whenever any person shall contract with another for the performance of any work which the contracting person has undertaken to perform, the contracting person shall become civilly liable to employees engaged in the performance of work under such contract for the payment of wages, exclusive of treble damages, as required under this section, whenever and to the extent that the employer of such employees fails to pay such wages, and the employer of such employees shall be liable to such person for any wages paid by the employer under this section. If pursuant to this subsection a person becomes civilly liable to employees of another, such liability shall not constitute a violation of this section for purposes of the termination, civil penalty and debarment provisions of subsections (d) and (e) of this section.

(j) A contract manager shall be responsible for monitoring compliance with this section, but shall not become civilly liable to the same extent as the contracting person. For purposes of this section, "contract manager" means any person who performs the function of the contracting person without becoming a party to the contract of performance, but rather contracts with the recipient of the goods or services to act as the recipient's agent. A contract manager who knowingly fails or refuses to monitor compliance with this section shall, for each such failure or refusal, be subject to a civil penalty of not less than $100 nor more than $500. A civil penalty claim under this subsection may be filed in any court of competent jurisdiction. A contract manager's liability for a civil penalty pursuant to this subsection shall not constitute a violation of this section for purposes of the termination, civil penalty and debarment provisions of subsections (d) and (e) of this section.

(k) Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the Department pursuant to this chapter, or because that employee has caused to be instituted or is about to cause to be instituted any proceedings under this chapter, or has testified or is about to testify in any such proceedings, shall be deemed in violation of this chapter and shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(*l*) [Repealed.]

(m) None of the specifications of this section shall apply to a project of the Department of Transportation wholly funded by Community Transportation Funds. None of the specifications of this section shall apply to a project wholly funded by the Municipal Street Aid Program authorized pursuant to Chapter 51 of Title 30.

(29 Del. C. 1953, § 6913; 53 Del. Laws, c. 380, § 1; 57 Del. Laws, c. 454, § 17; 58 Del. Laws, c. 408; 63 Del. Laws, c. 80, § 69; 65 Del. Laws, c. 368, § 1; 67 Del. Laws, c. 260, § 1; 69 Del. Laws, c. 64, § 28; 69 Del. Laws, c. 295, § 1; 70 Del. Laws, c. 99, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 601, §§ 6, 8; 71 Del. Laws, c. 310, § 1; 71 Del. Laws, c. 312, § 1; 72 Del. Laws, c. 170, § 1; 73 Del. Laws, c. 129, § 1; 74 Del. Laws, c. 279, §§ 1, 3; 76 Del. Laws, c. 185, § 1; 80 Del. Laws, c. 105, §§ 1-3; 83 Del. Laws, c. 37, § 36; 83 Del. Laws, c. 283, § 44; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 124, § 1; 84 Del. Laws, c. 466, §§ 3, 4.)

§ 6960A. Craft training requirement.

(a) (1) A contract relating to a public works project under § 6962 of this title must include a craft training program for each craft in the project if at the time the contractor executes a public works contract, all of the following apply:

a. A project meets the prevailing wage requirement under § 6960 of this title.

b. The contractor employs 10 or more total employees.

c. The project is not a federal highway project, except for the project under § 6962(c)(11) of this title.

d. There is an apprenticeship program for a craft in the project on the list of crafts under § 204(b)(2) of Title 19.

(2) A contractor must commit that all subcontractors provide craft training if paragraph (a)(1) of this section applies to the subcontractor.

(b) (1) If a contract requires a craft training program under subsection (a) of this section, the contractor must satisfy the craft training requirement before the contract is executed. A contractor or subcontractor may satisfy the craft training requirement under this section by doing any of the following for each craft under subsection (a) of this section:

a. Having at least 1 active apprentice in a craft training program for the craft.

b. Having at least 1 active apprentice who completes a craft training program for the craft within the 6 months before the date the contract was executed.

c. Being a member of a consortium that provides craft training for the craft and all of the following apply to the craft training program for the craft:

1. The consortium requires a regular financial contribution.

2. The contractor or subcontractor has access to the craft training program.

3. There is at least 1 active apprentice in the craft training program.

d. Making a payment under subsection (c) of this section.

(2) The craft training program under paragraphs (b)(1)a. through (b)(1)b. of this section may be provided by the contractor or subcontractor or through agreement with another entity.

(3) The active apprentice under paragraphs (b)(1)a. through (b)(1)b. of this section does not have to work on the contract being executed under paragraph (b)(1) of this section.

(c) (1) For contracts executed after September 9, 2022, a contractor or subcontractor may satisfy the craft training requirement under this section by making a payment in the amount established under § 204(b)(2)b.2. of Title 19, for the craft into the Apprenticeship and Training Fund of the Department Labor.

(2) For each calendar year, a contractor or subcontractor satisfies the craft training requirement for all contracts executed during that year when payments made under paragraph (c)(1) of this section after January 1 equal the following amounts:

a. For employers with 10 through 25 employees, payments that total $10,000.

b. For employers with more than 25 employees, payments that total $20,000.

(d) (1) All contracts that require a craft training program under subsection (a) of this section must contain a penalty provision against the successful bidder for the failure to comply with the requirements under this section. The penalty provision must require all of the following:

a. The contractor must pay the amount of the payment required under subsection (c) of this section to the Apprenticeship and Training Fund.

b. An amount that does not exceed 10 percent of the payment under paragraph (d)(1)a. of this section.

(2) A penalty assessed under paragraph (d)(1) of this section may be fully or partially remitted or refunded by the agency awarding the contract only if the contractor establishes compliance within 60 days of the notice of the penalty. A claim for remission or refund of a penalty may only be granted if an application for the remission or refund is filed within 1 year of the notice of the penalty.

(3) All money received from penalties under paragraph (d)(1)b. of this section, that is not remitted or refunded, reverts to the government entity under the contract for which the penalty was imposed.

(83 Del. Laws, c. 129, § 4; 83 Del. Laws, c. 283, § 45.)

§ 6961. Small public works contract procedures.

(a) *Applicability.* — Any state contract for which an agency is a party and for which the probable cost is less than or equal to the threshold amount(s) set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title for small public works contracts shall be subject to the provisions of this section.

(b) *Procedure.* — All contracts entered into pursuant to this section shall follow the procedures as prescribed by the Director pursuant to § 6922 of this title.

(c) Bid and performance bonds as authorized in § 6962 of this title may be made a requirement by the agency for contracts made pursuant to this section.

(70 Del. Laws, c. 601, § 9; 75 Del. Laws, c. 88, § 16(5).)

§ 6962. Large public works contract procedures [For application of this section, see 82 Del. Laws, c. 36, § 3].

(a) *Applicability.* — Any state contract for which an agency is a party and for which the probable cost is greater than the amount set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title for small public works contracts shall be subject to the provisions of this section.

(b) *Advertising requirements.* —

Each agency shall publicly announce, for 2 consecutive weeks, each public works contract unless a shorter advertisement period has been approved by the Section Director. Public advertising shall require electronic publication accessible to the public in a manner prescribed pursuant to § 6902(12) of this title for 2 consecutive weeks unless a shorter advertisement period has been approved by the Section Director. An agency may also maintain a register of prospective bidders which may be used to provide direct notification of

contracts to be bid. This register shall not be used in a manner which will limit the competitiveness of the bidding process described in this subchapter. No agency shall be subject to a cause of action or be otherwise liable for any errors or omissions in administering a bid registry. The public announcement shall also state the nature of the contract under the following conditions:

(1) If the agency requires all bidders to be registered or prequalified in order to receive bidding documents for the proposed contract, the announcement shall state in general terms the character and location of the work and bid and performance bond requirements. If the agency requires prequalification of subcontractors in its invitation to bid, no contractor shall list a subcontractor in its subcontractor listing who has not already been prequalified by the agency.

(2) If the agency does not require bidder registration or prequalification for the proposed contract, the announcement shall state with reasonable accuracy the character, quantity and location of the work as well as bid and performance bond requirements. The public announcement shall also state that the agency may extend the time and place for the opening of bids from that described in the announcement. Such extension shall not take place unless at least 2 calendar days' notice, unless special circumstances apply as determined by the Section Director, by certified delivery, facsimile transmission or by other verifiable electronic means, is sent to those bidders who obtained copies of the plans and specifications or contract descriptions.

(c) *Bidder prequalification requirements. —*

(1) The Office shall establish a 2-step process for the prequalification of contractors and subcontractors that desire to bid on large public works contracts for which prequalification is specified by the contracting agency. A contractor shall not be permitted to bid on a contract that requires prequalification unless the contractor has been prequalified pursuant to this subsection. A prequalified and classified contractor shall not be permitted to submit a bid on a specific contract unless the contractor completes a questionnaire and submits supplemental information at the option of the contracting agency or per paragraph (c)(9)a. of this section to the Office pertaining to that contract. The supplemental request for information shall not include any information requested during the first step of the prequalification process, but may require the contractor to affirm that no material changes have occurred since the application for the first step of the prequalification process was submitted to the Office. The prequalification process shall apply to general contractors and subcontractors in the areas that are deemed necessary by the Office.

(2) The prequalification classification issued by the Office as part 1 of the prequalification process shall be valid for 24 months. A contractor or subcontractor subject to prequalification shall request to be reclassified by the Office after the 24-month period in order to remain eligible to bid on public works contracts that require prequalification. A contractor or subcontractor who holds a valid prequalification classification shall report any material changes which could adversely affect the prequalification, as established in paragraph (c)(3) of this section, to the Office in writing within 10 days of the material change. A contractor or subcontractor may report to the Office in writing material changes which could positively affect the prequalification, as established in paragraph (c)(3) of this section. Based on the information provided, the Office may change the classification or revoke prequalification at the sole discretion of the Director.

(3) The prequalification process shall include a requirement that the contractor or subcontractor submit a statement under oath on a form designated by the Office. The form shall fully describe and establish the financial ability, responsibility, plant and equipment, organization, ownership, relationships, and prior experience of the contractor or subcontractor and any other pertinent and material facts as may be deemed necessary by the Office. At the discretion of the Office, the submission shall include part or all of the following:

a. The most recent audited financial statement and/or financial statement review containing a complete statement of the proposing contractor's or subcontractor's financial status. Such statement shall include the contractor's Z score;

b. The proposing contractor's or subcontractor's experience on other public works or private sector projects, including but not limited to the size, complexity and scope of the firm's prior projects;

c. Performance reviews of the proposing contractor or subcontractor on previously awarded public works or private sector construction projects within the last 5 years;

d. Civil judgments and/or criminal history of the proposing contractor's or subcontractor's principals;

e. Any debarment or suspension by any government agency;

f. Any revocation or suspension of a license;

g. Any bankruptcy filings or proceedings; and

h. A statement as to organization, which shall demonstrate the adequacy of such organization to undertake a public works contract. This statement shall include the resumes of the management and professional staff.

(4) After the receipt of the submission provided for in paragraph (c)(3) of this section, the Office may verify all information provided in the contractor's or subcontractor's submission, including applicable license and certificate requirements, federal or state debarments, and violations of law. The Office may also conduct inquiries or surveys of the contractor's or subcontractor's prior customers.

(5) a. Based upon the submission provided for in paragraphs (c)(3) and (4) of this section, the Office Review Committee, which shall include at least 2 Office employees, shall assign a contractor or subcontractor the following classification or classifications and limits for the purpose of determining the types of projects for which a contractor or subcontractor is entitled to bid:

1. A trade(s) or work classification(s); and

2. The maximum contract dollar value for which the contractor or subcontractor may submit a bid.

To effectuate these requirements of the prequalification process, the Office shall develop rules and regulations for assigning classifications and maximum dollar limits.

b. The classification shall be made, or prequalification may be denied, and notice thereof shall be sent to the contractor or subcontractor within 5 days of the determination made pursuant to paragraph (c)(5)a. of this section by registered or certified mail or other legally valid methods. Notice of prequalification classification or denial shall also be sent to the contracting agency if said agency is not the Office.

(6) Based upon the proposing contractor's or subcontractor's answers to the step-1 or step-2 prequalification questionnaire, the Office may deny prequalification for any 1 of the following specified reasons:

a. Insufficient financial ability to perform a public works contract;

b. Inadequate experience to undertake a public works contract;

c. Documented failure to perform on prior public or private construction contracts, including but not limited to final adjudication or admission of violations of prevailing wage laws in Delaware or any other state;

d. Prior judgments for breach of contract that indicate the proposing contractor or subcontractor may not be capable of performing the work or completing a large public works contract;

e. Criminal convictions for fraud, misrepresentation or theft relating to contract procurement;

f. Previous debarment or suspension of the contractor or subcontractor by any government agency that indicates the proposing contractor or subcontractor may not be capable of performing the work or completing a large public works contract;

g. Previous revocation or suspension of a license that indicates the proposing contractor or subcontractor may not be capable of performing the work or completing a public works contract;

h. Previous bankruptcy proceedings that indicate the proposing contractor or subcontractor may not be capable of performing the work or completing a public works contract; or

i. Failure to provide accurate prequalification information on past or current prequalification questionnaires.

Reason or reasons for the denial of prequalification shall be in writing, and shall be sent to the contractor or subcontractor within 5 working days of such decision. An agency may refuse to provide any contractor or subcontractor disqualified under this paragraph plans and specifications for a contract. An agency receiving a bid from a contractor or subcontractor disqualified under this paragraph shall not consider such bid.

(7) Any contractor or subcontractor disqualified pursuant to paragraph (c)(6) of this section may request a review of such decisions with the Director within 5 working days of the receipt of the agency's notification of the prequalification decision. Such request shall be made in writing. No action in law or equity shall lie against any agency or its employees if the contractor or subcontractor does not first review the decision with the Director. To the extent the contractor or subcontractor brings an action challenging a decision made pursuant to paragraph (c)(6) of this section after such review by the Director, the court shall afford great weight to the decision of the Office head and shall not overturn such decision unless the contractor or subcontractor proves by clear and convincing evidence that such decision was arbitrary and capricious.

(8) The Office shall maintain a registry of all contractors and subcontractors prequalified to bid on public works projects. The registry shall include the classification or classifications of the contractor or subcontractor and the maximum contract dollar value for which the contractor or subcontractor may submit a bid.

(9) a. In addition to the prequalification required herein, any agency shall require a contractor or subcontractor to provide supplemental information that is specifically relevant to the public works contract to be bid. Such additional information shall be considered supplemental certification and shall not duplicate in any way the information required by the Office in its prequalification process except for labor supply available to complete the project in a timely manner.

b. Based upon the proposing contractor's or subcontractor's answers to the agency's supplemental prequalification questionnaire, the Director, or in the case of school projects, the school district may deny the prequalification for any 1 of the following specified reasons:

1. Inadequate experience to undertake the specific project that requires supplemental prequalification;

2. Inadequate expertise to undertake the specific project that requires supplemental prequalification;

3. Failure to provide supplemental prequalification information for the specific project that requires supplemental prequalification; or

4. Inadequate labor supply available to complete the project in a timely manner.

Denial of supplemental prequalification by the Office, or in the case of school projects, the school district shall be in writing no later than 2 weeks before the close of the project bid and shall be sent to the contractor or subcontractor within 5 working days of such decision. An agency may refuse to provide any contractor or subcontractor disqualified under this paragraph plans and specifications for the contract. An agency receiving a bid from a contractor or subcontractor disqualified under this paragraph shall not consider such bid.

(10) Any contractor or subcontractor disqualified pursuant to paragraph (c)(9) of this section may request in writing within 5 working days of the receipt of the Office's or, in the case of school projects, the school district's, supplemental prequalification a review of such

decisions with the Director or the Director's designee or, in the case of school projects, the school district. No action in law or equity shall lie against any agency or its employees if the contractor or subcontractor does not first review the decision with the Director or, in the case of school projects, the school district within 5 working days after the decision is rendered by the Office or, in the case of school projects, the school district. To the extent the contractor or subcontractor brings an action challenging a decision made pursuant to paragraph (c)(9) of this section after such review by the Director or, in the case of school projects, the school district, the court shall afford great weight to the decision of the Director or, in the case of school projects, the school district and shall not overturn such decision unless the contractor or subcontractor proves by clear and convincing evidence that such decision was "arbitrary and capricious."

(11) In addition, for the US 301 project from the Maryland-Delaware state line to its termination at Delaware Route 1, all contractors and subcontractors are required, independently or through agreement with other organizations, to provide craft training for journeyman and apprentice levels through a bona fide program approved by and registered with the State of Delaware and/or United States Department of Labor.

(12) a. A Department of Transportation project, excluding a municipal street aid contract, must include a performance-based rating system.

b. The Department of Transportation's performance-based rating system must be defined in regulations promulgated by the Secretary of the Department of Transportation.

c. A contractor is eligible to bid as follows:

1. A contractor meeting or exceeding the minimum contractor's performance rating at the time of bid, as determined by the Department's performance-based contractor evaluation system, is eligible to bid.

2. A. A contractor who does not meet or exceed the minimum contractor's performance rating at the time of bid is eligible to bid if the contractor agrees to allow the Department to retain 5% of the payments to be made to the contractor for work performed under the contract under the procedures provided in paragraph (d)(5)a.1. of this section.

B. A contract under paragraph (c)(12)c.2. of this section must contain all of the following provisions:

I. A variable retainage in an amount that does not exceed 5%, that is established at the discretion of the Secretary.

II. When the project is at 50% completion, the contractor may request that the retainage be reduced to 2% after an interim evaluation of the current project.

III. The project completion percentage will be based on the actual work completed, excluding money paid for stored materials.

(13) a. If there is a craft training requirement for a craft in the project under § 6960A of this title, a contractor must commit that the contractor and all subcontractors will provide craft training for journeyman and apprentice levels at the time the contractor executes the public works contract.

1.–3. [Repealed.]

b., c. [Repealed.]

d. The Secretary of the Department of Labor may promulgate and adopt regulations to implement this paragraph (c)(13) of this section.

(d) *Bid specifications and plans requirements*. —

(1) *Preparation of plans and specifications and approvals.* — The contracting agency shall cause suitable plans and specifications to be prepared for all contracts pursuant to this section. All plans and specifications shall be prepared by registered and licensed architects and/or engineers who shall sign the plans and specifications and affix their seals thereto. This requirement may be waived if:

a. The work to be covered by the public works contract is to be performed in accordance with identical plans and specifications similarly signed and sealed pursuant to which previous public works contracts have been awarded under this subchapter. Any architect and/or engineer who signed and sealed the original of such identical plan(s) will have no liability arising from the use of those plans other than the use contemplated by the contract pursuant to which the original copies of such plans was created, unless such architect and/or engineer reviews and approves such different use; or

b. The project does not require architectural and engineering services and the agency head waives in writing the use of such services.

(2) *Agency assistance.* — An agency may retain, in accordance with subchapter V of this chapter, the professional services of a general contractor or other qualified firm to assist in cost estimation, economic design analysis and construction.

(3) *Prohibition of brand specification.* — The description of work and/or materiel and the plans and specifications shall not use a brand or trade name, except as an indication of the type or quality of materiel and in all such limited cases shall contain the words "or approved equal."

(4) *Special provisions.* — a. *Anti-pollution, conservation, environmental measures or Energy Star equipment not covered by contract specifications.* — 1. The description of the materiel and the plans and specifications for the work issued by the agency shall set forth those provisions of federal, state and local statutes, ordinances, rules and regulations respecting anti-pollution, conservation and environmental protection which affect the project or projects for which such solicitations or bids are sought.

2. If the successful bidder must undertake anti-pollution, conservation or environmental protection work not specified in the agency's plans and specifications or descriptions of materiel, including measures required by the enactment of new or the amendment of existing statutes, ordinances, rules or regulations occurring after the submission of the successful bid or quotation, the awarding agency shall issue a change order, as provided for in § 6963 of this title, setting forth the additional measures that must be undertaken.

3. *Cost.* — The cost of such a change order to the awarding agency shall be determined in accordance with the contract for change orders or force accounts. If no such provision is set forth in the contract, then the cost to the awarding agency shall be the contractor's costs for wages, labor costs other than wages, wage taxes, materiel, equipment rentals, insurance and subcontracts attributable to the additional activity plus a reasonable sum for overhead and profit.

4. *Authorization.* — Written authorization by the agency is to be given to the successful bidder prior to the bidder undertaking such additional activity. Costs incurred by the successful bidder for additional work performed without prior approval shall not be approved for payment by the agency.

5. *Energy Star equipment.* — Prior to finalizing specifications for equipment to be purchased as part of a large public works contract, the agency or its architect and/or engineer shall review all equipment to determine whether Energy Star rated products are available. For each piece of equipment, if an Energy Star product is available, the specifications and bid documents shall require the use of an Energy Star product unless the agency can demonstrate, in writing, to the satisfaction of the Director, that a product with an Energy Star rating meets at least 1 of the following criteria:

A. The Energy Star rated equipment is not available competitively,

B. The Energy Star rated equipment is not available within a reasonable time frame, or

C. The Energy Star rated equipment does not meet appropriate performance standards.

The agency may include non-Energy Star rated equipment as an alternate in the bid documents to enable lifecycle costing analysis to be performed as part of the analysis of responsive bids. The agency shall be required to award a contract that includes the procurement of Energy Star rated equipment unless the agency can demonstrate, in writing, to the satisfaction of the Director, that the interests of the state would be better served by procuring non-Energy Star rated equipment.

b. *Preference for Delaware labor.* — In the construction of all public works for the State or any political subdivision thereof or by firms contracting with the State or any political subdivision thereof, preference in employment of laborers, workers or mechanics shall be given to bona fide legal citizens of the State who have established citizenship by residence of at least 90 days in the State. Each public works contract for the construction of public works for the State or any political subdivision thereof shall contain a stipulation that any person, company or corporation who violates this section shall pay a penalty to the Secretary of Finance equal to the amount of compensation paid to any person in violation of this section.

(5) *Retainages and substitution of securities.* — a. *Authority to withhold contract retainage.* — 1. Agencies may retain a portion of the payments to be made to a contractor for work performed pursuant to a public works contract. The percentage of the value of work performed which may be retained shall be established for each particular contract in the contract bidding documents and shall be incorporated into the contract. The percentage retained shall be 5% of the value of the work completed by the contractor under the contract. Upon completion of the work under the contract, the agency may release 60% of the amount then retained. The balance of the amount retained will be held until:

A. All reports required of the contract are received;

B. All subcontractors in trades listed on the bid form are paid by the contractor, unless the amount owed to the subcontractor is disputed, in which case the agency may withhold 150% of the amount withheld by the contractor in its dispute with the subcontractor; and

C. Final payment is authorized by the agency.

2. The agency may, at its option, retain, temporarily or permanently, a small amount and may cause the contractor to be paid, temporarily or permanently, from time to time, such portion of the amount retained as it deems equitable. The contractor shall be paid for all work that is due to the contractor under the contract except for the amount retained.

3. The agency may at the beginning of each public works contract establish a time schedule for the completion of the project. If the project is delayed beyond the completion date due to the contractor's failure to meet the contractor's own responsibilities, the agency may forfeit all or part of retainage at its discretion.

b. *Procedures requirement.* — Agencies shall establish standard procedures and regulations for the administration of contract retainages prior to entering into contracts which require retainages. All agency procedures shall provide for contract retainage and substitution of securities for retainage.

c. *Substitution of securities.* — 1. The contractor under a public works contract, with the approval of the agency, may deposit securities as authorized by this section in substitution for moneys being withheld from the contractor as retainage. Securities allowable for substitution of retainage shall be: United States Treasury Bonds, United States Treasury Notes, United States Treasury Certificates of Indebtedness or United States Treasury Bills; bonds or notes of the State; bonds of any political subdivision of the State; or certificates of deposit from state or national banks located in this State; or any letter of credit or other security approved by the agency.

2. The contractor shall have the right to withdraw and take all or portions of the moneys being retained from the contractor under the contract by depositing securities in substitution for such moneys. The contractor may do so only in accordance with the agency's standard procedures and mechanisms. Such substitution shall be approved by the agency only if the aggregate market value of the securities are at least as great as the contract retainages being withdrawn.

3. A contractor may substitute cash for and receive back all or part of the securities on deposit from the contractor. The cash must at least have the same value as the market value of the securities received back from the agency.

4. The contractor shall be entitled to receive, in all events, all interest and income earned on the securities deposited by the contractor in substitution for contract retainage. If the securities deposited are in the form of coupon bonds, the agency or the escrow agent designated by it and holding the deposited securities shall deliver each coupon to the contractor as it matures.

5. All securities shall be released, delivered and paid over to the contractor at such time as cash moneys being retained from the contractor would have been released, delivered and paid over to the contractor under the public works contract if there had been no substitution for the cash moneys.

6. All costs of depositing and maintaining securities as provided for in this section shall be borne by the contractor.

7. No agency shall have any duty to invest moneys being retained by it from a contractor under a public works contract in any interest bearing account or to establish any procedures or mechanisms for any such investment.

8. Notwithstanding any other provisions of this section, any contracting agency may deny the contractor on any public works contract permission to substitute securities for moneys being held as retainages. This action shall be taken only for good cause and when the agency deems it to be in the best interest of the contracting agency. Written notice shall be given to the contractor and a hearing shall be held by the agency showing cause for such denial if requested in writing by the contractor. Denial of such substitution shall be for a stated period of time, not to exceed a period of 3 years, and shall continue until the end of the stated time period, or until the contractor has successfully completed all outstanding public works contracts without forfeiting any part of the retainage held by the agency, whichever occurs first.

(6) *Partial payments.* — Any public works contract executed by any agency may provide for partial payments with respect to materials placed along or upon the sites or stored at secured locations, which are suitable for use in the performance of the contract. When approved by the agency, partial payments may include the values of tested and acceptable materials of a nonperishable or noncontaminative nature which have been produced or furnished for incorporation as a permanent part of work yet to be completed, provided acceptable provisions have been made for storage. Any allowance made for materials on hand will not exceed the delivered cost of the materials as verified by invoices furnished by the contractor, nor will it exceed the contract bid price for the material complete in place.

(7) *Equality of employment opportunity and equal pay on public works.* —

a. As a condition of the awarding of any contract for public works financed in whole or in part by state appropriation, such contracts shall include the following provisions:

During the performance of this contract, the contractor agrees as follows:

1. A. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity, national origin, housing status, or any other basis protected under Chapter 7 of Title 19.

B. The contractor will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity, national origin, housing status or any other basis protected under Chapter 7 of Title 19, in all of the following actions:

I. Employment.

II. Upgrading.

III. Demotion or transfer.

IV. Recruitment or recruitment advertising.

V. Layoff or termination.

VI. Rates of pay or other forms of compensation.

VII. Selection for training, including apprenticeship.

C. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices provided by the contracting agency setting forth the nondiscrimination requirements under paragraphs (d)(7)a.1.A. through (d)(7)a.1.B. of this section.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, sexual orientation, gender identity, national origin, housing status, or any other basis protected under Chapter 7 of Title 19.

3. The contractor will ensure employees receive equal pay for equal work, without regard to sex. Employee pay differential is acceptable if pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or if the differential is based on any other factor other than sex.

b. The Secretary of the Department of Labor shall be responsible for the administration of this provision and shall adopt such rules and regulations and issue such orders as deemed necessary to achieve the purposes thereof; provided, that no requirement established hereby shall be in conflict with § 6904 of this title.

c. For the purposes of this section:

1. "Housing status" means as defined in § 204 of Title 19.

2. "Protective hairstyle" includes braids, locks, and twists.

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

(8) *Bid bonding requirements.* — a. All bids shall be accompanied by a deposit of either a good and sufficient bond to the agency for the benefit of the agency, with corporate surety authorized to do business in this State, the form of the bond and the surety to be approved by the agency, and the bond form used shall be the standard form issued by the Office of Management and Budget for this purpose or a security of the bidder assigned to the agency, for a sum equal to at least 10% of the bid. The bid bond need not be for a specific sum, but may be stated to be for a sum equal to 10% of the bid to which it relates and not to exceed a certain stated sum, if said sum is equal to at least 10% of the bid. Any bid which, at the time it is submitted, is not accompanied by a bid bond or sufficient security as required by this paragraph shall not be opened or read, and shall be rejected.

b. Upon the execution of a formal contract and performance bond, the bid bond or security shall be returned to the successful bidder. The security of the unsuccessful bidders shall be returned to them immediately upon the awarding of the contract or the rejection of all bids, but in no event later than 30 days after the opening of bids with the exception of school districts and the Department of Public Instruction, which shall be no more than 60 days unless the contracting agency or school district extends the bid evaluation period by 5 working days per the requirements of paragraph (d)(13)a. of this section. If the bid evaluation period is extended by 5 working days, then the security of each unsuccessful bidder shall be returned to them on the first working day after the end of the extended bid evaluation period.

c. *Loss of bid bond as damages.* — In the event of any successful bidder refusing or neglecting to execute a formal contract and bond within 20 days of the awarding of the contract, the bid bond or security deposited by the successful bidder shall be taken and become the absolute property of the State for the benefit of the agency as liquidated damages. Such damages shall neither constitute a forfeiture nor a penalty and shall be deposited with the Secretary of Finance. Such moneys pertaining to Department of Transportation contracts shall be deposited in the Transportation Trust Fund. The contracting agency may award the contract to the next lowest responsible bidder or re-advertise for new bids.

d. In the case of bids submitted to agencies other than any county of this State and other than any public school district, wherever security is required under this section, the vendor shall also supply with its bid its taxpayer identification number (i.e., federal employer identification number or social security number) or a Delaware business license number and, should the vendor be awarded a contract, such vendor shall provide to the agency the taxpayer identification or Delaware business license numbers of such subcontractors. Such numbers shall be provided on the later of the date on which such subcontractor is required to be identified or the time the contract is executed. The agency shall report to the Division of Revenue each vendor selected for award within 15 days of execution of the contract and each subcontractor within 15 days of such contractor having been identified to the agency or on the date of execution of the contract, whichever is later, unless the Director of the Division of Revenue has notified the agency of criteria according to which, in the Director's discretion, reporting is not required and the contract meets such criteria.

(9) *Performance bonding requirements.* — a. Simultaneous with the execution of the formal contract, the successful bidder shall also execute a good and sufficient bond to the contracting agency for the benefit of the agency, with corporate surety authorized to do business in this State, in a sum equal to 100% of the contract price and the bond form used shall be the standard form issued by the Office of Management and Budget.

b. The bond shall be conditioned upon the faithful compliance and performance by the successful bidder of each and every term and condition of the contract and the proposal and plans and specifications thereof, at the time and in the manner prescribed by the contract and the plans and specifications, including the payment in full, to every firm furnishing materiel or performing labor in the performance of the contract, of all sums of money due it for such labor or materiel. The bond shall also contain the successful bidder's guarantee to indemnify and save harmless the agency from all costs, damages and expenses growing out of or by reason of the successful bidder's failure to comply and perform the work and complete the contract in accordance with the contract.

c. The agency may, when it considers that the interests of the agency so require, cause judgment to be confessed upon the bond. All sums received through confession of judgment shall be paid for the credit of the agency to the Secretary of Finance or to the chief financial officer of the agency if it is not a state agency.

d. Every firm furnishing materiel or performing labor under the contract for which the successful bidder is liable may maintain an action on the bond for its own use in the name of the agency in any court of competent jurisdiction for the recovery of such sum or sums as may be due such firm from the successful bidder, but if the bond so provides, no suit shall be commenced after the expiration of 1 year following the date on which the successful bidder ceased work on the contract. Otherwise, suits may be commenced at any time within 3 years following the date the last work was done on the contract.

e. No firm or surety, in any action brought under this section, or on the bond required by this section, shall assert as a defense to such action the claim that the bond given pursuant to this section contained a limitation or restriction not provided for by this section.

f. In the event of defaults of its contracts, the money collected on the performance bonds shall be utilized by the contracting agency for the projects for which the performance bonds were issued. All performance bond proceeds received shall be deposited with the Secretary of Finance for the credit of the agency. Such moneys pertaining to Department of Transportation contracts shall be deposited in the Transportation Trust Fund.

g. In addition to the bond, letter of credit or other financial security posted by the successful bidder in conjunction with the execution of the formal contract, each successful bidder, regardless of the type of the security posted or waived, as the case may be, must purchase adequate insurance for the performance of the contract and, by submission of a bid, does agree to indemnify and save harmless and to defend all legal or equitable actions brought against the agency or officer or employee of the agency for and from all claims of liability which is or may be the result of the successful bidder's actions during the performance of the contract. The purchase or nonpurchase of such insurance or the involvement of the successful bidder in any legal or equitable defense of any action brought against the successful bidder based upon work performed pursuant to the contract shall not waive any defense which the agency and its officers and employees might otherwise have to such claims, specifically including the defense of sovereign immunity, where applicable, and by the terms of this section, the agency and its officers and employees shall not be financially responsible for the consequences of work performed, pursuant to said contract.

h. Contracts may contain a waiver of the bond requirement; provided however, that the successful bidder post with the contracting agency an irrevocable letter of credit or other suitable or readily collectible financial security for the project. Such security shall be subject to the terms and conditions of the contracting agency.

(10) *Public buildings; special requirements.* — a. Pre-bid meeting requirement. —

In the case of any public works contract for the construction, reconstruction, alteration or repair of any public building (not a road, street or highway) the agency shall call a meeting of all prospective bidders upon notice in compliance with Chapter 100 of this title. The meeting shall be at least 15 days before the date for the submission of bids.

1. At the meeting, all the participants, including the agency, shall attempt to agree upon a listing of all subcontractor categories to be included in the bids for performing the work as required by paragraph (d)(10)b. of this section and any such agreed listing shall be final and binding upon all bidders and upon the agency. If all of the participants do not agree on such a listing at the meeting, then the agency itself, at least 10 days before the due date for the submission of bids, shall determine the subcontractor categories to be included in the listing. The listing, whether agreed to by all of the participants at the meeting or determined by the agency itself in the absence of the unanimous agreement of the participants at the meeting, shall be published by the agency at least 10 days before the due date for the submission of bids by mailing and listing to all of the participants at the meeting. The listing, as so published, shall be final and binding upon all bidders and the agency and it shall be filled out completely, in full, without any abbreviations. If the agency required prequalification of subcontractors pursuant to this section in its invitation to bid, no contractor shall list a subcontractor in its subcontractor listing required by this subsection who has not already been prequalified by the agency.

2. If a pre-bid meeting is held but the bidding process does not proceed, a new bidding process for the same project without any changes to the scope of the project does not require a new pre-bid meeting if the agency head determines that in the best interest of the State one is not needed.

b. *Subcontracting requirements.* — All contracts for the construction, reconstruction, alteration or repair of any public building (not a road, street or highway) shall be subject to the following provisions:

1. Such contract shall be awarded only to a bidder whose bid is accompanied by a statement containing, for each subcontractor category set forth in the listing as provided in paragraph (d)(10)a. of this section the name and address (city or town and State only — street number and P.O. Box addresses not required) of the subcontractor whose services the bidder intends to use in performing the work and providing the materiel for such subcontractor category. Where any services and/or materiel are to be provided by or through a third-tier contractor, the bidder shall also supply the name and address of the third-tier contractor. If a bidder intends to perform the work or provide the materiel for any subcontractor category specifically established by the agency and as set forth in the listing provided for in paragraph (d)(10)a. of this section, the bidder must list itself as the subcontractor for that category. If at the time it is submitted a bid is not accompanied by the subcontractor statement required by this subparagraph, or if a bidder fails to list itself as the subcontractor for any category for which it intends to perform the work or provide the materiel, the bid shall not be opened or read, and shall be rejected.

2. The contracting agency shall neither accept any bid nor award any contract to any bidder which, as the prime contractor, has listed itself as the subcontractor for any subcontractor category on the listing as provided in paragraph (d)(10)a. of this section, unless:

A. It has been established to the satisfaction of the awarding agency that the bidder has customarily performed the specialty work of such subcontractor category by artisans regularly employed by the bidder's firm;

B. That the bidder is duly licensed by the State to engage in such specialty work, if the State requires such licenses; and

C. That the bidder is recognized in the industry as a bona fide subcontractor or contractor in such specialty work and subcontractor category.

The typical subcontractor categories involving specialty work includes, by way of illustration and not limited to, plumbing, electrical wiring, heating, roofing, insulating, weather stripping, masonry, bricklaying and plastering. The decision of the awarding agency as to whether a bidder who lists itself as the subcontractor for a subcontractor category set forth in the listing as provided in paragraph (d)(10)a. of this section shall be final and binding upon all bidders, and no action of any nature shall lie against any awarding agency or its employees or officers because of its decision in this regard.

3. After such a contract has been awarded, the successful bidder shall not substitute another subcontractor for any subcontractor whose name was set forth in the statement which accompanied the bid without the written consent of the awarding agency. No agency shall consent to any substitution of subcontractors unless the agency is satisfied that the subcontractor whose name is on the bidders accompanying statement:

A. Is unqualified to perform the work required;

B. Has failed to execute a timely reasonable subcontract;

C. Has defaulted in the performance on the portion of the work covered by the subcontract; or

D. Is no longer engaged in such business.

4. All such contracts shall contain a provision for a penalty against the successful bidder for its failure to utilize any or all the subcontractors in the successful bidder's accompanying statement in the performance of the work on the public building contemplated by the contract. The penalty amount shall be set by the agency. The agency will also determine if the amount is to be deducted from payments to the bidder for contract performance or if the amount is to be paid directly to the agency by the bidder. Any penalty amount assessed against the contractor may be remitted or refunded, in whole or in part, by the agency awarding the contract, only if it is established to the satisfaction of the agency that the subcontractor in question has defaulted or is no longer engaged in such business. No claim for the remission or refund of any penalty shall be granted under this section unless an application is filed within 1 year after the liability of the successful bidder accrues. All penalty amounts assessed and not refunded or remitted to the contractor shall be reverted to the State, municipality or other agency as the case may be.

5. If awarded, not to a general contractor, but to a prime contractor which contracts directly with agency awarding and/or administering the contract, such contract may include a provision in its contract specifications that the successful bidder perform a fixed percentage of the work of said public works contract up to 50% of the total contract bid. Factors to be considered by the agency awarding the contract in setting the required percentage of amount of work the successful bidder must perform may include the degree of difficulty involved in the agency's administration of the work covered under the terms of the public works contract; the degree of specialty work contemplated in the contract including, but not limited to, the amount of plumbing, electrical wiring, heating, roofing, insulation, weather-stripping, masonry, bricklaying or plastering work under the contract; and the time period required in which to complete the public works project. The terms of the contract shall so specify reasons for the stated percentage in its general terms and conditions. The decision of the agency setting the required percentage shall not be set aside by any court of competent jurisdiction as long as there is a rational basis for setting the required fixed percentage to be performed by the contractor. If the successful bidder fails to perform pursuant to the terms of this provision, the agency awarding and/or administering the contract may invoke the provisions of § 6964 of this title.

6. No construction manager contract for public school projects may be signed unless approved by the Director.

(11) *Other contracting requirements.* — a. *Asbestos abatement.* — The selection of any contractor to perform asbestos abatement for State-funded projects shall be approved by the Office of Management and Budget pursuant to Chapter 78 of Title 16.

b. *Standards of construction; protection of physically handicapped.* — All contracts shall conform with the standards established by the Delaware Architectural Accessibility Board as authorized by Chapter 73 of this title, unless otherwise exempted by the Board.

(12) *Public bid opening requirements.* — a. Bids shall be opened publicly and the contractor and total bid price or the contractor, base bid, and alternate price should be read aloud at the time and place designated in the plans and specifications.

b. Bids shall be unconditionally accepted without alteration. After the bid opening, no corrections in bid prices or other provisions of bids prejudicial to the interests of the State or fair competition shall be permitted.

(13) *Bid evaluation, contract award and execution procedure*. —

a. The contracting agency shall award any public works contract within 30 days of the bid opening to the lowest responsive and responsible bidder, unless the agency elects to award on the basis of best value, in which case the election to award on the basis of best value shall be stated in the invitation to bid. Any public school district and its board shall award public works contracts in accordance with this section's requirements except it shall award the contract within 60 days of the bid opening. A contracting agency shall extend the 30-day bid evaluation period by a total of 5 working days and a school district shall extend the 60-day bid evaluation period by a total of 5 working days if a bid is nonresponsive or a bidder is judged to be not responsible, and the bidder cannot be notified in writing a minimum of 5 days prior to the end of the 30-day bid evaluation period in the case of an agency, or the 60-day bid evaluation period in the case of a school district. Written notification to the bidder or bidders whose bid is non-responsive or who have been determined to be not responsible shall be received at least 5 working days prior to the end of the original or the extended evaluation period and shall specify the reason or reasons why the bid is nonresponsive or the bidder determined to be not responsible. If the bid evaluation period is extended by 5 working days, the contracting agency or school district shall notify each

bidder in writing prior to the end of the 30-day bid evaluation period in the case of an agency, or the 60-day bid evaluation period in the case of a school district, that the bid evaluation period is being extended by 5 working days. The written notification to all bidders shall include the calendar date by which the agency or school district shall award a contract or reject all bids.

1. Each bid on any public works contract must be deemed responsive by the agency to be considered for award. A responsive bid shall conform in all material respects to the requirements and criteria set forth in the contract plans and specifications.

2. An agency shall determine that each bidder on any public works contract is responsible before awarding the contract. Factors to be considered in determining the responsibility of a bidder include:

A. The bidder's financial, physical, personnel or other resources including subcontracts;

B. The bidder's record of performance on past public or private construction projects, including, but not limited to, defaults and/or final adjudication or admission of violations of prevailing wage laws in Delaware or any other state;

C. The bidder's written safety plan;

D. Whether the bidder is qualified legally to contract with the State;

E. Whether the bidder supplied all necessary information concerning its responsibility; and,

F. Any other specific criteria for a particular procurement, which an agency may establish; provided however, that, the criteria shall be set forth in the invitation to bid and is otherwise in conformity with state and/or federal law.

3. If an agency determines that a bidder is nonresponsive or not responsible, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be sent to the affected bidder within 5 working days of said determination. The final determination shall be made part of the procurement file.

4. A. If the agency elects to award on the basis of best value, the agency must determine that the successful bidder is responsive and responsible, as defined in this subsection. The determination of best value shall be based upon objective criteria that have been communicated to the bidders in the invitation to bid. The following objective criteria shall be assigned a weight consistent with some or all of the following:

I. Price — must be at least 70% but no more than 90%.

II. Schedule — must be at least 10% but no more than 20%.

III. Performance — must be at least 10% but no more than 20%.

IV. Disadvantaged business enterprise participation (only for projects valued in excess of $30,000,000) — must be at least 10% but no more than 30%.

B. Performance criterion must be based on a contractor's performance rating as determined by the agency's performance-based rating system. The agency's performance-based rating system must be based on previous contracting performance and may not be based on a set of prescriptive rules favoring a particular business model or business procedure. The performance-based rating system must be defined in regulations promulgated by the Secretary of the agency and must include a procedure for a contractor to appeal a performance-based rating.

C. A weighted average stated in the invitation to bid shall be applied to each criterion according to its importance to each project. The agency shall rank the bidder according to the established criteria and award to the highest ranked bidder. Every state agency and school district shall, on a yearly basis, file a report with every member of the General Assembly and the Governor that states which projects were bid under best value and what contractor was awarded each contract.

b. A contract may be awarded to a bidder other than the lowest responsible and responsive bidder if, in the opinion of the contracting agency, the interest of the agency shall be better served by awarding the contract to another bidder. Such award shall be made only if the contracting agency makes a written determination of the award describing the reason or reasons why such award better serves the interest of the agency. The reason or reasons for making such award may include, but are not limited to, unsatisfactory performance on any previously awarded contract by the bidder being rejected.

c. The successful bidder shall execute a formal contract within 20 days after the award of the contract. The contract shall be in a form with terms and conditions approved by the contracting agency. The successful bidder shall also provide a bond as required in paragraph (d)(8) of this section within 20 days after the award of the contract.

d. If the successful bidder refuses or neglects to execute a formal contract and bond as required in this subchapter, the bidder's bid bond or security deposit shall be taken and become the absolute property of the agency for the benefit of the agency as liquidated damages, and not as a forfeiture or as a penalty. Such moneys shall be deposited with the Secretary of Finance or the chief financial officer of the agency if the agency is not a state agency.

e. If 2 or more responsible and responsive bidders shall bid an equal amount and such amount shall be the lowest bid, the contracting agency may award the contract to any 1 of them or may reject all bids.

f. A contracting agency may reject all bids on any contract prior to the award of the contract for any reason it believes to be in the best interest of the agency.

g. *Electronic bid or electronic submission.* —

1. If the Office or an agency determines that an electronic bid or electronic submission is beneficial, the Office or the agency may use the selected method to obtain bids for public works contracts.

2. The solicitation must designate that the procurement method will be an electronic bid or electronic submission, a schedule of bid activities, and an electronic mail account to which the response must be sent.

3. The Office's or the agency's representative and a witness shall open the electronic mail account immediately after the closing date and time; record the names of the vendors that responded, the date and time submitted, and the bids or associated prices; and prepare a tabulation of all responsive vendors for review.

h. *On-line bidding method. —*

If the Office or an agency determines that an on-line bidding method is beneficial, the Office or the agency may use an on-line bidding method to obtain and evaluate bids for public works contracts. The Office or agency must indicate the method in the solicitation.

i. [Repealed.]

(14) *Suspension and debarment. —*

a. 1. Any contractor who fails to perform a public works contract or complete a public works project within the time schedule established by the agency in the invitation to bid, may be subject to suspension or debarment for 1 or more of the following reasons:

A. Failure to supply the adequate labor supply ratio for the project.

B. Inadequate financial resources.

C. Poor performance on the project.

D. Failure to provide required craft training under § 6960A of this title.

2. Any subcontractor who fails to provide required craft training under § 6960A of this title may be subject to suspension or debarment.

b. If a contractor fails to perform a public works contract or complete a public works project under paragraph (d)(14)a. of this section or a subcontractor fails to provide required craft training under § 6960A of this title, the agency that contracted for the public works project may petition the Director of the Office of Management and Budget for suspension or debarment of the contractor. The agency shall send a copy of the petition to the contractor within 3 working days of filing with the Director. If the Director concludes that the petition has merit, the Director shall schedule and hold a hearing to determine whether to suspend the contractor, debar the contractor or deny the petition. The agency shall have the burden of proving, by a preponderance of the evidence, that either the subcontractor failed to provide required craft training under § 6960A of this title or the contractor failed to perform or complete the public works project within the time schedule established by the agency by failing to do so for 1 or more of the following reasons:

1. Failure to supply the adequate labor supply ratio for the project.

2. Inadequate financial resources.

3. Poor performance on the project.

4. Failure to provide required craft training under § 6960A of this title.

c. 1. Upon a finding in favor of the agency under paragraph (d)(14)b. of this section because a contractor failed to perform a public works contract or complete a public works project, the Director may suspend a contractor from bidding on any project funded, in whole or in part, with public funds for up to 1 year for a first offense, up to 3 years for a second offense and permanently debar the contractor for a third offense.

2. Notwithstanding the penalties under paragraph (d)(14)c.1, of this section, upon a finding in favor of the agency that a contractor or subcontractor failed to perform the requirements under § 6960A of this title, the Director shall suspend a contractor or subcontractor who fails to perform the requirements under § 6960A of this title and shall debar the contractor or subcontractor from bidding on any project funded, in whole or in part, with public funds for up to 5 years.

d. The Director shall issue a written decision and shall send a copy to the contractor and the agency. Such decision may be appealed to the Superior Court within 30 days for a review on the record.

(70 Del. Laws, c. 601, § 9; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 133, §§ 3-6; 72 Del. Laws, c. 258, § 77; 73 Del. Laws, c. 289, § 1; 73 Del. Laws, c. 300, § 1; 73 Del. Laws, c. 364, § 4; 73 Del. Laws, c. 428, §§ 3, 4; 73 Del. Laws, c. 438, § 2; 74 Del. Laws, c. 373, §§ 2-4; 74 Del. Laws, c. 416, §§ 2, 3; 75 Del. Laws, c. 88, § 16(5); 77 Del. Laws, c. 90, § 23; 77 Del. Laws, c. 329, § 116; 78 Del. Laws, c. 288, § 3; 79 Del. Laws, c. 47, § 26; 80 Del. Laws, c. 56, § 1; 81 Del. Laws, c. 298, § 4; 81 Del. Laws, c. 365, § 1; 82 Del. Laws, c. 36, § 2; 83 Del. Laws, c. 13, § 24; 83 Del. Laws, c. 129, § 5; 83 Del. Laws, c. 188, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 45, § 1; 84 Del. Laws, c. 124, § 1; 84 Del. Laws, c. 429, § 13; 84 Del. Laws, c. 489, § 11; 84 Del. Laws, c. 513, § 2; 85 Del. Laws, c. 144, § 18.)

§ 6963. Emergency procedures and contract change orders.

(a) All of the provisions of this subchapter may be waived pursuant to § 6907 of this title.

(b) The awarding agency may issue a change order to the public works contract setting forth any change, addition or extra work required to be undertaken by the contractor. Such changes may be necessitated by changed situations, unforeseen conditions, strikes and acts of God. Change orders shall be issued for all changes or extra work determined to be necessary and requested by the agency, but not specified in the contract or its plans and specifications. The change order shall not:

(1) Be subject to the competitive bidding requirements of this subchapter; or

(2) Invalidate the contract, provided that such change is within the scope of the contract as set forth in the standard specifications, special provisions or similar publication of the agency; or

(3) Be subject to the requirement for lifecycle costing analysis as described in §§ 6902 and 6909A(a) of this title.

(70 Del. Laws, c. 601, § 9; 74 Del. Laws, c. 419, § 9.)

§ 6964. Contract performance.

If any firm entering into a public works contract neglects or refuses to perform or fails to comply with its terms, the agency may terminate the contract and proceed to award a new contract in accordance with this subchapter or may require the surety on the performance bond to complete the contract in accordance with the terms of the performance bond.

(70 Del. Laws, c. 601, § 9.)

§ 6965. Sole source procurement.

(a) A contract may be awarded for a public works project without competition if the agency head, prior to the procurement, determines in writing that there is only 1 source for the required public works project. Sole source procurement shall not be used unless there is sufficient evidence that there is only 1 source for the required public works project and that no other type of public works project will satisfy the requirements of the agency. The agency shall examine cost or pricing data, which shall include lifecycle costing analysis as described in §§ 6902 and 6909A(a) of this title if the sole source offers more than 1 type or variety of equipment prior to an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the agency on the basis for the sole source procurement shall be included in the contract file.

(b) An agency seeking a sole source procurement shall prepare written documentation citing the existence of a sole source condition. The document shall include the specific efforts made to determine the availability of any other source and an explanation of the procurement need. The agency may, for confirmation, submit this documentation to the Section for review and comment prior to the intended date of award.

(c) The agency shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the agency. The agency shall enter into a formal contract stating the terms and conditions of the procurement.

(70 Del. Laws, c. 601, § 9; 74 Del. Laws, c. 419, § 10; 75 Del. Laws, c. 88, § 22.)

§ 6966. Multiple source contracting.

An agency may award a contract for a particular public works project to 2 or more firms if the agency head makes a determination that such an award is in the best interests of the State. If such a determination is made, the advertisement shall include a notification of the right of the agency to make such an award and the criteria upon which such an award will be based.

(70 Del. Laws, c. 601, § 9.)

§ 6967. Requirement of occupational and business license [For application of (b) and (c), see 79 Del. Laws, c. 401, § 4].

(a) All contractors, subcontractors and independent contractors shall have a proper and current occupational and/or business license, as required by Title 30, to enter or perform work under a public works contract. It is the responsibility of a contractor to verify and make a record that all subcontractors or independent contractors working for such contractor pursuant to a public works contract shall have their occupational and/or business licenses, as required by Title 30.

(b) No agency shall accept a proposal for a public works contract unless such contractor has provided a proper and current copy of its occupational and/or business license, as required by Title 30, to such agency.

(c) Any contractor that enters a public works contract must provide to the agency to which it is contracting, within 30 days of entering such public works contract, copies of all occupational and business licenses of subcontractors and/or independent contractors that will perform work for such public works contract. However, if a subcontractor or independent contractor is hired or contracted more than 20 days after the contractor entered the public works contract the occupational or business license of such subcontractor or independent contractor shall be provided to the agency within 10 days of being contracted or hired.

(d) Any contractor, subcontractor or independent contractor that does not have a proper and current occupational and/or business license, as required by Title 30, while working under a public works contract shall be subject to a civil penalty not to exceed $1,000. Such penalty shall be enforced by the Director of Revenue and administered in accordance with Chapters 3 and 5 of Title 30. This penalty shall be in addition to any other penalties imposed pursuant to Title 30.

(79 Del. Laws, c. 401, § 1.)

§ 6968. Requirement of certificate of registration.

(a) After a bid proposal for a public works contract is submitted, but before the award of a public works contract, a contractor must provide the agency to which it is contracting a copy of the certificate of registration under Chapter 36 of Title 19 for each subcontractor listed in the bid proposal.

(b) An agency shall provide contractors and subcontractors the opportunity to register under Chapter 36 of Title 19 before the award of a contract.

(82 Del. Laws, c. 168, §§ 5, 6; 82 Del. Laws, c. 291, § 2.)

§ 6969. [Reserved].

(82 Del. Laws, c. 168, §§ 5, 6; 82 Del. Laws, c. 291, § 2.)

§ 6970. Open-end contract process for highway construction and reconstruction.

(a) *Legislative findings.* — The General Assembly finds that certain market conditions, including but not limited to a diminished number of available private contractors and/or limits on competitive pricing opportunities for basic materials, can impede the State's ability to complete its highway construction and reconstruction projects on a timely and useful schedule. Under these circumstances, the General Assembly finds that the limited use of an open-end contract process for such work may enable the Department of Transportation to meet its capital improvement schedules despite these impediments.

(b) Notwithstanding any portion of this chapter to the contrary, the Department of Transportation is hereby authorized to use an open-end contract process for highway construction and reconstruction projects, under the following terms and conditions:

(1) As used herein, "open-end contract" means a contract for highway construction and reconstruction work to be performed for a defined period of time, not to exceed 3 years, in which the Department may designate 1 or more locations for highway construction and reconstruction projects to be completed during the contract period, and in which the payments for the work to be performed at such locations are calculated based on a unit price/item basis during the contract period.

(2) The Department shall limit the use of this contract process to no more than 25% of its total authorized capital improvement budget for the applicable fiscal year or years, in order to provide adequate alternative contracting opportunities for those seeking to work on other Departmental highway construction and reconstruction projects.

(3) The Department may award open-end contracts to more than 1 firm, for work anywhere within the State, as it deems necessary.

(4) In all other respects, the award and execution of open-end contracts shall be deemed to have complied with the provisions of this subchapter.

(74 Del. Laws, c. 308, § 108.)

§ 6970A. Design-build contracting for Transportation Trust Fund projects.

(a) As used herein, "design-build contracting" is a project delivery method under which the procurement of both the design and construction of a project is done in a single contract with a company or combination of companies capable of providing the necessary engineering services and construction.

(b) Notwithstanding any portion of this chapter to the contrary, the Department of Transportation is hereby authorized to use design-build contracting method, under the following terms and conditions:

(1) The contract terms shall include provisions to pay the prevailing wage rates as provided in § 6960 of this title, in conjunction with federal prevailing wage rates for such work;

(2) The contracts shall adhere to § 6962(d)(4)a., (d)(7) and (d)(8) of this title;

(3) Any such contracts shall conform to all applicable federal laws and regulations concerning design-build contracting, including but not limited to 23 C.F.R. Part 636, without regard to the source of funds; and

(4) Any design-build contract for the construction of any transportation facility shall also be subject to the provisions of Chapter 8 of Title 17.

(c) The use of design-build contracting shall be used at the discretion of the Secretary of the Department of Transportation for specialized projects that have time constraints, unique site conditions, specialized construction methods or similar complexities and is expected to be used on a limited basis.

(80 Del. Laws, c. 107, § 1.)

Subchapter V

The Energy Performance Contracting Act

§ 6971. Short title; declaration of policy.

(a) This subchapter shall be known and may be cited as the "Energy Performance Contracting Act."

(b) The General Assembly finds that investment in energy conservation measures in agency facilities can reduce the amount of energy consumed and produce immediate and long-term savings. It is the policy of this State to encourage agencies to invest in energy conservation measures that reduce energy consumption, produce a cost savings for the agency, and improve the quality of indoor air in public facilities and to operate, maintain, and when economically feasible, build or renovate existing agency facilities in such a manner as to minimize energy consumption and maximize energy savings. It is further the policy of this state to encourage agencies to reinvest any energy savings resulting from energy conservation measures in additional energy conservation efforts.

(75 Del. Laws, c. 67, § 2.)

§ 6972. Definitions.

As used in this subchapter:

(1) “Agency” means any state agency, authority, or any political subdivision of state or local government, including, but not limited to, county, city, township, village or municipal government, local school districts, and institutions of higher education, any state-supported institution, or a joint action agency composed of political subdivisions.

(2) “Energy and operational cost savings” means a measured reduction in the cost of fuel, energy consumption, and stipulated operation and maintenance created from the implementation of 1 or more energy conservation measures when compared with an established baseline for the previous cost of fuel, energy consumption, and stipulated operation and maintenance.

(3) “Energy conservation measure” means a training program, facility alteration, facility improvement, or equipment purchase to be added or used in any facility that is designed to reduce energy or operating costs and includes, but is not limited to:

a. Insulation of the facility structure and systems within the facility;

b. Storm windows and doors, caulking and weather-stripping, multi-glazed windows and doors, heat-absorbing, or heat-reflective, glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

c. Automatic energy control systems;

d. Heating, ventilating, or air-conditioning system modifications or replacements;

e. Replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system;

f. Day-lighting systems;

g. Energy recovery systems;

h. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a facility or complex of facilities;

i. Renewable energy systems, such as solar, biomass or wind systems;

j. Devices that reduce water consumption or sewer charges;

k. Storage systems, such as fuel cells and thermal storage;

l. Generating technologies, such as micro turbines; and

m. Any other repair, replacement or upgrade of existing equipment that produces energy and operational cost savings, improves safety, significantly reduces energy consumption or increases the operating efficiency of the facilities and which must conform to the applicable state or local building code.

(4) “Guaranteed energy performance contract” means a contract between the agency and a qualified provider for the evaluation, recommendation, and implementation of energy conservation measures, which, at minimum, shall include:

a. The design and installation of equipment to implement 1 or more of such measures and, if applicable, operation and maintenance of such measures;

b. That the amount of guaranteed actual savings must meet or exceed the total annual contract payments made by the contracting agency for the guaranteed performance contract; and

c. The finance charges incurred by the agency over the life of the contract.

(5) “Qualified provider” means a person or business with a record of established projects that is experienced in the analysis, design, implementation, or installation of energy conservation measures through guaranteed energy performance contracts.

(75 Del. Laws, c. 67, § 2; 77 Del. Laws, c. 222, § 1.)

§ 6973. Authorization.

(a) An agency may enter into an energy performance contract with a qualified provider to reduce energy or operational costs of an agency facility through one or more energy conservation measures. Cost savings work shall comply with state or local building codes.

(b) An agency may enter into a performance contract structured as an installment payment contract or lease-purchase agreement for the purchase and installation of cost-saving measures. Financing, including tax exempt financing, implemented through an entity other than the qualified provider is authorized.

(c) The agency may enter into an energy performance contract with a qualified provider if the agency finds that the amount the agency would spend on the energy conservation measures will not exceed the amount to be saved in both energy and operational costs for up to 20 years from the date of installation.

(d) The qualified provider shall be selected pursuant to § 6924 of this title.

(e) The selected qualified provider shall prepare a financial grade energy audit which, upon acceptance, shall be part of the final performance contract which shall be executed with the agency. Notwithstanding the foregoing, if after preparation of the financial grade energy audit the governmental unit decides not to execute a performance contract, then the costs incurred in preparing such financial grade energy audit shall be paid to the qualified provider by the agency, otherwise the costs of the financial grade energy audit shall be deemed part of the costs of the performance contract.

(f) Simultaneous with the execution of a contract for energy conservation measures, the agency shall require the qualified provider to provide a payment and performance bond relating to the installation of energy conservation measures in the amount equal to 100% of the value of the performance contract.

(g) Where appropriate, agencies shall determine cost-effectiveness based on the life-cycle costs of combinations of conservation measures, particularly to encourage bundling of energy efficiency projects with onsite generation and renewable energy projects.

(75 Del. Laws, c. 67, § 2.)

§ 6974. Allocation of obligations, use of moneys and payment schedule.

(a) Each governmental unit shall allocate sufficient moneys for each fiscal year to make payment of any amounts payable by the governmental unit under performance contracts during that fiscal year.

(b) The agency engaging in the performance contract shall retain the savings realized by entering into the performance contract. In no event shall the agency utilize such savings to supplant otherwise appropriated funds for the agency.

(c) A governmental unit may use funds designated for operating, energy, or capital expenditures for any performance contract, including, without limitation, for purchases on an installment payment or lease purchase basis.

(d) Grants, subsidies, or other payments from the State to an agency shall not be reduced as a result of energy savings obtained as a result of a performance contract during the life of the contract.

(e) A performance contract, and payments provided there under, may extend beyond the fiscal year in which the performance contract became effective, subject to appropriation of moneys, if required by law, for costs incurred in future fiscal years. The performance contract may extend for a term not to exceed 20 years.

(f) No obligation of the State or an agency under an installment payment agreement, a guaranteed energy performance contract or any other agreement entered into in connection with a project under this Chapter 69 or Chapter 80 of this title shall constitute or create a debt of the State or agency. No such obligation of the State or an agency shall constitute a tax supported obligation or a bond or a note of the State as provided in Chapter 74 of this title.

(75 Del. Laws, c. 67, § 2; 77 Del. Laws, c. 222, § 2.)

§ 6975. Monitoring and reporting.

(a) During the term of each performance contract, the qualified provider shall monitor the reductions in energy consumption and cost-savings attributable to the cost-savings measures installed through the performance contract, and shall, no less than annually, prepare and provide a report to the governmental unit documenting the performance of the cost-savings measures to the governmental unit.

(b) The agency and qualified provider may agree to base the measurement and verification of the performance contract on the practices outlined by the International Performance Measurement and Verification Protocol when appropriate.

(75 Del. Laws, c. 67, § 2.)

§ 6976. Adherence to state procurement laws.

(a) The qualified provider shall, in the execution of a performance contract, adhere to the requirements of § 6961 or § 6962 of this title.

(b) Before an agency enters into a performance contract, the performance contract shall be approved by the Secretary.

(75 Del. Laws, c. 67, § 2.)

Subchapter VI

Professional Services

§ 6980. Small professional services procurement process.

(a) *Applicability. —*

Any state contract for which an agency is a party with probable fees, including reimbursable expenses and amendments, less than the threshold amount or amounts established by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title for the completed job shall be excluded from all other portions of this subchapter. Agencies may, alternately, at their discretion, procure services which include materiel other than professional services in accordance with § 6924 of this title.

(b) *Procedure. —*

The Director, with the approval of the Contracting and Purchasing Advisory Council, shall provide for a simplified administrative process for obtaining competitive procurement for small professional services purchases. If applicable, the procedure shall incorporate the procedures identified as lifecycle costing analysis as specified in § § 6902 and 6909A(b) of this title. This procedure shall be in writing and distributed to all agencies.

(70 Del. Laws, c. 601, § 9; 71 Del. Laws, c. 4, §§ 10, 11; 84 Del. Laws, c. 489, § 12.)

§ 6981. Large professional service procurement process.

(a) *Authority. —*

Any state contract for which an agency is a party with probable fees, including reimbursable expenses and amendments, greater than the threshold amount or amounts established by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title for the completed job will be subject to the provisions of this subchapter. Agencies may, alternately, at their discretion, procure services which include materiel other than professional services in accordance with § 6924 of this title.

(b) Each contracting agency shall publicly announce, not less than once a week for 2 consecutive weeks, when professional services are required except:

(1) In case of critical needs so certified pursuant to § 6907 of this title; or

(2) Where professional services are determined by the agency to be necessary during the course of completion of a previously awarded contract and:

a. The agency determines that it would be in the best interest of the State to procure such additional or supplemental professional services from a firm already under contract for which the supplemental and additional professional services are required; and

b. Such additional or supplemental professional services are within the scope of the contract.

(c) Subject to the exceptions of subsection (b) of this section:

(1) Each agency shall publicly announce each professional services contract subject to subsection (a) of this section by electronic publication accessible to the public in a manner prescribed pursuant to § 6902(12) of this title for 2 consecutive weeks unless a shorter advertisement period has been approved by the Section Director.

(2) The advertisement for proposals shall state the name of the procuring agency, indicate with reasonable accuracy the character, quantity, and location of the work or the character and quantity of materiel, the time and place for the opening of proposals and where the specifications or descriptions may be obtained. The advertisement shall also state that the agency may extend the time and place for opening proposals from that described in the advertisement, on not less than 2 calendar days' notice, unless special circumstances exist, as determined by the Section Director.

(d) *Proposal openings. —*

(1) At the discretion of the agency, it may elect to have a public proposal opening or not to have a public proposal opening. The agency shall identify the type of proposal opening, public or nonpublic, in the initial solicitation posting. Proposals opened publicly shall have the time and place designated in the solicitation. The main purpose of the proposal opening is to reveal the names of the proposing firms, not to serve as a forum for determining any other factors.

(2) Proposals shall be evaluated based on the requirements set forth in the solicitation. No criteria may be used in proposal evaluations that are not set forth in the solicitation.

(3) Neither the proposals, proposal summaries, nor any other aspect of the proposal evaluations shall be open for public inspection until after receipt of a signed contract.

(e) *Vendor eligibility. —*

(1) A firm may be required to have a valid Delaware state business license prior to the execution of an agency contract.

(2) Vendors are responsible for reviewing all public advertisements which announce the solicitation and request for proposals for an agency contract.

(3) To supplement the contract public notice, the agency may compile and maintain a prospective vendors list. Inclusion of the name of a person on a prospective vendors list shall not indicate whether the firm is responsible concerning a particular procurement or otherwise capable of successfully performing a contract.

(4) Firms desiring to be included on the prospective vendors list shall notify the agency. Upon notification, the agency shall provide the firm with a means to register its interest in competing for future formal procurement opportunities. A vendor registration list shall not be used as a means to restrict competition.

(5) No cause of action shall accrue from any good faith effort to contact, distribute, or announce solicitations, solicit amendments to requests for proposal, or any correspondence utilizing the agency's vendor eligibility list.

(f) *Solicitation. —*

(1) The agency shall make available solicitations at least 14 days before the time and date of the proposal opening, unless a shorter time is deemed necessary for a particular procurement as determined in writing by the agency.

(2) The solicitation shall include all of the following:

a. Instructions and information concerning the proposal submission requirements, including the time, date, and place set for proposal opening and any other special information;

b. The agency's intention to award to more than 1 firm, if applicable;

c. The description, specifications, evaluation criteria as defined in § 6982 of this title, delivery or performance schedule and inspection and acceptance requirements for the resulting contract; and

d. The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

(3) If the solicitation incorporates documents by reference, the solicitation shall specify where such documents may be obtained or reviewed.

(4) A solicitation may require the submission of proposal samples, descriptive literature and technical data and may require inspection or testing of a product before award.

(5) A copy of the solicitation shall be made available for public inspection at the agency.

(6) Additional advertising shall be at the discretion of the agency.

(g) *Pre-proposal conferences. —*

An agency may conduct a pre-proposal conference within a reasonable time but not less than 7 days before a proposal opening to explain the requirements of a solicitation. An agency may require mandatory attendance by potential proposing firms at such pre-proposal conferences to qualify as a responsible and responsive proposing firm. Statements made at the pre-proposal conference shall not be considered amendments to the solicitation unless a written amendment is issued pursuant to subsection (h) of this section.

(h) *Amendments to solicitations. —*

(1) An amendment to a solicitation shall be issued to:

a. Make changes in the solicitation;

b. Correct defects or ambiguities in the solicitation; and/or

c. Change the date, place or time of the proposal opening.

(2) Amendments to solicitations shall be so identified and shall be advertised along with the original solicitation.

(3) The agency may obtain vendor acknowledgement of all amendments issued.

(i) *Withdrawal of proposals. —*

(1) A vendor may withdraw its proposal at any time before proposal opening if the withdrawal is received in writing before the proposal opening at the location designated in the invitation for proposals for receipt of proposals. A vendor or its authorized representative may withdraw its proposal in person if, before the proposal opening, the identity of the person requesting withdrawal is established and that person signs a receipt for the proposal. If a proposal has been received electronically, the agency shall delete the file in the agency system records.

(2) All documents concerning a withdrawal of a proposal shall be retained in the appropriate procurement file.

(3) After a proposal opening, a firm may request in writing that its proposal be withdrawn. Such a request may be allowed only upon the approval of the agency. The agency shall prepare a written determination showing that the request was permitted or denied along with the reasons for such determination.

(j) *Late proposals and late modifications. —*

(1) A proposal or withdrawal of a proposal is late if it is received at the location designated in the solicitation for receipt of proposals after the time and date set for proposal opening.

(2) Proposing firms submitting proposals or withdrawals of proposals that are late shall be notified as soon as practicable and the proposal shall be returned unopened.

(3) Documentation concerning a late proposal or late withdrawal of a proposal shall be retained in the appropriate procurement file.

(k) *Receipt, opening, and recording of proposals. —*

(1) Except as provided in paragraph (j)(2) of this section, each proposal shall be time stamped upon receipt and stored by the agency unopened in a secure place until the time and date set for proposal opening.

(2) An envelope that is not marked as a proposal or does not identify the proposing firm or solicitation may be opened solely for the purpose of identification. A record shall be made on the envelope of the reason for opening it, the date and time it was opened, the solicitation to which the proposal responded, and the signature of the person who opened the envelope. The envelope shall be resealed and retained in the procurement file.

(3) If the agency has elected to open proposals publicly, then the opening shall be in the presence of 1 or more witnesses at the time, date, and location designated in the solicitation. Proposal information shall be disclosed at the public opening pursuant to paragraph (d)(1) of this section. The proposal information made available at the public opening shall be recorded on a proposal abstract. The name of the required witness shall also be recorded. The proposal abstract shall be available for public inspection.

(4) Proposals shall not be available for public inspection before receipt of a signed contract pursuant to paragraph (d)(3) of this section. After contract award, the proposals shall be available for public inspection, except to the extent any information is exempt pursuant to Chapter 100 of this title. If the proposing firm designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions. The proposing firm shall include with this designation a statement that explains and supports the proposing firm's claim that the proposal items identified as confidential contain trade secrets or other proprietary data.

(*l*) Cancellation of solicitation. —

A solicitation may be canceled or any or all proposals may be rejected in whole or in part if it is in the best interest of the State. The reasons for the cancellation or rejection shall be made part of the procurement file.

(1) If a solicitation is canceled before the opening of proposals, a notice of cancellation must be posted with the public record of the solicitation.

(2) Any proposals that have been received shall be returned unopened to the vendors. Electronic proposals received shall be deleted from the agency system and notice of deletion provided to the vendor.

(3) If a solicitation is canceled after the proposal opening, a notice of cancellation shall be posted with the public record of the solicitation.

(4) Any proposals shall be returned to the vendors. Electronic proposals shall be deleted from the agency system and notice of deletion provided to the vendor.

(m) *Rejection of individual proposals. —*

A proposal may be rejected if:

(1) The vendor is determined to be nonresponsive pursuant to paragraph (n)(1) of this section; or

(2) The proposal is nonresponsive or not responsible in accordance with paragraph (n)(2) of this section; or

(3) It is otherwise not advantageous to the State.

If an agency rejects a vendor, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be promptly sent to the proposing firm. The final determination shall also be made part of the procurement file. Vendors whose proposals are rejected under this section shall be notified in writing about the rejection. Record of the rejection shall be made part of the procurement file.

(n) *Responsiveness and Responsibility of proposing firms. —*

(1) An agency shall determine that a proposing firm is responsive to all requirements of the solicitation and request for proposals before selecting a firm for negotiation.

(2) Factors to be considered in determining if a proposing firm is responsible include:

a. The proposing firm's financial, physical, personnel, or other resources, including subcontracts;

b. The proposing firm's record of performance and integrity;

c. Whether the proposing firm is qualified legally to contract with the State; and

d. Whether the proposing firm supplied all necessary information concerning its responsiveness.

e. Any additional specific responsibility criteria for a particular procurement that the agency includes in the solicitation.

f. *Evaluation Criteria. —*

Each agency shall establish written administrative procedures for the evaluation of applicants. One or more of the following criteria may be utilized in ranking the applicants under consideration:

1. Experience and reputation;

2. Expertise (for the particular project under consideration);

3. Capacity to meet requirements (size, financial condition, etc.);

4. Location (geographical);

5. Demonstrated ability;

6. Familiarity with public work and its requirements; or

7. Distribution of work to individuals and firms or economic considerations.

8. Any other criteria deemed necessary for a quality, cost-effective project.

(o) Each project shall be given individual attention, and a weighted average may be applied to criteria according to its importance to each project.

(p) For the selection process described in § 6982(b) of this title, price may be a criterion used to rank applicants under consideration.

(q) If the agency determines that an electronic submission is beneficial, the agency may use this method to receive proposals from proposing firms under this subchapter.

(1) The solicitation must designate that the procurement method will be an electronic submission, a schedule of proposing activities, and an electronic mail account to which the proposals must be sent.

(2) The agency's representative and a witness shall open the electronic mail account immediately after the closing date and time; record the names of the proposing firms that responded, and the date and time submitted; and prepare a tabulation of all responsive proposing firms for review.

(70 Del. Laws, c. 601, § 9; 78 Del. Laws, c. 288, § 4; 81 Del. Laws, c. 298, § 5; 82 Del. Laws, c. 36, § 1; 83 Del. Laws, c. 56, § 37; 84 Del. Laws, c. 124, § 1; 84 Del. Laws, c. 489, § 13; 84 Del. Laws, c. 513, § 1; 85 Del. Laws, c. 68, § 43.)

§ 6982. Selection.

(a) Agencies shall use the selection process described in paragraphs (a)(1) through (5) of this section for those professional services within the scope of the practice of architecture, professional engineering, including, but not limited to, environmental engineering, consulting and environmental monitoring, professional land surveying, construction management, landscape architecture and geology as

defined and authorized by the laws of the State or those services performed by persons engaged in the above-mentioned professions in connection with their professional employment or practice.

(1) Based upon the criteria established pursuant to § 6981(n)(2)f. of this title, the agency shall rank, in order of preference, the applicants deemed to be qualified to perform the required services.

(2) Beginning with the qualified firm designated first on the preference list, the agency shall negotiate for professional services at compensation which the agency determines is fair and reasonable. The agency shall conduct an analysis of the cost of the professional services required, in addition to considering their scope and complexity. Fee proposals shall not be solicited from this or any other firm on the preference list for use in comparison of fee negotiations. The agency may require the firm receiving the award to execute a truth-in-negotiation certificate stating the wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. All professional service contracts shall provide that the original contract price and any additions thereto shall be adjusted to exclude any significant sums where the agency determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract.

(3) Should the agency be unable to negotiate a satisfactory contract with the qualified firm designated to be first on the preference list, at a price the agency determines to be fair and reasonable, negotiations with that firm shall be formally terminated. The agency may negotiate with the remaining firms by order of ranking. At any point in the negotiations process, the agency may, at its discretion, terminate negotiations with any or all firms.

(4) After accomplishing the evaluation and conducting discussions and negotiations, the agency shall select 1 applicant and prepare a public notice within 10 days after awarding the contract stating the firm selected. This notice will appear in a statewide news publication or by letter to all applicants. If the agency has elected to select multiple firms, the agency shall continue the selection process by negotiating with the next firm on the preference list. This process shall be continued until the required number of vendors have been selected.

(5) It shall be the responsibility of the professional services firm to be current with any professional registration or certification as required by law.

(b) For all professional services not described in subsection (a) of this section, agencies shall use the selection process described in paragraphs (b)(1) through (3) of this section.

(1) Based upon the criteria established pursuant to § 6981(n)(2)f. of this title, the agency shall determine all applicants that meet the minimum qualifications to perform the required services.

(2) The agency shall then interview at least 1 of the qualified firms. The agency may negotiate with 1 firm without terminating negotiations with another firm and may negotiate with 1 or more firms during the same period. At any point in the negotiation process, the agency may, at its discretion, terminate negotiations with any or all firms.

(3) The agency may require the firm with whom the agency is negotiating to execute a truth-in-negotiation certificate stating the wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. All professional service contracts shall provide that the original contract price and any additions thereto shall be adjusted to exclude significant sums where the agency determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract.

(c) *Contract award. —*

Once the agency has successfully negotiated with the selected proposing firm:

(1) The agency shall award a contract to the selected proposing firm whose proposal is determined in writing to be most advantageous to the State, based on the factors set forth in the solicitation. The determination shall explain the basis of award.

(2) The agency shall notify each unsuccessful offeror in writing of the award.

(3) After receipt of a signed contract, the proposals shall be open for public inspection in accordance with § 6981(k)(4) of this title.

(59 Del. Laws, c. 573, § 1; 60 Del. Laws, c. 589, § 1; 70 Del. Laws, c. 601, § 9; 78 Del. Laws, c. 288, § 4; 84 Del. Laws, c. 489, §§ 13, 14.)

§ 6983. State assistance to local governmental units.

The Office of Management and Budget shall provide assistance in selecting professional services firms and negotiating professional service contracts upon the request by an agency, municipality or political subdivision. The Office shall be reimbursed by the municipality or political subdivision for all costs involved.

(59 Del. Laws, c. 573, § 1; 60 Del. Laws, c. 589, § 1; 70 Del. Laws, c. 601, § 9; 75 Del. Laws, c. 88, § 16(5).)

§ 6984. Administrative provisions.

In the case of any contract entered into by an agency other than any county of this State and other than a public school district, and which is not excluded under §§ 6980 and/or 6981 of this title, no contract shall be executed unless and until the firm has provided the agency with its taxpayer identification number (i.e., federal employer identification number or Social Security number) or its Delaware

business license number and, within 15 days of the time identification of any subcontractor shall be required or at the time the contract is executed, whichever is later, the number of such subcontractor. The agency shall report to the Division of Revenue each firm and subcontractor selected for an award within 15 days of identification of such firm or subcontractor under this section unless the Director of the Division of Revenue notifies the agency of criteria according to which, in the Director's discretion, reporting is not required, and the contract meets such criteria.

(59 Del. Laws, c. 573, § 1; 60 Del. Laws, c. 589, § 1; 61 Del. Laws, c. 3, § 3; 70 Del. Laws, c. 94, § 2; 70 Del. Laws, c. 601, § 9.)

§ 6985. Sole source procurement.

(a) A contract may be awarded for professional service without competition if the agency head, prior to the procurement, determines in writing that there is only 1 source for the required professional service. Sole source procurement shall not be used unless there is sufficient evidence that there is only 1 source for the required professional service and that no other type of professional service will satisfy the requirements of the agency. The agency shall examine cost or pricing data prior to an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the agency on the basis for the sole source procurement shall be included in the contract file.

(b) An agency seeking a sole source procurement shall prepare written documentation citing the existence of a sole source condition. The document shall include the specific efforts made to determine the availability of any other source and an explanation of the procurement need. The agency may, for confirmation, submit this documentation to the Section for review and comment prior to the intended date of award.

(c) The agency shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the agency. The agency shall enter into a formal contract stating the terms and conditions of the procurement.

(70 Del. Laws, c. 601, § 9; 75 Del. Laws, c. 88, § 22.)

§ 6986. Multiple source contracting.

An agency may award a contract for a particular professional service to 2 or more firms if the agency head makes a determination that such an award is in the best interests of the State. If such a determination is made, the advertisement shall include a notification of the right of the agency to make such an award and the criteria upon which such an award will be based.

(70 Del. Laws, c. 601, § 9.)

§ 6987. Cooperative procurement.

The Section may, with written approval by the Section director or the Section director's designee, allow an agency to participate in, sponsor, conduct or administer a cooperative agreement for the procurement of professional services with 1 or more public procurement units either within this State, with or within another state, or with a consortium of other states in accordance with an agreement entered into between the participants. Such agreement may include material and/or nonprofessional services with professional services. The other provisions of this subchapter shall not apply when an agency participates in an existing cooperative agreement for the procurement of professional services with a contractor holding a current contract as part of such cooperative agreement.

(73 Del. Laws, c. 427, § 1; 77 Del. Laws, c. 327, § 30; 80 Del. Laws, c. 323, § 1; 84 Del. Laws, c. 489, § 15.)

§ 6988. Purchases using federal contracts.

The Section may, with written approval by the Section director or the Section director's designee, enter into negotiations with various manufacturers or distributors and award contracts which will enable agencies and local governments to purchase professional services at prices approved by the General Services Administration of the United States government or its successor.

(80 Del. Laws, c. 323, § 1; 84 Del. Laws, c. 489, § 16.)

§ 6989. Performance bond.

(a) Simultaneous with the execution of the formal contract, the agency may require the successful proposing firm to execute a good and sufficient bond to the State for the benefit of the agency. Such performance bonds shall:

(1) Be with a corporate surety authorized to do business in this State;

(2) Be in a sum equal to 100% of the contract award, except as otherwise provided in this subsection; and

(3) Be in the standard form issued by the Office of Management and Budget for this purpose and shall be included in the solicitation.

(b) *Contents of performance bonds. —*

The bond shall be conditioned upon the faithful compliance and performance by the successful bidder of each and every term and condition of the contract and the proposal, plans, and specifications thereof. Each term and condition shall be met at the time and in the manner prescribed by the contract and the specifications, including the payment in full to every person furnishing materiel or performing labor in the performance of the contract, of all sums of money due the person for such labor and materiel. The bond shall also contain the successful proposing firm's guarantee to indemnify and save harmless the State and the agency from all costs, damages and expenses

growing out of or by reason of the successful proposing vendor's failure to comply and perform the work and complete the contract in accordance with the contract.

(c) *Invoking a performance bond. —*

The agency may, when it considers that the interests of the State so require, cause judgment to be confessed upon the bond. All sums received through confession of judgment shall be deposited with the Secretary of Finance for the credit of the agency. Such moneys pertaining to Department of Transportation contracts shall be deposited in the Transportation Trust Fund. Every person furnishing materiel or performing labor under the contract for which the successful proposing firm is liable may maintain an action on the bond for the person's own use in the name of the State in any court of competent jurisdiction for the recovery of such sum or sums as may be due such person from the successful bidder, but if the bond so provides, no suit shall be commenced after the expiration of 1 year following the date on which the successful proposing vendor ceased work on the contract, otherwise suits may be commenced at any time within 3 years following the date the last work was done on the contract. No person or surety, in any action brought under this section or on the bond required in this section shall assert as a defense to such action the claim that the bond given pursuant to this section contained a limitation or restriction not provided for by this section.

(d) *Other security for contracts under threshold amount. —*

Contracts valued less than the threshold amount set by the Contracting and Purchasing Advisory Council may contain a waiver of the bond requirement provided that the successful proposing firm posts with the State an irrevocable letter of credit or other suitable or readily-collectible financial security for the project. Such letter of credit or other security shall be issued for a term commencing simultaneously with the execution of the formal contract and terminating no earlier than 3 years subsequent to the date of final acceptance by the agency or to the extent of the warranty period, whichever is later. In no event shall such security expire without the express written approval of the State. Such waiver as described in this paragraph shall be stated in the solicitation.

(e) *Waivers from performance bonds. —*

The State may, at its discretion, reduce or waive the bond or other form of security. Such waiver shall be stated in the solicitation.

(84 Del. Laws, c. 489, § 17.)

§ 6989A. Failure to comply with contract.

If any firm entering into a contract under the authority of this chapter neglects or refuses to perform or fails to comply with the terms thereof, the agency may terminate the contract and proceed to award a new contract in accordance with this subchapter or the agency may require the surety on the performance bond to complete the contract in accordance with the terms of the performance bond. Nothing herein shall preclude the agency from pursuing additional remedies as otherwise provided by law.

(84 Del. Laws, c. 489, § 17.)

§ 6989B. Right to audit records.

An agency shall have the right to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of 3 years from the date of final payment under the prime contract and by the subcontractor for a period of 3 years from the date of final payment under the subcontract.

(84 Del. Laws, c. 489, § 17.)

§ 6989C. Maximum practicable competition.

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the agency's needs and shall not be unduly restrictive.

(84 Del. Laws, c. 489, § 16.)

§ 6989D. Reverse auction for the procurement of professional services for, or related to, pharmaceuticals or pharmacy benefits management services.

(a) This section applies only to the procurement of professional services for or related to pharmaceuticals or "pharmacy benefits management services," as defined under § 3351A of Title 18, by the State Employee Benefits Committee established under Chapter 96 of this title.

(b) When the Section determines that a reverse auction is advantageous, the Section may, with written approval by the Section Director or the Section Director's designee, use or allow an agency to use a reverse auction to receive competitive pricing proposals from proposing firms under this subchapter.

(c) The Section shall establish written procedures for obtaining and evaluating proposals for professional services in advance of the reverse auction price competition. The procedures must require vendors to preregister before the opening date and time for purposes of vetting vendor responsibility and, as part of that registration, to agree to any contractual terms, conditions, or other requirements of the solicitation.

(d) The solicitation must provide notification of the Section's or procuring agency's intent to use a reverse auction, a schedule of proposing activities, and the procedures established under subsection (c) of this section.

(e) The Section or procuring agency may, with the written approval of the Section Director or the Section Director's designee, contract with a third-party vendor to conduct a reverse auction on its behalf under this section.

(f) Each proposal received through the reverse auction process must record the name and address of the submitting vendor.

(g) The proposals, proposal summaries, tabulations, or any other aspect of the proposal evaluations are not open for public inspection until after receipt of a signed contract under § 6981(d)(3) of this title. After receipt of a signed contract, the proposals must be made available for public inspection under § 6981(k)(4) of this title.

(85 Del. Laws, c. 93, § 2.)

Subchapter VII

Pay for Success Contracts

(81 Del. Laws, c. 366, § 1.)

§ 6990. Definitions.

For the purposes of this subchapter:

(1) "Outcome payment" means the money paid when a pay for success contract performance measure is met.

(2) "Pay for success contract" means a written agreement to provide a program, service, or economic development initiative, under which an investor provides funding that a state agency agrees to repay to the investor if the service, program, or economic development initiative meets the performance measures and outcomes in the agreement.

(3) "Program intermediary" means a firm that contracts with a state agency to establish and deliver a service, program, or economic development initiative by doing any of the following:

a. Delivering or contracting for relevant services or outcomes.

b. Raising capital to finance the delivery of services or outcomes.

c. Providing ongoing project management and investor relations for the social impact funding instrument.

d. Raising capital to create jobs in scalable, high-growth startups.

(81 Del. Laws, c. 366, § 1.)

§ 6991. Authorization of pay for success contracts.

(a) (1) An agency may enter into a pay for success contract if the agency head determines with reasonable certainty that the contract will produce a quantifiable public benefit or financial savings to the State by doing any of the following:

a. Reducing or avoiding costs.

b. Increasing economic productivity.

c. Improving client outcomes.

d. Creating high wage jobs.

(2) A pay for success contract may be used for a service, program, or economic development initiative that produces a public benefit or financial savings under paragraph (a)(1) of this section and includes any of the following:

a. Economic development.

b. Public education, including early childhood education.

c. Workforce preparedness and employment, including school to work programs.

d. Public safety, including programs that reduce recidivism and address juvenile justice.

e. Health and human services, including programs for drug and alcohol addiction, mental health, chronic homelessness, supportive housing, and child welfare services.

(3) A pay for success contract for education must comply with the specific procedures for pay for success contracts for public education. The procedures for pay for success contracts for public education must be consistent with the recommendations from a working group.

(b) A pay for success contract may be made between either of the following:

(1) An agency and a program intermediary.

(2) An agency and an investor.

(c) The agency head shall design a pay for success contract in collaboration with other relevant agencies and the program intermediary or investor.

(d) The Director must approve the terms and conditions of a pay for success contract before an agency head may enter into a contract under subsection (a) of this section.

(e) An agency must comply with the requirements of this chapter when selecting a program intermediary, investor, or any necessary consulting assistance.

(f) Each pay for success contract must include all of the following:

(1) A full and thorough description of the objectives to be addressed by the pay for success contract and an analysis of how the defined performance measures will demonstrate progress in addressing the objectives, and how achieving the objectives should provide a significant public benefit, lead to a long-term reduction in state expenditures, or enhance job growth.

(2) A requirement that the agency will hold the funds for the pay for success contract in a reserve account that is specifically for the pay for success contract.

(3) A requirement that a substantial portion of the outcome payment is conditioned on achieving specific outcomes based on the defined performance measures that lead to fiscal, economic, or social value for the State.

(4) A requirement that the program intermediary or investor provide evidence that the program intermediary or investor has secured all of the necessary financing before service delivery begins.

(5) A description of the data each agency involved in developing the pay for success contract will provide to the program intermediary or investor. The data will be provided by the agency only to the extent permissible by law.

(6) The objective process that an independent evaluator, chosen by the agency head, will use to monitor program progress and determine if a performance measure is achieved.

(7) The reporting requirements the program intermediary or investor must provide to the agency regarding the program intermediary's or investor's progress in meeting the objectives.

(8) The method that will be used to calculate the amount and timing of outcome payments to the program intermediary or investor during each year of the pay for success contract if the independent evaluator determines that the program intermediary or investor achieves a performance measure.

(9) The terms under which a pay for success contract may be terminated.

(81 Del. Laws, c. 366, § 1.)

§ 6992. Pay for Success Contract Reserve Account.

(a) The State Treasurer shall create a Pay for Success Contract Reserve Account for public funds appropriated by the General Assembly for each pay for success contract.

(b) Money held in a Pay for Success Contract Reserve Account is not subject to yearly reversion until the pay for success contract is completed or terminated and all obligations to the program intermediary or investor are satisfied.

(c) An agency head whose agency has entered a pay for success contract may authorize a payment under a pay for success contract from the Pay for Success Contract Reserve Account.

(d) (1) If the amount of funding in the Pay for Success Contract Reserve Account does not equal or exceed the amount of the total payments due to the program intermediary or investor under a pay for success contract if the program intermediary and investor achieve full performance for the services or outcomes under the pay for success contract, the agency head must submit to the Director a schedule detailing how much funding is needed in each remaining year of the pay for success contract to meet the contract obligations.

(2) After the Director approves the schedule under paragraph (d)(1) of this section, the agency head must request an appropriation from the General Assembly as part of the agency's annual budget request, in the amount required under the schedule to meet the funding requirements under the pay for success contract, during each fiscal year under the term of the contract.

(3) Funds appropriated by the General Assembly under this subsection must be designated as a separately identifiable appropriation.

(81 Del. Laws, c. 366, § 1.)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations
Chapter 70
Sale of State-Owned Materiel

§ 7001. Definitions.

For purposes of this chapter:

(1) "Agency" includes every board, department, bureau, commission, person, group of persons, or other authority to which any of the following apply:

a. Executes, supervises, controls, or administers governmental functions under the laws of this State or performs such other duties as may be prescribed.

b. Receives any funds under any budget appropriation act or supplemental appropriation act or any other act which authorizes and requires any department to collect or use any taxes, fees, licenses, permits, or other receipts for services or for the performance of any function of, related to, or supported in whole or in part by the laws of this State.

c. Administers any laws providing for the collection of taxes, fees, permits, licenses, or other forms of receipts from any source for the use of this State.

(2) "Computer technology" means computers, computer equipment, or software.

(3) "Government Support Services" or "GSS" means the Government Support Services Section of the Office of Management and Budget.

(4) a. "Materiel" means materials, equipment, vehicles, tools, supplies, and any other personal property.

b. "Materiel" does not mean real property, such as land, ponds, or buildings.

(5) "School" means a public school or school district, including charter schools.

(29 Del. C. 1953, § 7001; 55 Del. Laws, c. 326; 68 Del. Laws, c. 233, § 1; 85 Del. Laws, c. 195, § 1.)

§ 7002. Disposal of state-owned property.

(a) (1) All equipment, supplies, and materiel purchased in whole or in part with state-appropriated funds are assets of this State and are not assets of the agency which holds or uses the materiel, except as provided under paragraph (a)(3) of this section.

(2) When an agency determines that materiel held or used by the agency is in excess of the agency's needs, the agency shall report this excess materiel to Government Support Services for appropriate reallocation or disposal.

(3) Except for vehicles, materiel that is being replaced in kind is not excess materiel under paragraph (a)(2) of this section and an agency, including a school, may enter into an agreement with a purchasing vendor to trade in this materiel on similar materiel or sell this materiel and credit the receipt as required under § 6102(c) of this title.

(b) (1) a. Except as provided for vehicles under paragraph (b)(2) of this section and computer technology under paragraph (b)(3) of this section, when Government Support Services determines that the materiel reported by the agency under paragraph (a)(2) of this section has additional useful life, Government Support Services shall give 2 weeks' written notice to agencies, volunteer ambulance services, volunteer rescue services, and volunteer fire departments of the availability of the materiel.

b. Requests for materiel under paragraph (b)(1)a. of this section must be submitted in writing to Government Support Services. In the event 2 or more agencies request the same materiel, GSS shall make the appropriate determination as to allocation.

(2) a. Vehicles can be made available to agencies at fair market value as determined by GSS. Vehicles not purchased by agencies may be made available, at fair market value as determined by GSS, to any private organization that is exempt from taxation under § 501(c) of the Federal Internal Revenue Code, 26 U.S.C. § 501(c), and whose headquarters is in this State.

b. Requests for vehicles by organizations eligible under paragraph (b)(2)a. of this section must be submitted in writing to Government Support Services.

(3) If computer technology is not being replaced under paragraph (a)(3) of this section, GSS shall offer that computer technology to the Department of Education's Partners in Technology Group before disposal or disposition to any other group or agency. Upon acceptance, the Partners in Technology Group will pick up the computer technology from the holding agency at no charge. Government Support Services shall dispose of the computer technology refused by the Partners in Technology Group following the procedures under subsection (c) of this section.

(c) (1) If no requests are received for materiel within the 2-week period under subsection (b) of this section, Government Support Services shall transfer the materiel to an appropriate storage area. The materiel can then be made available to other political subdivisions, nonprofit organizations, or the general public at reasonable cost as determined by GSS.

(2) When the quantity or size of the materiel makes removal from the site of the disposing agency unwarranted or when it is in the best interest of this State, GSS may arrange for public auction of the materiel under subsection (d) of this section or the sale of the materiel under subsection (f) of this section.

(d) Notice of auctions shall be advertised at least once a week for 2 consecutive weeks in a Delaware newspaper circulated in each county of the State; provided, however, that if the anticipated proceeds of such auction are equal to or less than the cost of handling and advertising, the advertising requirement may be waived at the discretion of the Director of the Office of Management and Budget. The materiel shall be sold to the highest bidder at such auction. Any materiel remaining after being offered at such auction shall be disposed of by the Office of Management and Budget in the best interests of the State. All proceeds from such auctions shall be deposited with the State Treasurer.

(e) [Repealed.]

(f) Nothing in this section interferes with the right of Government Support Services to transfer or sell equipment within this State to the groups in paragraph (c)(1) of this section at mutually agreed values before the public auction. This transfer or sale shall be conducted for the agency by Government Support Services upon written request of the agency.

(29 Del. C. 1953, § 7002; 55 Del. Laws, c. 326; 58 Del. Laws, c. 213, § 1; 59 Del. Laws, c. 242, § 1; 64 Del. Laws, c. 227, § 1; 65 Del. Laws, c. 348, § 110; 68 Del. Laws, c. 233, §§ 2-5; 69 Del. Laws, c. 149, §§ 1-5; 69 Del. Laws, c. 332, §§ 1, 2; 71 Del. Laws, c. 138, § 7; 73 Del. Laws, c. 143, § 5; 73 Del. Laws, c. 348, § 1; 74 Del. Laws, c. 330, §§ 1, 2; 75 Del. Laws, c. 88, §§ 16(5), 22(4); 85 Del. Laws, c. 195, § 2.)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations

Chapter 71
Transportation of State Employees

§ 7101. Definition of agency.

As used in this chapter, the term "agency" shall have the same meaning as defined in § 6301 of this title; provided, however, that the judiciary and the courts of the State shall be included in the meaning of the term "agency" when used in this chapter.

(29 Del. C. 1953, § 7101; 69 Del. Laws, c. 136, § 3.)

§ 7102. Mileage rate.

The authorized mileage rate for employees of the State, its agencies and departments shall be 50 cents per mile effective July 1, 2023.

(42 Del. Laws, c. 74, § 1; 46 Del. Laws, c. 317; 48 Del. Laws, c. 235; 29 Del. C. 1953, § 7102; 50 Del. Laws, c. 217, § 1; 55 Del. Laws, c. 459, § 1; 62 Del. Laws, c. 31, § 1; 64 Del. Laws, c. 334, § 63(a); 71 Del. Laws, c. 132, § 38(a); 72 Del. Laws, c. 67, § 1; 75 Del. Laws, c. 350, § 33; 84 Del. Laws, c. 81, § 70.)

§ 7103. Claims for mileage.

(a) Before any allowance for mileage shall be paid to any claimant therefor, the claimant shall set forth an itemized statement showing the number of miles traveled during the period for which such claim is filed. The total number of miles set forth in such claim shall be the total miles actually traveled in and about the business of the State, or of any agency of the State.

(b) No claim for mileage shall be allowed any employee of this State, its agencies and departments for miles traveled between the employee's place of residence or abode and the employee's principal place of employment by this State.

(c) The prohibition of subsection (b) of this section shall extend to all officers of the State excluding members of boards or commissions, any other provisions of the law to the contrary notwithstanding.

(42 Del. Laws, c. 74, § 3; 29 Del. C. 1953, § 7103; 57 Del. Laws, c. 324, § 1; 65 Del. Laws, c. 348, § 29; 70 Del. Laws, c. 186, § 1.)

§ 7104. Penalties.

(a) Whoever pays any mileage in excess of the rates prescribed in this chapter, for or on behalf of any agency of the State, or files a claim or receives mileage in excess of the rates prescribed in this chapter shall be fined not less than $10 nor more than $100, or upon failure to pay such fine shall be imprisoned not more than 30 days.

(b) In addition to the penalties provided in subsection (a) of this section, any recipient of any allowance for mileage in violation of § 7103 of this title shall be civilly liable to the State in an amount equal to twice the excess allowance received.

(42 Del. Laws, c. 74, § 4; 29 Del. C. 1953, § 7104; 57 Del. Laws, c. 324, § 2.)

§ 7105. Establishment and use of a statewide fleet management system.

(a) The Office of Management and Budget, Government Support Services shall establish and operate a Statewide Fleet Management System ("fleet system"). This fleet system shall be composed of all passenger vehicles used by every agency, except for those vehicles exempted by the Director of the Office of Management and Budget. Passenger vehicles as used in this section includes sedans, station wagons, passenger and utility vans, off-road vehicles and trucks rated 10,000 GVW or less.

(b) Each agency shall, within 30 days of a request from the Director of the Office of Management and Budget, deliver to Government Support Services any passenger vehicle and its title for inclusion in the fleet system. If such vehicles were purchased with nonappropriated special funds that require the proceeds of the disposition of the vehicle to be returned to the agency or nonappropriated special funds source, the Director of the Office of Management and Budget shall provide the agency with credits in the amount of the then current value of the vehicle to be used toward the agency's vehicle lease expenses.

(c) No agency shall lease passenger vehicles except from Government Support Services. Exempt from this subsection are the Governor's car, agency employees traveling on out-of-state business, and Government Support Services.

(d) Government Support Services, in cooperation with the Department of Technology and Information and the Division of Accounting, shall implement the systems and procedures to enable the direct, electronic transfer of funds from customers of the fleet system to an account designated by Government Support Services. Customers shall be required to furnish Government Support Services with a Purchase Order by August 1 of each year that encumbers funds for the rental of vehicles for that entire fiscal year. The Director of the Office of Management and Budget may exempt agencies from this subsection.

(e) Each agency shall appoint 1 individual to serve as the agency's vehicle representative. It is the responsibility of the head of each agency to ensure that the vehicle representative completes and submits all vehicle reports as required by the Director of the Office of

Management and Budget. It is also the responsibility of each agency head to ensure that the employees of each agency head's respective agency follow the polices concerning the fleet system.

(f) Law-enforcement vehicles and vessels of State agency law-enforcement personnel covered under the provisions of the Police Officer Standards and Training Commission, owned by school districts shall be exempt from subsections (a) and (b) of this section.

(69 Del. Laws, c. 136, § 4; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 274, § 4; 73 Del. Laws, c. 143, §§ 6, 15; 74 Del. Laws, c. 128, § 6; 75 Del. Laws, c. 88, §§ 16(5), 22(4); 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 149, § 14.)

§ 7106. Use of state-owned vehicles; penalty; exemptions.

(a) No motor vehicle owned by any agency/school district, except as otherwise indicated herein, shall be driven by an employee before or after the prescribed working hours of that employee.

(b) When not on official State business, every motor vehicle owned by any agency/school district, with the exception of those vehicles exempted under subsection (c) of this section, shall be parked at the agency or motor pool location to which the vehicle is assigned.

(c) Specifically exempted from subsections (a) and (b) of this section are the Governor's car, law-enforcement vehicles and vessels of State agency law-enforcement personnel covered under the provisions of the Police Officer Standards and Training Commission and those vehicles exempted by the Director of the Office of Management and Budget. The Director of the Office of Management and Budget shall promulgate a policy concerning these exemptions. This policy shall include rules which allow certain vehicles to be parked at locations other than a motor pool or agency site if warranted by emergency or business activities of certain employees and/or security requirements of certain vehicles.

(d) Those vehicles designated by the Governor or the Governor's designee for the transportation of State employees commuting to and from their prescribed places of employment, provided that the vehicles are part of a specific pooling program, shall also be exempt from subsection (b) of this section. Each such vehicle pooling program and costs thereof shall be approved by the Director, Office of Management and Budget prior to starting operations and shall provide that the State be reimbursed for the entire cost of the vehicle and all operating costs thereof by its users. After the initial year of operation, and in each successive year, the Director, Office of Management and Budget shall determine an appropriate cost factor for each approved pooling program.

(e) Whoever violates this section, for the first offense, shall be fined not less than $10 nor more than $25. For each subsequent like offense, the violator shall be fined not less than $25 nor more than $50. Justice of the Peace Courts shall have jurisdiction over offenses under this section.

(60 Del. Laws, c. 660, § 1; 63 Del. Laws, c. 57, §§ 1, 2; 65 Del. Laws, c. 87, § 40; 69 Del. Laws, c. 136, § 5; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 16(5); 76 Del. Laws, c. 80, § 71; 84 Del. Laws, c. 149, § 14.)

§ 7107. Identification of state-owned vehicles and boats.

All state-owned motor vehicles shall bear on the rear license plates issued by the Division of Motor Vehicles the notation "STATE OWNED." All state–owned boats shall bear prominent identification on the rear thereof identifying such boats as state owned. The automobile used by the Governor, and law-enforcement vehicles and vessels of State agency law-enforcement personnel covered under the provisions of the Police Officer Standards and Training Commission, are exempted from the requirements of this section. Other exemptions from this section must be approved by the Director of the Office of Management and Budget.

(62 Del. Laws, c. 68, § 48; 63 Del. Laws, c. 336, § 2; 65 Del. Laws, c. 87, § 187; 69 Del. Laws, c. 136, § 6; 75 Del. Laws, c. 88, § 16(5); 84 Del. Laws, c. 149, § 14.)

§ 7108. Other permissible users of state-owned vehicles.

Notwithstanding the definition of the term "agency" set forth in § 7101 of this title, operators of provider-managed residential settings or day programs contracted through the Department of Health and Social Services' Division of Developmental Disabilities Services (DDDS) may contract with Fleet Services, with the permission of DDDS, for the sole purpose of obtaining vehicles necessary or the operation of the contracted provider-managed residential settings or day programs, subject to all provisions of the Fleet Services Acceptable Use Policies.

(77 Del. Laws, c. 218, § 1; 82 Del. Laws, c. 64, § 179.)

§ 7109. Procurement of Delaware state-owned vehicles; zero emission vehicle fleet plan.

(a) In pursuit of a zero emission vehicle state fleet, the State shall ensure the following:

(1) Fifteen percent of passenger vehicles and light duty vehicles owned and operated by the State shall be zero emission vehicles by 2026.

(2) Twenty-five percent of passenger vehicles and light duty vehicles owned and operated by the State shall be zero emission vehicles by 2029.

(3) Fifty percent of passenger vehicles and light duty vehicles owned and operated by the State shall be zero emission vehicles by 2032.

(4) All passenger vehicles and light duty vehicles owned and operated by the State shall be zero emission vehicles by 2040.

(b) The Office of Management and Budget shall submit an implementation report regarding the goals set forth in subsection (a) of this section beginning on January 31, 2026, and every 3 years thereafter until 2040.

(c) By January 31, 2035, the Office of Management and Budget shall submit a report detailing recommendations for further reduction of carbon emissions and decreasing the environmental impact of the statewide fleet system.

(d) The reports in subsections (b) and (c) of this section shall be delivered to the Clerk of the House of Representatives, the Secretary of the Senate, the Director of the Legislative Services, and the Director of the Public Archives.

(e) If zero emission vehicle technology improves faster than expected, the State shall make every effort to surpass the goals required by subsection (a) of this section.

(f) The Office of Management and Budget may grant exemptions from the requirements of this section to the extent that the vehicles required by this section are not available or do not meet the specific needs of an agency.

(g) This section shall not apply to the following vehicles:

(1) Law-enforcement and emergency vehicles of Delaware state agency law-enforcement and emergency personnel.

(2) All vehicles owned or operated by the Department of Education, school districts, and charter schools.

(3) Vehicles designated for take home use prior to the year 2035.

(h) For purposes of this section:

(1) “Passenger vehicles” and “light duty vehicles” shall mean as defined in state regulations promulgated by the Department of Natural Resources and Environmental Control.

(2) “Zero emission vehicle” means a battery electric vehicle, a hydrogen fuel cell electric vehicle, or a plug-in hybrid electric vehicle with a battery range that is sufficient to meet the vehicle’s regular mileage between charges.

(84 Del. Laws, c. 398, § 1; 84 Del. Laws, c. 255, § 36.)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations

Chapter 72
Indigent Sick

§ 7201. Hospitals caring for indigent sick.

All hospitals located within each of the several counties which are not principally dependent for their maintenance and operation upon state or federal appropriation are authorized to furnish any indigent person with proper medical or surgical care and attention, to be paid therefor in the manner provided in this chapter.

(29 Del. C. 1953, § 7201; 57 Del. Laws, c. 228, § 4; 57 Del. Laws, c. 747, § 1.)

§ 7202. Records.

Every hospital, qualifying under § 7201 of this title, which furnishes medical or surgical care and attention to any indigent person shall keep a record thereof in the manner and form prescribed by the Budget Director showing the number of such indigent sick receiving medical or surgical care and attention, the name and residence of each such person, the dates the person was admitted to and discharged from the hospital and an itemized list showing all expenses incurred by the hospital for medical or surgical care and attention furnished such persons.

(29 Del. C. 1953, § 7202; 57 Del. Laws, c. 228, § 4; 57 Del. Laws, c. 747, § 1.)

§ 7203. Audit of records by Department of Health and Social Services.

Every hospital which desires to be paid by the Secretary of Finance for medical or surgical care and attention for any indigent sick resident shall on or before the fifteenth day of each month transmit to the Department of Health and Social Services a duly certified statement, as prescribed by the Budget Director, of the record required by § 7202 of this title, for the preceding month, and the Department of Health and Social Services upon receipt thereof shall investigate the facts contained therein, and if they deem it proper or necessary in the making of their investigation, they may make an examination of the hospital's books, papers and account appertaining thereto. If, after such investigation, the Department of Health and Social Services is satisfied that the facts contained in the submitted record are true and correct, they shall approve for payment by the Secretary of Finance to the hospital of the amount shown to be due by the record; otherwise, the Department of Health and Social Services shall disapprove the same.

(29 Del. C. 1953, § 7203; 57 Del. Laws, c. 228, § 4; 57 Del. Laws, c. 747, § 1.)

§ 7204. Payment by Secretary of Finance.

The Secretary of Finance shall pay to each hospital qualified under § 7201 of this title such amount shown to be due to it as shall be approved by the Department of Health and Social Services at such rate per day as shall be determined by the Budget Director at the Budget Director's discretion for each person receiving such medical or surgical care and attention. No money shall be paid to any hospital for any month until the amount due to all the hospitals for the preceding month has been fully determined and paid.

(29 Del. C. 1953, § 7204; 57 Del. Laws, c. 228, § 4; 57 Del. Laws, c. 747, § 1; 70 Del. Laws, c. 186, § 1.)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations

Chapter 73
Architectural Accessibility Act

§ 7301. Purpose; construction.

It is the purpose of this chapter to enable members of society with disabilities to make use of public facilities with the maximum of safety and independence by providing for the implementation of standards for the elimination of architectural barriers. This chapter shall be construed liberally to achieve that purpose.

(62 Del. Laws, c. 174, § 1; 78 Del. Laws, c. 179, § 302.)

§ 7302. Definitions.

As used in this chapter:

(1) "Alteration" means any modification or renovation of a facility which involves a structural change.

(2) "Architectural barrier" means any physical attribute or design feature which by its presence, absence or design restricts access to or use of any facility by a person with a disability.

(3) "Board" means the Architectural Accessibility Board.

(4) "Facility" means any building, structure, installation or improved area of any nature whatsoever or any part thereof, which is utilized or held out for use by the public, and shall include, but not be limited to:

a. Sidewalks, ramps or other means of ingress and egress;

b. Parks and recreational areas;

c. Public telephones, drinking fountains and restrooms.

(5) "Person" means 1 or more individuals, partnerships, associations, organizations, corporations, cooperatives, representatives, trustees, receivers or agents whether or not associated in any way with the State.

(6) "Person with a disability" means a person who permanently or temporarily has a physical, mental or communicative condition or characteristic, and who, because of the condition or characteristic, is restricted in using facilities.

(62 Del. Laws, c. 174, § 1; 78 Del. Laws, c. 179, §§ 303, 304.)

§ 7303. Applicability.

(a) This chapter shall be applicable to any facility or part of any facility and to any alteration thereto, which, after July 13, 1979, is:

(1) Constructed by or on behalf of the State;

(2) Is leased or rented in whole or in part by the State;

(3) Is financed in whole or in part by the State or by bonds guaranteed in whole or in part by the State.

(b) This chapter shall apply only to the alteration actually being made to any facility and not to any of the surrounding or related area or facility.

(62 Del. Laws, c. 174, § 1; 77 Del. Laws, c. 446, § 2.)

§ 7304. Architectural Accessibility Board — Created; composition; terms; vacancies; compensation.

(a) The Architectural Accessibility Board is created as an agency of the State for carrying out the purpose of this chapter. The Board, for administrative purposes, is within the Office of Management and Budget.

(b) (1) The Board is composed of 9 members who are appointed by the Governor as follows:

a. One architect registered in this State.

b. One registered professional engineer in the field of structural engineering.

c. One general contractor with experience in commercial construction.

d. One attorney licensed in this State.

e. Four individuals with disabilities, at least 1 of whom uses a wheelchair.

f. One member of the general public who is a parent, guardian, or representative of an individual with a disability; provides services to individuals with disabilities; or has a demonstrated involvement in programs for individuals with disabilities.

(2) The Governor may appoint a member for a term of less than 4 years to ensure no more than 3 members' terms expire in a year.

(3) Nothing in this section may be construed to prevent or disfavor an individual with a disability from serving in any of the positions described in paragraphs paragraphs (b)(1)a. through d. of this section. The intent of paragraphs (b)(1)e. and f. of this section is to provide for representatives of various types of disabilities and individuals with disabilities who cannot effectively represent themselves on the Board.

(c) The chair may request that any of the following individuals, or their designees, attend a scheduled meeting as needed to conduct business within the individual's area of expertise:

(1) Secretary of the Department of Health and Social Services.

(2) Secretary of the Department of Labor.

(3) Secretary of the Department of Transportation.

(4) Director of the Office of Management and Budget.

(5) Secretary of the Department of Education.

(6) [Repealed.]

(7) Chairperson of the Governor's Commission of Employment of the Handicapped.

(8) Chairperson of the Developmental Disabilities Planning Council.

(9) Chairperson of the Delaware Human and Civil Rights Commission.

(10) Chief building inspectors of each of the counties of this State and of the City of Wilmington, or if no such position exists, then an individual designated by the governing body of the jurisdiction.

(d) The Governor shall appoint a chair from among the members of the Board. The chair serves as the chair at the pleasure of the Governor.

(e) The Governor may remove a member 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 Board meetings or attends less than 50% of Board meetings in a calendar year. The Governor may consider the member to have resigned, and may accept the member's resignation.

(f) Members must receive a compensation of $25 per day when the members are engaged in their duties as members of the Board. Members must be reimbursed for their actual travel and other necessary expenses incurred in carrying out their duties.

(62 Del. Laws, c. 174, § 1; 71 Del. Laws, c. 378, § 114; 75 Del. Laws, c. 88, § 16(5); 78 Del. Laws, c. 179, §§ 305-309; 82 Del. Laws, c. 138, § 1; 83 Del. Laws, c. 305, § 7.)

§ 7305. Architectural Accessibility Board — Procedures.

(a) The Board shall meet at least once every 2 months, and may meet more frequently as determined by a majority of the Board.

(b) Five members of the Board must be present at a Board meeting in order to have a quorum and conduct official business unless otherwise provided in this chapter. Counting for quorum does not include member positions that are vacant.

(c) [Repealed.]

(d) The Board may adopt other procedures as it deems appropriate.

(62 Del. Laws, c. 174, § 1; 71 Del. Laws, c. 138, § 8; 82 Del. Laws, c. 138, § 2.)

§ 7306. Architectural Accessibility Board — Duties and powers.

(a) In addition to the other duties expressly conferred by this chapter, the Board has the following duties and responsibilities:

(1) Through the approval of a majority of the voting Board members following a public hearing, promulgate rules and regulations which establishing standards for the design and construction of facilities covered by this chapter to assure that individuals with disabilities can safely access and use the facilities. The standards must take into account the requirements and standards that are either of the following:

a. Recommended or amended by the American National Standards Institute (ANSI) and the Building Officials and Code Administrators (BOCA).

b. Required under applicable federal law.

(2) Through the approval of a majority of the voting Board members following a public hearing, promulgate rules and regulations for the granting of waivers from the requirements of this chapter and the Board's standards. The rules and regulations may provide for conditional or temporary waivers where appropriate, and must take into account such factors as the availability of acceptable alternatives to the Board's standards and whether compliance with the standards will produce extreme economic hardship without substantial benefit to individuals with disabilities.

(3) Publish the standards and regulations adopted under paragraphs (a)(1) and (2) of this section and make copies available to architects, engineers, contractors, state and local building inspectors, public works officials, and other interested persons and groups.

(4) Review all submissions to the Board under § 7308 of this title to determine if the requirements of this chapter and the standards of the Board are met and, upon a determination that the pertinent requirements are met, issue a letter of approval for such construction.

(5) Monitor compliance with pertinent standards during construction of a facility for which a letter of approval has been issued.

(6) Grant a waiver under § 7309 of this title.

(7) Receive and act upon complaints concerning alleged noncompliance with this chapter and the standards of the Board.

(8) Conduct a polling place accessibility assessment upon referral from the Department of Elections under § 4512 of Title 15.

(9) Survey existing facilities which the State has constructed, leased, or financed before July 13, 1979, and recommend to the Director of the Office of Management and Budget steps to eliminate existing architectural barriers.

(10) Formulate educational and training courses to assist in the accomplishment of the purpose of this chapter.

(11) Make studies and collect and retain data relative to the purpose of this chapter.

(12) Provide for public awareness of architectural accessibility and of the requirements related to architectural accessibility.

(b) To achieve the purposes of this chapter and in addition to other responsibilities and duties under this chapter, the Board has the following powers:

(1) To make and promulgate rules and regulations, consistent with this chapter, that are necessary and proper for the Board's administration and operation, and for the conduct of the Board's business.

(2) In conjunction with the Director of the Office of Management and Budget, to appoint a Chief Administrator, who serves as the Board's Chief Executive Officer and supervises clerical and other staff as the Director of the Office of Management and Budget may provide.

(3) To hold hearings; inspect construction; provide for inspection by the Chief Administrator, other staff of the Office of Management and Budget as the Director may make available, or through purchase of services; request information; and perform other acts which are necessary and proper for effectuating the purpose of this chapter.

(62 Del. Laws, c. 174, § 1; 75 Del. Laws, c. 88, § 16(5); 77 Del. Laws, c. 446, § 3; 78 Del. Laws, c. 179, § 310; 82 Del. Laws, c. 138, § 3.)

§ 7307. Applicability of Administrative Procedures Act.

The Board shall be a state agency affected by the Administrative Procedures Act, § 10101 et seq. of this title. Except as otherwise specifically required by this chapter or the regulations of the Board, public hearings as defined by the Administrative Procedures Act shall not be required.

(62 Del. Laws, c. 174, § 1.)

§ 7308. Submission of plans.

(a) No person shall undertake the construction or alteration of any facility covered by this chapter without first submitting the plan, specifications or design for such construction to the Board for review and approval. No such construction shall commence until the Board has issued a letter of approval stating that the proposed construction conforms with this chapter and the Board's standards.

(b) Plans, specifications or designs for all construction or alterations shall be filed with the Board by the design architect or engineer or, in the case of plans and specifications for which there is no design architect or engineer, by a person responsible for the construction or alterations. All solicitations for bids on projects for construction or alteration of facilities covered by this chapter, which are published pursuant to this title, shall state that conformity to the Delaware Architectural Accessibility Act and the standards of the Board shall be required.

(c) No facility shall be leased or rented by the State unless the state agency responsible for the lease has submitted to the Board for review and approval such plans, description, specifications or other documentation concerning the accessibility of such facility as the Board by regulation may require.

(d) Any plans, specifications, designs or other documentation required under this section which are properly submitted to the Board at least 10 days prior to a meeting of the Board shall be acted upon by the Board on or before the meeting next following such meeting of the Board, or within 60 days following its submission, whichever first occurs. In the event that the Board has not acted upon a submission within such period, the Chairperson of the Board shall issue a letter of approval to the submitter.

(e) The Board may reject any submission either in whole or in part for noncompliance with this chapter or the standards of the Board. The Board shall state in writing its reason for such rejection.

(62 Del. Laws, c. 174, § 1.)

§ 7309. Granting of waivers.

(a) Upon written application setting forth good and sufficient reason, the Board may grant a waiver from this chapter and the Board's standards.

(b) Such application shall specify the facts relating to the request for the waiver. Any waiver granted by the Board shall be in writing and shall specify the Board's reason for granting the waiver.

(62 Del. Laws, c. 174, § 1.)

§ 7310. Judicial review and enforcement.

(a) Any person aggrieved by a final order of the Board may appeal pursuant to the Administrative Procedures Act, Chapter 101 of this title.

(b) Whenever the Board has evidence that any person has violated or is violating any provision of this chapter or the Board's standards, the Board shall notify the alleged violator and by informal negotiation attempt to resolve the problem. Such notice shall contain a date

upon which the Board will next meet, at which time the person so notified may hear in its entirety the basis of the Board's finding. The Board and the person so notified shall attempt to agree upon a solution for compliance, which shall prescribe the action necessary to achieve compliance.

(c) If no solution for compliance is agreed upon, or if the alleged violation continues, the Board shall refer the matter to the Attorney General, who may institute appropriate legal proceedings, including an action for an injunction or temporary restraining order to enjoin violations of the chapter or the Board's standards.

(d) Any person with a disability or groups of persons with disabilities may bring an action for legal or equitable relief from violations of this chapter and the Board's standards and may be awarded compensatory and punitive damages suffered as a result of such violations. If successful in such litigation, the persons with disabilities bringing the litigation shall be reimbursed for all costs and expenses of the litigation, including attorneys' fees as may be allowed by the Court.

(e) The Superior Court in and for the county for in which alleged violation occurred shall have jurisdiction of civil actions under this section. The Court of Chancery in and for the county in which the alleged violation occurred shall have jurisdiction over actions for injunctive relief.

(f) Any person who violates any provision of this chapter or any standard or order of the Board shall be subject to a civil penalty not to exceed $500 for each day such violation continues.

(g) No action hereunder may be commenced after the expiration of 2 years from the completion of the construction of any facility or alteration thereto.

(62 Del. Laws, c. 174, § 1; 78 Del. Laws, c. 179, § 311.)

§ 7311. Penalties.

(a) Any person who violates any provision of this chapter or the regulations of the Board shall be guilty of a class B misdemeanor and fined as provided in § 4207 of Title 11.

(b) Whenever any person is convicted of a misdemeanor hereunder, no public construction contract with the State shall be awarded to or received by such person or any firm, partnership, or corporation in which such person has an interest until the expiration of 1 year from the date sentence was pronounced and any fine has been paid in full.

(c) The Superior Court shall have jurisdiction of offenses under this section.

(62 Del. Laws, c. 174, § 1.)

§ 7312. Insignia.

The Board shall adopt a symbol of access to persons with disabilities, which may be the international symbol of access, which shall be permanently and prominently displayed on all buildings covered by this chapter which comply with the requirements of the chapter and the Board's standards. Said insignia shall not be displayed unless compliance exists.

(62 Del. Laws, c. 174, § 1; 78 Del. Laws, c. 179, § 312.)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations
Chapter 74
Bonds and Notes of the State

§ 7401. Definitions.

As used in this chapter:

(1) "Authorization act" means an act of the General Assembly, concurred in by $^{3}/_{4}$ of all the members of each House, appropriating funds of the State from the proceeds of bonds authorized to be issued by such act.

(2) "Bonds" means any bonds authorized to be issued by the State pursuant to an authorization act and to the payment of which the State has pledged its full faith and credit.

(3) "Certificated obligation" means a registered bond, note or revenue note represented by an instrument.

(4) "Issuing officers" means the Governor, Secretary of State, State Treasurer and Secretary of Finance of the State.

(5) "Notes" means notes issued by the State in anticipation of the issuance of bonds authorized by an authorization act and to the payment of which the State has pledged its full faith and credit.

(6) "Revenue notes" means notes issued by the State in anticipation of the receipt by the State of taxes and revenues payable to the State and the payment of which the State has pledged its full faith and credit.

(7) "Uncertificated obligation" means a registered bond, note or revenue note which is not represented by an instrument.

(29 Del. C. 1953, § 7401; 54 Del. Laws, c. 124; 59 Del. Laws, c. 378, § 5; 62 Del. Laws, c. 146, §§ 6, 7; 64 Del. Laws, c. 131, § 11(a), (f); 65 Del. Laws, c. 119, § 1.)

§ 7402. Issuing authority.

(a) The issuing officers shall authorize the issuance of bonds, notes and revenue notes of the State by resolution adopted by the unanimous vote of the issuing officers. Each issuing officer may designate a deputy to represent the issuing officer as an issuing officer at meetings of the issuing officers with full powers to act and vote in the issuing officer's behalf. Bonds and notes shall be issued for the purposes authorized in an authorization act. Revenue notes shall be issued for purposes authorized by this chapter. Bonds, notes and revenue notes may be issued regardless of the treatment of interest thereon for federal income tax purposes.

(b) Notwithstanding any other laws to the contrary, the issuing officers shall approve, by the same vote, individual contracts or classes of contracts with firms or individuals entered into by bond issuing authorities, agencies and instrumentalities created by the State other than authorities, agencies or instrumentalities constituting institutions of higher learning.

(c) Any other law to the contrary notwithstanding, the General Assembly hereby authorizes the issuance, from time to time, of general obligation bonds to refund, prior to their stated maturity, all or any portion of the outstanding general obligation bonds issued by the State and costs incidental thereto; provided, however, that the present value of the aggregate principal and interest payments of the refunding bonds must be less than the present value of the aggregate principal and interest payments on the bonds to be refunded.

(1) The present value of the aggregate principal and interest payments of the refunding bonds and of the bonds to be refunded shall be discounted at the effective interest rate on the refunding bonds, calculated based on the internal rate of return.

(2) Refunding bonds may be issued in a principal amount which exceeds the principal amount of the bonds to be refunded, so long as 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.

(3) Section 7423 of this title shall not apply to refunding bonds issued in accordance with, and under the limitations of, this subsection.

(4) The issuing officers, by resolution adopted by unanimous vote and without further authorization of the General Assembly, may resolve to issue refunding bonds authorized by this subsection at any time prior to the final maturity of the bonds to be refunded. Subject to the limitations imposed by this subsection, but any other law to the contrary notwithstanding, refunding bonds may be sold at public or private sale, above or below par, with principal installments payable at such times and in such amounts and on such other terms and conditions as the issuing officers determine. Without limiting the foregoing, refunding bonds are not required to pay current interest for all or any portion of the issue, and thus may be "zero coupon" or "capital appreciation" bonds.

(5) No refunding bonds may be issued unless all or a portion of the proceeds of the refunding bonds are deposited irrevocably in an account pledged to pay, and are sufficient together with any other available assets in such account to meet, the payment when due of the principal, premium (if any) and interest on the bonds to be refunded. The proceeds of the refunding bonds pledged to pay the bonds to be refunded may be invested in direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States government.

(6) Any other law to the contrary notwithstanding, the issuing officers, by resolution adopted by unanimous vote, may resolve to issue refunding bonds to refund the State's Certificates of Participation (Real Estate Acquisition Program) Series 1989 so long as the other requirements of this section are satisfied and assuming that said Certificates of Participation are treated as the bonds to be refunded.

(29 Del. C. 1953, § 7403; 54 Del. Laws, c. 124; 62 Del. Laws, c. 146, §§ 6, 8; 63 Del. Laws, c. 179, § 8; 64 Del. Laws, c. 131, § 11(c), (f); 65 Del. Laws, c. 280, § 1; 66 Del. Laws, c. 92, § 19; 69 Del. Laws, c. 187, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7403. Notes.

In anticipation of the issuance of bonds, the issuing officers may issue and sell notes of the State at either public or private sale for not less than par and accrued interest, at a rate to be determined by the issuing officers. Such notes may be issued for a period of not exceeding 1 year and may be renewed from time to time for periods not exceeding 1 year but all such notes, including renewals, shall mature and be paid from sources, including the proceeds of bonds, but other than the proceeds of notes, not later than 4 years after their initial date of issuance. No notes shall be issued in excess of the amount of bonds authorized and unissued in anticipation of which the notes are issued. All other terms, forms and contents of such notes shall be determined by the issuing officers subject to this chapter.

(29 Del. C. 1953, § 7404; 54 Del. Laws, c. 124; 59 Del. Laws, c. 387, § 1; 62 Del. Laws, c. 146, §§ 6, 9; 64 Del. Laws, c. 131, § 11(f).)

§ 7404. Revenue notes.

(a) If, at any time during any fiscal year, but prior to June 25 of that year, there should be a casual deficiency of revenue in the General Fund to pay General Fund obligations or to pay existing debts, the Governor, Secretary of State and State Treasurer (the "issuing officers") are authorized to issue revenue anticipation notes of the State in an amount they determine necessary to meet and to pay any or all of such obligations or debts.

(b) The issuing officers are hereby authorized to determine the terms, form and contents of such notes and to sell such notes, at such price or prices, at such rate or rates, at public or private sale, in such manner and from time to time, subject to this chapter, as they shall determine. Such notes and any renewals thereof shall mature within 1 year from date of the original issuance of such notes, and shall be payable at a bank (herein referred to as "the bank") chosen at the discretion of the issuing officers. Such notes shall be imprinted with the stamp of the Governor's signature and the stamp of the signature of the Secretary of State, and shall be manually signed by the State Treasurer. The Great Seal shall be impressed on all such notes or shall be reproduced thereon, in facsimile, and such signatures and such notes shall be authenticated by an officer of the bank.

(c) The faith and credit of the State are hereby pledged for the payment of the principal of and interest on such notes. All expenses incidental to the advertisement, preparation, issuance and delivery of revenue anticipation notes and the principal of and interest on such notes shall be paid by the State Treasurer from the General Fund.

(d) If, at any time during the fiscal year, but prior to June 15, there shall be a casual deficiency of revenue in the General Fund to pay General Fund obligations or to pay existing debts, the State Treasurer may transfer available money from the State's special funds to the General Fund to pay such obligations or debts. Such money shall be reimbursed to the appropriate special funds as soon as sufficient General Fund moneys become available, but not later than June 15.

(62 Del. Laws, c. 146, §§ 6, 10; 64 Del. Laws, c. 131, § 11(f); 65 Del. Laws, c. 87, § 96.)

§ 7405. Full faith and credit of the State pledged.

All bonds, notes and revenue notes shall be direct general obligations of the State and the full faith and credit of the State are expressly pledged for the prompt and complete payment of the principal of and interest on such bonds, notes and revenue notes when due.

(29 Del. C. 1953, § 7405; 54 Del. Laws, c. 124; 62 Del. Laws, c. 146, §§ 6, 11; 64 Del. Laws, c. 131, § 11(f).)

§ 7406. Terms, forms and contents of bonds; installment payments.

(a) The resolution of the issuing officers authorizing the issuance of bonds may include provisions for the date or dates of such bonds; the maturity of such bonds, which shall not exceed 20 years from their date; provisions for serial, term or "capital appreciation" bonds; sinking fund or reserve fund requirements, if any; due dates of the interest thereon; the form of bonds (including whether bonds shall be certificated or uncertificated); the denominations and designation of bonds; registration, conversion and transfer privileges; the terms of redemption with or without premium; the date and manner of sale of bonds (which may be a public or private negotiated sale at a price above or below par); provisions for the consolidation of bonds authorized to finance all or a portion of the costs of projects authorized in 1 or more authorization acts with bonds authorized by 1 or more authorization acts; limitations with respect to the interest rate or rates on bonds; provisions for receipt and deposit or investment of the good faith deposit pending delivery of bonds and such other terms and conditions of bonds and of the issuance and sale thereof as the issuing officers may determine to be in the best interests of the State.

(b) Notwithstanding the foregoing provisions of this section or any other law to the contrary, the issuing officers shall be required to provide in the resolution authorizing the issuance of general obligation bonds of the State (other than capital appreciation bonds as defined in § 7425 of this title):

(1) For the payment of bonds in annual installments, the first of which shall be not more than 1 year from the date of such bonds; and

(2) That no annual installment, except in the case of refunding of the bonds, shall be more than any prior installment of those bonds.

(29 Del. C. 1953, §§ 7406-7409; 54 Del. Laws, c. 124; 62 Del. Laws, c. 146, §§ 6, 12; 64 Del. Laws, c. 131, § 11(b), (f); 64 Del. Laws, c. 343, § 12(a); 66 Del. Laws, c. 371, § 1; 77 Del. Laws, c. 329, § 62.)

§ 7407. Sale of bonds.

Sufficient notice of public sale of bonds is deemed to have been given if the notice has been published on the Department of Finance's website at least once 7 or more days before the date of sale.

(29 Del. C. 1953, § 7414; 54 Del. Laws, c. 124; 60 Del. Laws, c. 372, § 1; 62 Del. Laws, c. 146, §§ 6, 13; 64 Del. Laws, c. 131, § 11(f); 71 Del. Laws, c. 378, § 43; 82 Del. Laws, c. 226, § 2.)

§ 7408. Place of payment.

Bonds, notes and revenue notes and the interest thereon shall be payable at such place or places within or without the State as the issuing officers may determine by resolution.

(62 Del. Laws, c. 146, §§ 6, 14; 63 Del. Laws, c. 142, § 49; 64 Del. Laws, c. 131, § 11(f).)

§ 7409. Recitals in bonds, notes and revenue notes conclusive on State; negotiability.

(a) All bonds and notes shall recite that they are issued for a purpose or purposes set forth in an authorization act. Revenue notes shall recite that they are issued for 1 or more of the purposes for which revenue notes may be authorized by this chapter. Bonds, notes and revenue notes shall also recite that they are issued pursuant to the Constitution and laws of this State. Upon the sale and delivery of any such bonds, notes or revenue notes against payment, such recitals shall be conclusive as to the right, power and authority of the State to issue such bonds, notes or revenue notes and of the legality, validity and enforceability of the obligation of the State to pay principal of and interest on such bonds, notes and revenue notes. The legality, validity and enforceability of such bonds, notes or revenue notes containing such recitals shall never be questioned in any court of law or equity by the State or any person after the issuance, execution and delivery against payment of such bonds, notes and revenue notes.

(b) All bonds, notes and revenue notes are hereby declared to have all the qualities and incidents of negotiable instruments under the commercial code of the State.

(29 Del. C. 1953, § 7406; 54 Del. Laws, c. 124; 62 Del. Laws, c. 146, §§ 6, 15; 64 Del. Laws, c. 131, § 11(f).)

§ 7410. Execution of bonds, notes and revenue notes.

(a) Bonds, notes and revenue notes, other than uncertificated obligations, shall be executed on behalf of the State by the issuing officers and shall bear the impression, or a facsimile, of the Great Seal of the State. All the signatures of the issuing officers may be engraved, printed or stamped on bonds, notes or revenue notes notwithstanding any other law to the contrary but no such signatures nor the impression or a facsimile of the Great Seal need appear on an uncertificated obligation.

(b) Interest coupons on certificated obligations shall bear the facsimile signature of the State Treasurer. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons, notes or revenue notes, shall cease to be such officer before the delivery of such obligations, 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.

(29 Del. C. 1953, § 7411; 54 Del. Laws, c. 124; 62 Del. Laws, c. 146, §§ 6, 16; 64 Del. Laws, c. 131, § 11(d), (f); 70 Del. Laws, c. 186, § 1.)

§ 7411. Exemption from taxation.

Bonds, notes and revenue notes and the interest thereon shall be exempt from income taxation by the State or any political subdivision thereof.

(29 Del. C. 1953, § 7405; 54 Del. Laws, c. 124; 62 Del. Laws, c. 146, §§ 6, 17; 64 Del. Laws, c. 131, § 11(f).)

§ 7412. Registration, recording and cancellation agent.

The issuing officer shall, by resolution, direct the State Treasurer to contract, in such manner as the issuing officers shall prescribe, with a banking or other institution to act as: (1) Registration agent for bonds, notes and revenue notes; (2) recording agent to provide a permanent record of all bonds and coupons pertaining thereto, notes and revenue notes which shall have been paid or redeemed; and (3) cancellation agent to cancel all such bonds and coupons pertaining thereto, notes and revenue notes which shall have been paid or redeemed. The State Treasurer may, at the direction of the issuing officers, contract with such institution for related services. Any such contract shall provide that the agent shall be responsible to the State for the faithful and safe conduct of the services to be performed by it as registration agent, recording agent or cancellation agent, or services related thereto, for the fidelity and integrity of the officers and agents of such contracting institution performing the duties of a registration agent, recording agent or cancellation agent, or services related thereto, and for all loss or damage which may result from any failure of such officers or agents to discharge their duties and for any improper or incorrect discharge of those duties, and shall save the State free and harmless from any and all loss or damage occasioned by or incurred in the performance of such services. Such contract may be terminated by the State Treasurer at any time, if so directed by the issuing officers. Any such contract shall be filed in the office of the State Treasurer as a public record.

(29 Del. C. 1953, § 7413A; 58 Del. Laws, c. 315, § 8; 59 Del. Laws, c. 378, § 6; 62 Del. Laws, c. 146, §§ 6, 18; 63 Del. Laws, c. 142, § 50; 64 Del. Laws, c. 131, § 11(f).)

§ 7413. Replacement of lost, stolen, mutilated or destroyed obligations.

(a) The State Treasurer may issue a replacement bond, with coupons pertaining thereto, a replacement note or a replacement revenue note, to replace unmatured bonds and coupons, notes or revenue notes, respectively, which have been lost, stolen, mutilated or destroyed upon receipt of:

(1) Satisfactory proof: (i) of ownership and (ii) of loss or destruction, or, in the case of a mutilated or destroyed bond, coupon, note or revenue note, the mutilated or destroyed bond, coupon, note or revenue note;

(2) Adequate security to indemnify the State and the bank or banks at which the bond, coupon, note or revenue note is payable against any loss that may be suffered by them on account of the issuance of such replaced obligation; and

(3) Payment of the cost of preparation of the replacement obligation.

(b) Any replacement bond, coupon, note or revenue note shall be of the same form and tenor as those originally issued, shall be executed by the manual or facsimile signature of the officers in office at the time of the replacement and shall bear an impression or reproduction of the Great Seal of the State or a facsimile thereof. A facsimile of the State Treasurer's signature may appear on coupons but on a bond, note or revenue note the signature of the State Treasurer shall be in the State Treasurer's own proper handwriting. There shall be endorsed on the bond, note or revenue note a statement in substantially the following form:

"This bond (note or revenue note) has been reissued to replace a (lost, stolen, mutilated or destroyed) (bond, note or revenue note)."

(29 Del. C. 1953, § 7412A; 57 Del. Laws, c. 279; 62 Del. Laws, c. 146, §§ 6, 19; 64 Del. Laws, c. 131, § 11(f); 70 Del. Laws, c. 186, § 1.)

§ 7414. Deposit of money; advances from funds.

(a) (1) All proceeds from the sale of bonds or notes other than premium or accrued interest must be deposited by the State Treasurer in a special fund or funds of the State and applied for the purposes for which the bonds or notes were issued or as otherwise provided by law. All proceeds from the sale of revenue notes and all accrued interest from the sale of bonds or revenue notes must be deposited by the State Treasurer in the General Fund. Any premium from bonds or revenue notes, except for any premium received on refunding bonds, sold after January 1, 2004, including any such premium previously deposited in the General Fund, must, at the discretion of the Director of the Office of Management and Budget, Controller General, and the Secretary of Finance, be deposited in 1 of the following.

a. A special fund of the State and applied for the purposes for which the bonds or notes were issued or as otherwise provided by law.

b. An escrow fund to redeem, refund, or defease debt service on existing bonds or notes of the State, or debt service on any debt or other obligation of an instrumentality of the State.

(2) If a deposit is made under paragraph (a)(1) of this section, bond authorization must be reduced by a corresponding amount. Under no circumstances may any proceeds, premium, or accrued interest be applied to pay the costs of any project not authorized by the General Assembly.

(b) The State may advance money to a special fund of the State established to hold money raised or to be raised to finance costs of projects authorized to be financed with the proceeds of bonds or notes after the adoption of an authorization act but prior to the issuance of bonds or notes authorized to be issued by that authorization act. Money may be advanced, in an amount not exceeding the greater of 3% of the estimated net General Fund revenue for that fiscal year from all sources (not including unencumbered funds remaining at the end of the previous fiscal year) as determined by joint resolution approved by a majority of the members elected to each House of the General Assembly and signed by the Governor in connection with the adoption of the annual budget appropriation bill for that fiscal year, or $ 150,000,000, from any other fund of the State unless prohibited by any other law. Any money advanced must be repaid at the time the money advanced is needed for the purposes for which the money was held before being advanced.

(29 Del. C. 1953, § 7415; 54 Del. Laws, c. 124; 62 Del. Laws, c. 146, §§ 6, 20; 62 Del. Laws, c. 407, § 6; 63 Del. Laws, c. 142, § 51; 63 Del. Laws, c. 179, § 9; 64 Del. Laws, c. 131, § 11(f); 66 Del. Laws, c. 92, § 20; 73 Del. Laws, c. 95, § 57; 74 Del. Laws, c. 221, § 6; 75 Del. Laws, c. 88, § 21(13); 75 Del. Laws, c. 254, § 1; 82 Del. Laws, c. 226, § 3; 84 Del. Laws, c. 5, § 12.)

§ 7415. Use of proceeds of bonds and notes.

The funds appropriated by an authorization act may be used only for the costs of the projects set forth in such act in an amount for each such project not exceeding the amount authorized by such act for such project. Costs of projects may include costs of surveys, maps, plans, designs, inspections, incidental land and equipment acquisition, incidental construction and reconstruction, landscaping, costs of issuing bonds and notes, capitalized interest during construction and reconstruction, fees for construction managers or persons performing similar functions and other costs incidental to the project. Such funds shall not be used for ordinary or normal maintenance expenses or repair, except for costs authorized by law for maintenance of and minor capital improvements to school buildings.

(29 Del. C. 1953, § 7415; 54 Del. Laws, c. 124; 62 Del. Laws, c. 146, §§ 6, 21; 64 Del. Laws, c. 131, § 11(f).)

§ 7416. Timetable for use of funds and the sale of bonds and notes; commencement of authorized project.

(a) No funds appropriated by an authorization act shall be encumbered more than 3 years after the passage of such act for any individual project unless:

(1) Such project has progressed into any of the following phases prior to that date: Planning, initial engineering, land, building or equipment acquisition, construction or reconstruction; and

(2) Eighty-five percent of the project costs have been expended on 1 or more of such phases.

(b) No bonds or notes shall be issued or funds borrowed pursuant to an authorization act, 4 years after the passage of such act, except:

(1) As provided in 54 Del. Laws, c. 345, as amended (Chapter 75 of this title, as amended); and

(2) With respect to bonds authorized prior to this chapter which shall remain subject to the law under which they were originally authorized.

(c) Any project authorized to be undertaken with the proceeds of bonds of the State shall commence in the fiscal year in which it is authorized. If such duly authorized project has not proceeded into 1 or more of the phases identified in subsection (a) of this section within 18 months from the effective date of the original authorization, the authorized but unsold portion of the bonds shall automatically be deauthorized and any unspent cash balances shall be reverted to the Bond Reversion Account to be applied to the costs of any other authorized project, pursuant to § 7418 of this title.

(29 Del. C. 1953, § 7416; 55 Del. Laws, c. 337; 62 Del. Laws, c. 146, §§ 6, 22; 64 Del. Laws, c. 131, § 11(f); 64 Del. Laws, c. 343, § 12(e), (f).)

§ 7417. Payment of debt service; first lien.

(a) Each annual Budget Appropriation Bill enacted by the General Assembly shall make sufficient provisions for the payment of principal of, premium, if any, and interest on all bonds, notes and revenue notes payable or to be paid by their terms during the fiscal year of the State for which such Budget Appropriation Bill is enacted.

(b) Vouchers for the payment of principal of, premium, if any, and interest on bonds, notes and revenue notes for payment of expenses incident to the issuance of such obligations shall be signed by the State Treasurer.

(c) Any appropriation made by the General Assembly to pay principal of, premium, if any, and interest on bonds, notes or revenue notes may be applied to pay principal of, premium, if any, and interest on obligations of other issuers pursuant to an agreement made by the issuing officers with a person agreeing to pay principal of, premium, if any, or interest on bonds, notes or revenue notes issued by the State.

(d) If, at any time, the State fails to make sufficient provisions to pay such principal of, premium, if any, and interest on bonds, notes or revenue notes, or, at the time such principal, premium or interest is payable sufficient moneys are unavailable for such payment, a sufficient sum shall be set apart by the State Treasurer from the first revenues thereafter received by the State and shall be applied to such purposes. The State Treasurer may be required to set apart and apply such revenues as provided herein at the suit of any holder of obligations for which such insufficient provision is made.

(62 Del. Laws, c. 146, §§ 6, 23; 64 Del. Laws, c. 131, § 11(f); 66 Del. Laws, c. 360, § 16.)

§ 7418. Use of unexpended funds.

Any funds borrowed pursuant to an authorization act, and remaining unencumbered after the completion or abandonment of a project authorized to be financed pursuant to such act, or because a project authorized to be financed by such act is not timely undertaken, or upon the expiration of the period set forth in § 7416 of this title, shall be deposited in a special fund and applied, with the approval of the issuing officers, to the cost of financing any previously authorized projects. The head of the department or agency to which such funds were appropriated for a project shall determine when such project is completed or abandoned.

(60 Del. Laws, c. 135, § 1; 62 Del. Laws, c. 146, §§ 6, 24; 64 Del. Laws, c. 131, § 11(f).)

§ 7419. Approval of plans, specifications, estimates and cash flows of projects.

(a) Delaware Technical and Community College, Delaware State University and all state departments and agencies shall submit to Facilities Management of the Office of Management and Budget all proposed contracts for architectural services and all architectural, structural, electrical and mechanical plans, specifications and cost estimates. Facilities Management of the Office of Management and Budget shall be responsible for reviewing and approving such plans, specifications and cost estimates prior to bid advertisement, and no such contracts nor contracts for construction and reconstruction of such projects (except highway construction and reconstruction contracts and school district minor capital improvements contracts) shall be executed without the prior approval of Facilities Management of the Office of Management and Budget. All such contracts shall be let on the condition, among others, that the contractor comply with the State's equal opportunity laws. Facilities Management of the Office of Management and Budget shall insure that approved projects are not inconsistent with any authorization of budget act.

(b) Each state agency, department and institution of higher learning to which proceeds of bonds or notes are appropriated, must, on an annual basis, report to the Director of the Office of Management and Budget the status and anticipated cash flow for each project which is not complete.

(62 Del. Laws, c. 146, §§ 6, 25; 63 Del. Laws, c. 189, § 5(h); 64 Del. Laws, c. 131, § 11(f); 65 Del. Laws, c. 434, §§ 3, 4; 69 Del. Laws, c. 10, §§ 11, 12; 69 Del. Laws, c. 67, § 2; 75 Del. Laws, c. 88, §§ 21(13), 37.)

§ 7420. Project restrictions.

(a) All new construction and/or reconstruction of existing structures financed with the proceeds of bonds or notes shall comply with flood plain management requirements adopted by the municipality in which such structure is located pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. § 4011 et seq.), as amended, or successor acts. If any such structure is in a flood program nonparticipating municipality, then the State shall comply with the criteria set forth in Chapter 55 of Title 24 of the Code of Federal Regulations (24 C.F.R. § 55.1 et seq.) issued pursuant to the National Flood Insurance Act of 1968, as amended, or successor acts.

(b) All projects funded with the proceeds of bonds or notes shall be built to standards that are no less stringent than American Society of Heating, Refrigerating, and Air Conditioning Engineering, Inc., Standard 90-75, or successor standards.

(c) The restrictions imposed by this section shall be applicable to projects for which no expenditure has been made prior to July 12, 1979, unless such project has been made subject to the same restrictions by another act of the General Assembly or by contract.

(d) The department, agency or other body of the State to which proceeds of bonds or notes are appropriated shall require the inspection of buildings to be constructed, reconstructed or rehabilitated with the proceeds of bonds or notes, and, at the discretion of the Director of the Office of Management and Budget, shall require the inspection of other structures to be financed with the proceeds of such obligations excluding highways, roads and bridges. Proceeds of bonds or notes shall be allocated to provide for the cost of inspecting the projects to be financed with such funds. The portion of the total funds appropriated to the cost of any such inspection shall not exceed the following percentages of such total funds appropriated to the cost of such projects:

(1) Projects with a maximum cost in excess of $1,000,000 1½%

(2) Projects with a maximum cost of $1,000,000 or less 1¾%

(3) Reconstruction and renovation projects 1¾%

The department or agency of the State to which proceeds of bonds or notes are appropriated shall let contracts for such inspection. If the total maximum cost of a project is less than $50,000, the employment of an inspector shall be discretionary with the department, agency or other body to whom such funds are appropriated. If a department, agency or other body retains a construction manager, retention of an inspector shall be discretionary with the department, agency or other body regardless of the total maximum cost of the project. In contracting for the inspection of such projects, first preference shall be given to an experienced and able Delaware organization offering to provide such inspection services on a nonprofit, at-cost basis. Such contracts shall not be deemed public works contracts as defined in 54 Del. Laws, c. 106, as amended (Chapter 69 of this title, as amended). If no such organization is able or willing to perform such inspection services on such nonprofit, at-cost basis, then the contracts for such services may be let with profit-making organizations subject to 54 Del. Laws, c. 106, as amended (Chapter 69 of this title, as amended).

(62 Del. Laws, c. 146, §§ 6, 26; 63 Del. Laws, c. 189, § 5(h); 64 Del. Laws, c. 131, §§ 11(f), 17(a); 69 Del. Laws, c. 10, § 13; 75 Del. Laws, c. 88, § 21(13); 81 Del. Laws, c. 425, § 22.)

§ 7421. Bonds, notes and revenue notes as legal investments for institutions and fiduciaries; legal deposit.

(a) Bonds, notes and revenue notes are securities in which any officer of the State and any officers of political subdivisions, administrative departments, boards and commissions of the State, all banks, bankers, savings banks, 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 are now or may, on and after July 12, 1979, be authorized to invest in bonds, notes, revenue notes or other obligations of the State, may properly and legally invest any funds, including capital belonging to them or within their control.

(b) Such bonds, notes and revenue notes are securities which may properly and legally be deposited with and received by any officer of the State, or an officer of any political subdivision or agency of the State, for any purpose for which the deposit of bonds, notes, revenue notes or other obligations of the State is now or may, on and after July 12, 1979, be authorized by law.

(62 Del. Laws, c. 146, §§ 6, 27; 64 Del. Laws, c. 131, § 11(f).)

§ 7422. Limitations on debt and other obligations.

(a) For the purposes of this section:

(1) “Aggregate maximum annual payments” on all tax supported obligations and all Transportation Trust Fund debt obligations outstanding, plus certain lease obligations as described in subsection (c) of this section, means the maximum payments due with respect to all such obligations in any 1 fiscal year. In any case where the terms of any such obligation include limitations on the incurrence of additional debt, the determination of maximum annual payments with respect to such obligation shall be determined consistently with those terms.

(2) a. “Tax supported obligations of the State” means all of the following:

1. All obligations of the State or any agency or authority thereof to which the State’s full faith and credit is pledged to pay directly or by guarantee, provided that any such guaranteed obligations shall be included only to the extent any such obligations are in default.

2. All obligations of the State or any agency or authority thereof extending beyond 1 year with respect to the lease, occupancy, or acquisition of property which are incurred in connection with debt financing transactions, such as certificates of participation, and which are payable from taxes, fees, permits, licenses, and fines imposed or approved by the General Assembly.

b. “Tax supported obligations of the State” do not include any of the following:

1. Obligations incurred to acquire a like principal amount of full faith and credit obligations issued by a local school district to the extent such local school district obligations are not in default.

2. Any obligations of the Delaware Transportation Authority.

3. Any tax or other revenue anticipation notes or bonds of the State.

4. Any obligations to the extent that the debt service with respect thereto is reasonably expected to be offset, as determined by the Secretary of Finance, by lease payments, user fees, federal grants, or other payments from some source other than the General Fund. Such payments must be used expressly for the purpose of paying such debt service.

5. Obligations incurred to acquire a like principal amount of promissory notes or bonds issued by Delaware Technical and Community College and secured by the non-appropriated funds held in the Community College Infrastructure Fund, under subchapter II, Chapter 91 of Title 14, as certified to the Secretary of Finance by the Chair of the Board of Trustees, in a form approved by the Secretary of Finance, to the extent such notes or bonds of the College are not in default.

(3) "Transportation Trust Fund debt obligations" means all debt obligations of the Delaware Transportation Authority, including all obligations extending beyond 1 year with respect to the lease, occupancy, or acquisition of property which are incurred in connection with debt financing transactions, such as certificates of participation, and which in any case are payable from the Transportation Trust Fund. Transportation Trust Fund debt obligations do not include any obligations to the extent that the debt service with respect thereto is reasonably expected to be offset, as determined by the Secretary of Finance, by lease payments, user fees, federal grants, or other payments from some nonstate source.

(b) The aggregate principal amount of tax supported obligations of the State which may be authorized by the State in any 1 fiscal year may not exceed 5% of the estimated net General Fund revenue for that fiscal year from all sources (not including unencumbered funds remaining at the end of the previous fiscal year) as determined by the joint resolution approved by a majority of the members elected to each House of the General Assembly and signed by the Governor in connection with the adoption of the annual budget appropriation bill for that fiscal year. Any amount of tax supported obligations which are duly authorized in any fiscal year within the limits of this subsection, and then are later deauthorized, may subsequently be reauthorized without regard to the authorization limit otherwise provided by this subsection. Any amount of tax supported obligations which were duly authorized before July 1, 1991, and which are duly deauthorized after June 30, 1991, may subsequently be reauthorized without regard to the authorization limit otherwise provided by this subsection. Obligations authorized to refund other obligations of the State shall not be subject to the limits of this subsection (b).

(c) No tax supported obligation of the State and no Transportation Trust Fund debt obligation of the Delaware Transportation Authority may be incurred if the aggregate maximum annual payments on all such outstanding obligations (plus certain lease obligations described below) will exceed 15% of the estimated aggregate General Fund revenue from all sources (not including unencumbered funds remaining at the end of the previous fiscal year), plus estimated Transportation Trust Fund revenue, in both cases for the fiscal year following the fiscal year in which such obligation is incurred, such estimated revenue as determined by the most recent projections made by the Delaware Economic and Financial Advisory Council and adjusted, if appropriate, by the fiscal impact of subsequently enacted legislation as certified by the Secretary of Finance. The lease obligations referred to in the preceding sentence shall mean: (i) All obligations of the State or any agency or authority thereof which are payable from taxes, fees, permits, licenses and fines imposed or approved by the General Assembly; and (ii) all obligations of the Delaware Transportation Authority which are payable from the Transportation Trust Fund, which in either case extend beyond 1 year and are with respect to the lease, occupancy or use of property provided that such lease obligations shall not include any obligations, the lease payments with respect to which are reasonably expected to be offset (as determined by the Secretary of Finance) by lease payments, user fees, federal grants or other payments from some nonstate source. For the purposes of this subsection, the maximum annual payments on the above-described lease obligations shall be as of the most recent date available as certified by the Secretary of Finance.

(d) No obligation to which the State's full faith and credit is pledged may be incurred if the maximum annual debt service payable in any fiscal year on all such outstanding obligations will exceed the State's cumulative cash balances for the fiscal year following the fiscal year in which such obligation is incurred as estimated by the Secretary of Finance. For the purposes of this subsection, there shall not be included: (i) Obligations incurred to acquire a like principal amount of full faith and credit obligations issued by a local school district to the extent such local school district obligations are not in default; (ii) obligations guaranteed by the State except to the extent such obligations are in default; (iii) general obligation bonds of the State issued prior to January 1, 1987, for the transportation related projects as certified by the Secretary of Finance; (iv) tax or other revenue anticipation notes of the State; or (v) any obligations to the extent that the debt service with respect thereto is reasonably expected to be offset (as determined by the Secretary of Finance) by lease payments, user fees, federal grants or other payments from some source other than the General Fund.

(e) There shall be attached to every bill and amendment introduced in the House of Representatives and/or in the Senate, of the General Assembly, which authorizes the incurrence of a tax supported obligation described in subsection (b) of this section, a debt statement in substantially the following form:

Office of Secretary of Finance	Debt Limit Statement Dated	This Debt Limit Statement to be attached to _____ as required by § 7422, Title 29, Delaware Code

(1)	Estimated Net General Fund revenue for the fiscal year ending June 30,____ , as per the joint resolution of the House and Senate and signed by the governor in connection with the adoption of the annual Budget Appropriation Bill for that fiscal year	$ _____
(2)	Multiply by 5%	x .05
(3)	Maximum aggregate principal amount of new tax-supported obligations which may be authorized by the State in the fiscal year ending June 30,	$_____
(4)	Less aggregate principal amount of previously authorized tax-supported obligations subject to debt limit	$_____
(5)	AVAILABLE DEBT LIMIT prior to appended legislation (3-4)	$_____
(6)	Less aggregate principal amount of new tax-supported obligations subject to debt limit to be authorized pursuant to appended legislation	$_____
(7)	REMAINING DEBT LIMIT (5-6)	$_____

Secretary of Finance
Date

The Secretary of Finance shall file said debt limit statement within 10 days of said joint resolution with the Office of the Controller General and the Director of the Office of Management and Budget.

(f) The certification of the Secretary of Finance referred to in this section shall be in substantially the following form:

Certification of Secretary of Finance Regarding

Certain Revenue Supported Debt

__ B. No. ___ would authorize the issuance of $ _____ principal amount of obligations of the State for the purposes of _____. [Describe the arrangement pursuant to which it is expected that the debt service will be offset by lease or other payments].

Accordingly, I hereby certify that I reasonably expect that the debt service on $ _____ principal amount of the above-described bonds will be offset by payments to the State which are described in Title 29, Delaware Code, § 7422(a)(2)b.4, (a)(3) or (d)(v).

____ Date

_____ Secretary of Finance

(29 Del. C. 1953, §§ 7422, 7423; 55 Del. Laws, c. 168, § 2; 57 Del. Laws, c. 176; 58 Del. Laws, c. 315, § 9; 58 Del. Laws, c. 420; 61 Del. Laws, c. 375, § 2; 62 Del. Laws, c. 146, §§ 6, 28; 63 Del. Laws, c. 189, § 5(h); 64 Del. Laws, c. 131, § 11(f); 68 Del. Laws, c. 7, § 1; 68 Del. Laws, c. 156, §§ 24(a)-(g); 69 Del. Laws, c. 10, § 14; 75 Del. Laws, c. 88, § 21(13); 82 Del. Laws, c. 21, § 1.)

§ 7423. DEFAC projections and monitoring of debt limits.

The Delaware Economic and Financial Advisory Council shall publish at least semiannually in December and June the projections described in § 7422(b) of this title. The Council shall also monitor the application and effect of the debt limits imposed by § 7422 of this title and shall report annually to the General Assembly and the Governor with respect thereto. Such reports shall include any recommendations with respect to such debt limits and the then current Debt Affordability Study prepared by the Department of Finance.

(68 Del. Laws, c. 7, § 2; 68 Del. Laws, c. 156, § 25.)

§ 7424. Right to obtain bondholder lists.

No holder or owner of any bond, note or revenue note shall have any right to obtain a list of registered owners or holders of bonds, notes or revenue notes from the State or its agents by virtue of ownership nor holding of any such obligation, no other law to the contrary notwithstanding.

(64 Del. Laws, c. 131, § 11(e), (f); 70 Del. Laws, c. 186, § 1.)

§ 7425. Capital appreciation bonds and discount bonds.

The term “capital appreciation bonds” means any bond or bonds sold at a price substantially less than the principal amount thereof and on which compounded interest is payable at maturity, as conclusively determined by the issuing officers, but only if such bond or

bonds are designated as capital appreciations by the issuing officers in the resolution authorizing the issuance of bonds. For purposes of §§ 7422 and 7423 of this title, the aggregate principal amount of any capital appreciation bonds or any other bonds sold to the public for a price less than the face amount thereof shall be the aggregate of the initial offering prices at which such bonds are offered for sale to the public, whether in a private or negotiated sale or in a public or competitive sale, or sold to the initial purchaser thereof in a private placement, without, in every case, reduction to reflect underwriters' discount or placement agents' fees or other similar fees.

(66 Del. Laws, c. 371, § 2; 69 Del. Laws, c. 386, § 31.)

§ 7426. Capital appreciation bonds and discount bonds; sale by State.

A maximum of 20 percent of the bonds authorized by each Bond and Capital Improvements Act of the State may be sold by the State directly to retail purchasers or to financial intermediaries, or to an underwriter who agrees to use its best efforts to sell such bonds to retail purchasers or to any intermediaries, such bonds to be herein referred to as "retail bonds." The Secretary of Finance, the State Treasurer, the Director of the Office of Management and Budget and the Controller General are hereby authorized to determine the terms and conditions of the retail bonds, and the manner, whether at public or private negotiated sale, by which they shall be awarded to the purchasers thereof, notwithstanding anything to the contrary contained in this chapter; provided, that the requirements of § 7422 of this title must be observed.

(74 Del. Laws, c. 308, § 56; 75 Del. Laws, c. 88, § 21(13).)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations

Chapter 75
School Construction Capital Improvements

§ 7501. Definitions.

As used in this chapter:

(1) “Bonds” means any bonds authorized to be issued by the State pursuant to a school construction bond authorization act.

(2) “Local share” means the sum of money specified in any school construction bond authorization act to render permissible the use of the state share for school construction within the particular school district.

(3) “Minor capital improvement” means minor capital improvement as that term is defined in § 7528 of this title.

(4) “Notes” means anticipation notes issued by the State in anticipation of the issuance of bonds.

(5) “School construction” includes, but is not limited to, the acquisition, construction, reconstruction, alteration, remodeling or enlargement of school buildings, the acquisition or installation of apparatus or equipment or educational supplies suitable for the use of such buildings, the acquisition of machinery necessary for the maintenance of such buildings or school grounds, the acquisition of land required as sites for such buildings, or for playgrounds, including land or rights in land needed to provide access to sites and to provide suitable playgrounds, and the grading or other improvements of such sites, land or rights in land, including the construction of sidewalks where authorized by law, the construction of any sewers or water mains needed to connect such buildings to any publicly owned sewer system or water system, the acquisition of temporary buildings or facilities for school purposes to be used until such time as permanent school buildings or facilities shall become available. The cost of such school construction shall not include any expenses in connection with the holding of any referendum for such school construction.

(6) “School construction bond authorization act” means an authorization act of the General Assembly concurred in by $^{3}/_{4}$ of all the members of each House, authorizing, among other things, the issuance of bonds and the appropriation of the proceeds thereof to finance school construction.

(7) “School district” means a reorganized school district, or any newly created school unit or area for which no board has been appointed or elected at the time of the effective date of any school construction bond authorization act or any area which the State Board of Education shall determine to be the area served by any school facility which is referred to in any school construction bond authorization act and for which there is specified no local share.

(8) “State share” means that maximum sum of money which may be paid from state sources for school construction in a particular school district as provided in any school construction bond authorization act.

(9) “Total cost” means the maximum sum or sums of money which may be spent for school construction under a particular school construction bond authorization act in a particular school district, provided that nothing contained in this chapter shall prevent any school district from increasing said total cost by providing a larger amount from local sources than that stated as that district’s local share, nor prevent the acceptance and use of any funds appropriated by the Congress of the United States for these purposes.

(29 Del. C. 1953, § 7501; 54 Del. Laws, c. 345; 57 Del. Laws, c. 440, §§ 1, 2; 62 Del. Laws, c. 146, § 30.)

§ 7502. Applicability of this chapter; relation to authorization act.

(a) Unless otherwise provided in any school construction bond authorization act this chapter, in addition to Chapter 74 of this title, shall apply to and control all school construction financed by the issuance of bonds and notes of the State for the purpose of school construction and the issuance of said bonds and notes and to the appropriations for school construction contained in the school construction bond authorization act.

(b) The provisions of this chapter are hereby incorporated in any school construction bond authorization act unless specifically excepted therefrom and shall be deemed a part of any school construction bond authorization act just as if contained verbatim in the school construction bond authorization act.

(29 Del. C. 1953, § 7502; 54 Del. Laws, c. 345.)

§ 7503. Matching funds.

(a) Except in the case of a school district for which a local share is not required by any school construction bond authorization act, the state share apportioned to a school district by such school construction bond authorization act shall not be expended unless the local share for such school district shall have been deposited with the State Treasurer not later than 2 years after the effective date of a school construction bond authorization act.

(b) The local share for each school construction project, excluding minor capital improvement projects, which is contained in a school construction bond authorization act, shall be computed as specified in this subsection. A local share ratio shall first be computed for each

school district, including vocational districts, and 1 for each county, for each fiscal year and shall be used in computing the local share of funding for that school district for each school construction project contained in the school construction bond act for that fiscal year. In the event that the funding of a project is spread over more than 1 school construction bond authorization act, the local share ratio which applies to that project in the school construction bond authorization act in which it first appears shall apply to all subsequent school construction bond authorization act allocations for that project. The local share ratio shall be computed by multiplying the school district ability index for the school district, or in the case of vocational schools or special schools, the county wide ability index, as defined in § 1707 of Title 14, by .40, providing, however, that the product shall not exceed .40 or be less than .20 for any school district. The local share ratio shall be rounded to the nearest one-hundredth and the result multiplied by the total cost of the school construction project in order to determine the local share.

The local share for each school construction project may include an additional amount, not to exceed 15% of the local cost as calculated in the preceding paragraph, to match additional state funds that may be appropriated to address increases in the cost of school construction projects. Provided the district receives referendum approval for this additional amount and the State appropriates additional funds subsequent to referendum passage, the district may increase its local share in accordance with the local share ratio for the project and the approved referendum subject to local school board approval.

Inclusion of a project and designation of a local share for a vocational school in a school construction bond authorization act shall be considered authorization for the vocational district to establish a tax rate sufficient to pay the principal and interest on the bonds for the local share of the project.

For the statewide autistic program, the Delaware School for the Deaf, the John G. Leach School, the Kent County Community School, the John S. Charlton School, the Sussex Consortium, Sussex County Orthopedic School, the Charles W. Bush Early Education Center, and the Howard T. Ennis School, construction shall be 100% state-funded. State funding for these schools shall include, but not be limited to, school construction projects serving students, ages three and older, who meet the criteria established in 14 Del. C. c. 31.

Inclusion of a project and designation of a local share for a special school shall be considered authorization for the school district administering the special school to obligate itself for the required bonds and for the school district to collect the revenues required to pay the principal and interest on those bonds through tuition payments authorized in § 602 of Title 14. The school district collecting the tuition for payment of bonds and interest shall maintain such debt service receipts in a separate account for the special school.

(c) The provisions of subsection (b) of this section to the contrary notwithstanding, for the fiscal years ending June 30, 1992, through June 30, 1994, the local share ratio for reorganized school districts with ability indices less than 1.0 shall be computed as follows:

FY'92: [Ability Index X .40] + ¾ [.40 — (Ability Index X .40)]

FY'93: [Ability Index X .40] + ½ [.40 — (Ability Index X .40)]

FY'94: [Ability Index X .40] + ¼ [.40 — (Ability Index X .40)]

For purposes of this subsection the value of the ability index used in these calculations for any school district shall not be less than .50. This subsection shall not apply to vocational-technical school districts or to special schools.

(29 Del. C. 1953, § 7503; 54 Del. Laws, c. 345; 68 Del. Laws, c. 156, § 72(a), (b); 69 Del. Laws, c. 77, § 80; 72 Del. Laws, c. 489, § 128; 73 Del. Laws, c. 95, § 110; 73 Del. Laws, c. 350, § 103; 76 Del. Laws, c. 79, § 142; 77 Del. Laws, c. 87, § 119; 78 Del. Laws, c. 262, § 2; 82 Del. Laws, c. 86, § 159.)

§ 7504. Time limit on construction.

No school construction shall be started under authority of any school construction bond authorization act later than 2 years after the effective date of the act, and no money shall be borrowed by the State under authority of any school construction bond authorization act later than 2 years after the effective date of such act, except such moneys as are necessary to complete school construction started prior to 2 years after the effective date of any school construction bond authorization act.

(29 Del. C. 1953, § 7504; 54 Del. Laws, c. 345.)

§ 7505. Formula for construction.

No school construction shall be paid with funds appropriated by any school construction bond authorization act or with funds for which a state share is provided by any school construction bond authorization act if such construction does not conform with the formula for school construction established by the Department of Education.

(29 Del. C. 1953, § 7505; 54 Del. Laws, c. 345; 71 Del. Laws, c. 378, § 115.)

§ 7506. Local bonds.

(a) Any school district which is entitled under any school construction bond authorization act to an apportionment of a state share and which is required therein to provide a local matching share is authorized to issue its bonds for the purpose of raising money to pay the local share set forth in such school construction bond authorization act and raising such additional amount, if any, as such school district may desire to expend for school construction. If such bonds are issued, they shall be authorized by the board of education of the school district pursuant to Chapter 21 of Title 14, except in the case of the City of Wilmington, in which case the local share to be contributed by the Board of Public Education in Wilmington may be raised by the proper authorities of said City by issuing bonds pursuant to Chapter

175, Volume 52, or Chapter 163, Volume 32, Laws of Delaware, as amended. Chapter 20 of Title 14 shall be complied with in the event that the amount in addition to the local share is for school construction which varies from the standard formula. Such bonds and any notes issued in anticipation of the issuance of such bonds shall, except in the case of the City of Wilmington, be sold to the State. Such bonds shall bear interest at a rate not less than the rate payable on bonds of the State issued to provide such local share plus an amount to cover administrative expenses of the State in connection with the financing of school construction programs in an amount not exceeding one quarter of 1 percent per annum. The State shall issue its bonds to provide the local share of any school construction program in accordance with any school construction bond authorization act, as well as any additional amounts which the qualified voters of any school district shall have authorized to be expended for school construction; provided, however, that such additional amounts must first have been appropriated to such school district in a school construction bond authorization act or amendment to such an act. Such bonds shall not be included in the amount of bonds or notes pledging the faith and credit of the State which are issued and outstanding, authorized but not issued, and about to be issued. The Department of Finance of the State shall annually prepare a report setting forth in brief detail all bonds or notes issued by the State for the purpose of financing a local share of a school construction program and the bonds or notes purchased from local school districts and setting forth receipts and disbursements.

(b) Instead of issuing bonds as hereinbefore provided, any school district may pay its local share by using gifts or any other moneys on hand which are not required by law to be used for some other purpose.

(29 Del. C. 1953, § 7506; 54 Del. Laws, c. 345; 55 Del. Laws, c. 432, §§ 2-4; 58 Del. Laws, c. 315, § 11.)

§ 7507. Referendum; notice [Repealed].

Repealed by 71 Del. Laws, c. 378, § 116, effective July 8, 1998.

§ 7508. Bond anticipation notes of local district.

(a) After a local referendum authorizing the sale of local school bonds and in anticipation of the issuance of the bonds, the board of school trustees or board of education of a school district may issue and sell notes of the school district at either public or private sale for not less than par and accrued interest. The notes shall bear interest at a rate not exceeding 5% per annum. They may be renewed from time to time by the issuance and sale of new notes, but all such notes shall mature and be paid not later than 4 years after issuance. The notes shall be signed by the chairperson and 1 member of the board of school trustees or president and 1 member of the board of education of the district, the seal of the school district shall be impressed on each of the notes and shall be payable at a place prescribed by the issuing officers of the State. All provisions of law pertaining to local school bonds and not inconsistent with this chapter shall apply to notes issued hereunder.

(b) The total amount of notes outstanding at any 1 time, together with the total amount of bonds theretofore issued in any district, shall not exceed that portion of the total authorized bonded indebtedness of the school district for which bonds have been authorized by local referendum within the district.

(c) The notes may be redeemed at par and accrued interest prior to their maturity if the right of the school district to do so shall have been reserved by an express provision in the notes. The principal and interest on said notes, including renewal notes, shall be paid from the proceeds of the sale of bonds or from other funds available therefor. The notes shall be general obligations of the school district and the faith and credit of the school district shall be pledged for the full and complete payment of the principal of and interest on such notes and such notes shall be exempt from taxation with respect to both principal and interest by the State or any political subdivision thereof for any purpose. The board of education or the board of school trustees of the issuing school district shall have the same power to levy taxes to pay such notes and the interest thereon as in the case of bonds.

(29 Del. C. 1953, § 7507; 54 Del. Laws, c. 345; 57 Del. Laws, c. 92, § 2; 63 Del. Laws, c. 142, § 52; 70 Del. Laws, c. 186, § 1.)

§ 7509. Determination of necessity.

The Department of Education shall determine the present necessity for any school construction program as authorized by any school construction bond authorization act in the several school districts of the State and, in so doing, shall take into consideration the actual and projected number of pupils in the requesting school district as determined by the most current September 30 Unit Count and a standardized annual population projection prepared by or approved by the Office of State Planning Coordination, the feasibility and possibility of the consolidation of school districts, the present and future possibility of overcrowding of school facilities within the school district, the condition and quality of existing school facilities within the district and all other matters and conditions pertinent to the determination of the present necessity of the school construction program, including the reasonable future development or dissolution of the school district. In making such determination of necessity, the Department of Education shall have the authority to make a determination of necessity of a school construction program for a school district which will have a lesser total cost than the maximum total cost for such school district set forth in any school construction bond authorization act. Whenever a determination of necessity of a school construction program is made in an amount less than the total maximum cost for such school district as set forth in any school construction bond authorization act, the state share and the local share shall be reduced in the proportions they bear to the total maximum cost set forth in that act. No determination of necessity for school construction shall be made until the school district shall have identified at least 1 proposed site for such construction, which site shall have been approved as required by § 7525(a) of this title.

(29 Del. C. 1953, § 7508; 54 Del. Laws, c. 345; 71 Del. Laws, c. 378, § 117; 74 Del. Laws, c. 367, §§ 17, 18.)

§ 7510. Certificate of necessity.

(a) When the Secretary of Education has prepared the proposed annual major capital improvement program budget the Secretary shall certify the necessity for same to the State Treasurer together with the amount of the total cost, the state share and the local share, if any, as authorized by any school construction bond authorization act and shall send a copy of such certification to the State Auditor of Accounts and the Director of the Office of Management and Budget and the board of education of such school district. Upon the receipt by the State Treasurer of the certification of said determination, the said school construction program shall be deemed to be authorized, and this chapter and any school construction bond authorization act for the issuance of state and local bonds to provide funds for school construction programs shall be in full force and effect with respect to such school construction program; provided, however, that, except in cases where a local share is not required by any school construction bond authorization act, such school construction program shall not be carried out until the local share shall have been deposited with the State Treasurer. The issuing officers may at any time after the State Treasurer receives such certificate proceed to issue bonds or notes of the State to provide the funds for the state share thereof, whether or not the requisite local share shall have been actually deposited with the State Treasurer, but the proceeds of said bonds or notes shall not be expended until the requisite local share shall have been so deposited.

(b) Instead of issuing bonds, as hereinabove provided, the State may pay its share of the total cost by using gifts or any other money on hand which are not required by law to be used for some other purpose.

(c) At the same time the Secretary submits the proposed annual major capital improvement program budget and certifies the necessity and total cost, the Secretary shall publish on its website and submit to the co-chairs of the Joint Committee on Capital Improvement, the Controller General, and the Director and the Librarian of the Division of Legislative Services a report that includes all of the following:

(1) A summary of each project rejected, the total proposed cost of each project rejected, the reason why the project was rejected, the number of times a district has applied for a certificate for the rejected project, the most recent year's capacity and enrollment numbers for the district, and a ranking of rejected projects by need.

(2) A list of all applications, both approved and rejected, with a designation of which priority level the project is assigned under the School Construction Technical Assistance Manual.

(3) A breakdown by school district of the total amount of state funds allocated through the certificate of necessity process for the current year, the prior 5 years, and any funds that are committed for future years through a current certificate of necessity.

(29 Del. C. 1953, § 7509; 54 Del. Laws, c. 345; 57 Del. Laws, c. 440, § 4; 59 Del. Laws, c. 205, § 7; 71 Del. Laws, c. 378, § 118; 74 Del. Laws, c. 367, § 19; 75 Del. Laws, c. 88, § 21(13); 84 Del. Laws, c. 152, § 1; 84 Del. Laws, c. 255, § 48.)

§ 7511. Approval of plans; modification.

After making the certificate required by § 7510 of this title, the Secretary of Education is authorized and directed to consider the preliminary and final plans, estimates of costs and specifications of any school construction program and to approve or modify such plans, estimates and specifications, and also to amend the certificates of necessity, provided that nothing herein shall be construed to give said Secretary of Education authority to increase the total share of such program beyond the maximum limit set forth in any school construction bond authorization act. No certificate of necessity shall be amended after the date of successful local school district referendum. In the event that a certificate shall be amended as herein provided, the fact of such amendment shall be communicated to the State Treasurer, and the copies thereof shall be sent to the State Auditor of Accounts and the Director of the Office of Management and Budget and the board of education of the school district.

(29 Del. C. 1953, § 7510; 54 Del. Laws, c. 345; 57 Del. Laws, c. 440, § 4; 71 Del. Laws, c. 378, § 119; 75 Del. Laws, c. 88, § 21(13).)

§ 7512. Consolidation of school districts.

In the event that 2 or more existing school districts shall consolidate, the maximum total cost, the maximum state share and the maximum local share of a school construction program as authorized by any school construction bond authorization act for such consolidated district shall be the totals of said amounts appearing in the school construction bond authorization act for the school districts so consolidating, except that the construction funds shall be used only as originally authorized in the certificates of necessity issued to the original districts.

(29 Del. C. 1953, § 7511; 54 Del. Laws, c. 345.)

§ 7513. Division of a school district.

In the event that an existing school district is divided into 2 or more school districts, the maximum total cost, the maximum state share and the maximum local share of the school construction program, as authorized for the existing district by any school construction bond authorization act, shall be determined and allocated among the resulting districts by the State Board of Education by taking into consideration the same factors prescribed by § 7509 of this title in determining the necessity for the school construction program in such resulting school districts. The aggregate amounts so determined by the State Board of Education to be allocated to such resulting districts shall not exceed the amount of the maximum total cost, maximum state share and maximum local share, respectively, in the pertinent school construction bond authorization act with respect to the original school district so divided. Such allocated amounts shall be in lieu of the amounts set forth in any school construction bond authorization act for the original school district, and applicable to certificates of necessity issued pursuant to the school construction bond authorization act and this chapter.

(29 Del. C. 1953, § 7512; 54 Del. Laws, c. 345.)

§ 7514. Local funds and state appropriations to be deposited.

The moneys paid to the State Treasurer by a school district as its local share under any school construction bond authorization act and any funds appropriated as its local share by the State under any school construction bond authorization act, including any additional amount appropriated to such school district by the State, and for the financing of which bonds of the State are to be issued shall be deposited by the State Treasurer in a special fund and shall be expended only for school construction in such district. Each of said local shares and additional amounts shall be credited with interest in the following manner:

(1) The State Treasurer shall credit to the account of each local school district which has funds on deposit with the State Treasurer such amount of interest as determined by this section upon such funds. The rate of interest applied shall be based upon net interest earned and calculated under guidelines established by the Cash Management Policy Board.

(2) On or before the last day of each month, the State Treasurer shall credit the operating and debt service accounts respectively of each school district's operating and debt service funds with interest on the average daily balances in operating and debt service funds for the preceding month. The amount of interest due shall be calculated upon the average daily account balances determined by the respective financial activity reports of the Department of Finance.

(3) On or before the first day of each month, the State Treasurer shall credit the debt service of each local school district's construction fund with interest on the average balance of that proportion of the construction account contributed by the local district. The amount of interest due shall be calculated upon the average daily account balances determined by the respective financial activity reports of the Department of Finance.

(29 Del. C. 1953, § 7513; 54 Del. Laws, c. 345; 58 Del. Laws, c. 315, § 12; 63 Del. Laws, c. 142, § 53; 63 Del. Laws, c. 404, §§ 3, 4, 7; 72 Del. Laws, c. 304, § 2.)

§ 7515. Reversion of unexpended state share.

Any sum of money which has been appropriated or allocated to any school district by the State under any school construction bond authorization act which remains unexpended 1 year after pupil occupancy of any school building constructed under the school construction bond authorization act authorizing the construction shall revert to the State and shall be deposited to a special account to be applied against future school construction bond requirements.

(29 Del. C. 1953, § 7514; 54 Del. Laws, c. 345.)

§ 7516. Reversion of unexpended local share.

Any sum of money which has been appropriated by any local school district under a school construction bond authorization act which remains unexpended 1 year after pupil occupancy of any school building constructed under the school construction bond authorization act authorizing the construction shall be deposited to the debt service account of the school district to be used for such purposes as are permitted by law.

(29 Del. C. 1953, § 7515; 54 Del. Laws, c. 345; 59 Del. Laws, c. 205, § 8.)

§ 7517. Aid to boards of education.

The Department of Education shall render such assistance to boards of education as they may request in the preparation of their preliminary and final plans for school construction.

(29 Del. C. 1953, § 7517; 54 Del. Laws, c. 345; 57 Del. Laws, c. 440, § 5; 71 Del. Laws, c. 378, § 120.)

§ 7518. Approval of plans.

The final plans, specifications and estimates of costs of school construction under any school construction bond authorization act and this chapter shall be approved by the Department of Education. No board of education shall change or alter the final plans as approved without the written consent of the Department of Education or its designated representatives.

(29 Del. C. 1953, § 7518; 54 Del. Laws, c. 345; 57 Del. Laws, c. 440, § 4; 71 Del. Laws, c. 378, § 121.)

§ 7519. Powers of board of education; contracts.

The board of education for any district shall cause the school construction program authorized under any school construction bond authorization act and this chapter for such school district to be carried out. Such board of education, with consent of the Department of Education or its designated representatives, shall have power to make and enter into all contracts for school construction and for labor, materials, supplies, instrumentalities, furniture and equipment required to accomplish any such school construction program (including purchase of all educational supplies necessary for the initial operation of school so built, altered or added to), provided that all contracts involving expenditure shall be subject to Chapter 69 of this title.

(29 Del. C. 1953, § 7519; 54 Del. Laws, c. 345; 57 Del. Laws, c. 440, §§ 4, 6; 71 Del. Laws, c. 378, § 122.)

§ 7520. Supervision of construction.

The board of education in each school district shall supervise, or cause to be supervised, the school construction program in such school district.

(29 Del. C. 1953, § 7520; 54 Del. Laws, c. 345; 57 Del. Laws, c. 440, § 4.)

§ 7521. Employing school construction personnel.

Each board of education shall have power to employ engineers, architects and such other employees as it deems essential to the proper and expeditious performance of its duties under this chapter, to fix their salaries and length of service and to dismiss them for any cause which it shall deem sufficient.

(29 Del. C. 1953, § 7521; 54 Del. Laws, c. 345; 57 Del. Laws, c. 440, §§ 4, 6; 71 Del. Laws, c. 378, § 123.)

§ 7522. Approval of bills.

All bills for the expenses of the board of education of any school district for carrying out the school construction program of such school district under this chapter must be marked "approved," and such approval must be signed by the president or vice-president of such board of education and attested by the secretary or acting secretary of such board of education. If such approval is countersigned by the superintendent of the school district or the superintendent's authorized designee, any other signature on the approval may be a facsimile.

(29 Del. C. 1953, § 7522; 54 Del. Laws, c. 345; 57 Del. Laws, c. 440, §§ 4, 7; 59 Del. Laws, c. 205, § 9; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 378, § 124.)

§ 7523. Warrants.

The board of education of each school district shall when and as funds are required (and not until then) for the payment of the expenses of carrying out the school construction program in such school district contemplated by this chapter, including expenses of engineers, architects and other employees of such board of education, draw warrants on the State Treasurer for the moneys required, which warrants shall be signed by the president or vice-president and attested by the secretary or acting secretary of such board of education; such warrants shall be delivered to the Director of the Office of Management and Budget who shall thereupon deliver them to the State Treasurer, and the State Treasurer shall pay the same. If such warrants are countersigned by the superintendent of the school district or the superintendent's authorized designee, any other signature on the warrants may be a facsimile.

(29 Del. C. 1953, § 7523; 54 Del. Laws, c. 345; 57 Del. Laws, c. 440, §§ 4, 8; 59 Del. Laws, c. 205, § 10; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(13).)

§ 7524. City of Wilmington schools [Repealed].

Repealed by 71 Del. Laws, c. 378, § 125, effective July 8, 1998.

§ 7525. Use or acquisition of lands for school construction.

(a) Whenever a school district either proposes to use land that it currently owns for the carrying out of school construction, or to select and acquire land for the same purpose, the board of education of such school district is authorized to use or to select and acquire such land upon the approval of the Department of Education, the Office of Management and Budget and the Office of State Planning Coordination, pursuant to rules and regulations to be promulgated by the Department of Education. A school district may submit more than 1 prospective site for approval. If the Department of Education, the Office of Management and Budget and the Office of State Planning Coordination approve more than 1 site, the Department of Education shall work jointly and cooperatively with the school district to finally decide which site or sites shall be approved. The provisions of this subsection shall apply to any land that a school district desires to use for school construction purposes, whether acquired prior to or after July 19, 2004, and regardless of whether said land was or is to be acquired by the school district either by gift or for consideration, or where said land is proposed to be set aside in lieu of payment of the Voluntary School Assessment as provided in § 2661(c)(3) of Title 9 and § 842(c) of Title 22.

(b) The land may be acquired by contract with the owner or owners thereof at a fair value, or by condemnation proceedings instituted by the appropriate official body, but such condemnation proceedings shall not be instituted against any land, building, franchise, easement or other property of a public utility used by it in providing its service to the public.

(c) The cost of such land shall be deemed to be part of the cost of such school construction.

(d) Title to any lands acquired shall be a fee simple title and shall be vested in the board of education of the school district.

(e) Condemnation proceedings to acquire land in any case where such land cannot for any reason be acquired by agreement with the owner or owners thereof for a fair or reasonable consideration may be instituted by the appropriate official body under § 2303 of Title 14 and Chapter 61 of Title 10.

(29 Del. C. 1953, § 7525; 54 Del. Laws, c. 345; 57 Del. Laws, c. 440, § 4; 71 Del. Laws, c. 378, § 126; 74 Del. Laws, c. 367, §§ 20, 21; 75 Del. Laws, c. 88, § 21(13).)

§ 7526. Use of appropriated funds for inspecting and auditing.

(a) The local school district shall apply such portions of the total cost of any school construction improvement authorized by a school construction bond authorization act as shall be necessary to provide for the cost of auditing such school construction improvement, but in no event shall such portion exceed $^1/_2$ percent of such total cost. The Auditor of Accounts shall be responsible for conducting or having conducted such audit subject to § 2906(c) and (d) and §§ 2907, 2908 and 2909 of this title, as amended.

(b) The local school district shall allocate such portion of the total cost of major school construction improvements for which funds are appropriated by an authorization act as shall be necessary to provide for the cost of inspecting such school construction improvement. The local school district may also allocate a portion of the funds appropriated for minor school improvements for such inspection services.

(c) The local school district shall let contracts for inspection of school construction improvements. In contracting for the inspection of major or minor school construction improvements, the local school district shall give first preference to an experienced and able Delaware organization offering to provide such inspection services on a nonprofit, at-cost basis. Such contracts shall not be deemed public works contracts as defined in Chapter 69 of this title, as amended. If no such organization is able or willing to perform such specialized service on such nonprofit, at-cost basis, then the local school district may contract for such services with profit-making organizations subject to Chapter 69 of this title.

(29 Del. C. 1953, § 7526; 54 Del. Laws, c. 345; 59 Del. Laws, c. 205, § 11; 62 Del. Laws, c. 146, § 31; 64 Del. Laws, c. 131, § 17(b); 66 Del. Laws, c. 92, § 60; 71 Del. Laws, c. 378, § 127.)

§ 7527. Expendable supplies.

Funds appropriated for school construction improvements by an authorization act shall not be expended for educational supplies of an expendable nature which are consumed or materially changed as they are used or which have a useful life of less than 4 years; provided, that such funds may be applied to the purchase of supplies necessary or appropriate for the initial operation of schools constructed or reconstructed with such funds.

(62 Del. Laws, c. 146, § 32.)

§ 7528. Minor capital improvements.

(a) The proceeds of bonds and notes may be applied to the cost of minor capital improvements. Minor Capital Improvements shall mean, but shall not be limited to, capital expenditures for rebuilding or major repairs of roofs, floors, heating systems or facilities, painting, electrical systems or facilities, plumbing or water systems or facilities, asbestos abatement, the removal of architectural barriers to the handicapped, stand-alone storage buildings and purchase or lease of portable classrooms. These funds may also be applied to the preparation and securing of a public school district building that is being vacated but preserved for an unspecified period of time or for the return of such a building from a closed condition to use by a public school district. The State Department of Education, with the approval of the State Board of Education shall establish rules, consistent with this section, for defining minor capital expenditures.

(b) The State Department of Education, or any other department or agency of the State, shall, in no case, pay more than 60 percent of the cost of minor capital improvements nor more than the total amount designated in an authorization act as "maximum state share," for any minor capital improvements nor less than 60 percent rounded to the nearest $100 of the final actual total costs therefor. Any funds transferred to a school district from any source for the purpose of removing architectural barriers for the handicapped or asbestos shall constitute the 60 percent portion of a minor capital improvement. No expenditure of such funds may be made by a school district unless and until it has provided its 40 percent share of such minor capital improvement. Notwithstanding the foregoing, the State may provide for the entire costs of minor capital improvements for schools entirely supported by the State.

(c) Before contracts for minor capital improvements are let or funds expended for minor capital improvements by any school district, a portion of the costs of which are to be funded with the proceeds of bonds or notes, such school district shall transmit a request for approval of such capital expenditures to the State Department of Education, which request shall: (1) itemize the minor capital improvements to be undertaken and (2) show the estimated cost of each such item. The State Department of Education, applying the rules established pursuant to subsection (a) of this section, shall decide the school district's payment for such minor capital improvements after: (1) inspecting the building or facilities to be improved in order to determine both the need for such minor capital improvements and compliance with the rules established pursuant to subsection (a) of this section; and (2) estimating the cost of each such minor capital improvement.

(d) The State Department of Education shall:

(1) Provide necessary help to the school district in letting bids on minor capital improvements;

(2) Inspect such improvements upon completion to determine that all specifications have been met and that the work and materials used are of acceptable quality; and thereupon

(3) Pay the state's share of the cost of such improvements made by the school district but only subsequent to the deposit with the State Treasurer by the school district of the school district's share, if any, of the cost of such improvements.

(e) Any school district may levy and collect a tax on taxable real property in the school district to pay its share of the cost of minor capital improvements. Such taxes shall be levied and collected by the school district subject to Chapter 19 of Title 14, as amended.

(f) The expenditure of funds for minor capital improvements shall be governed solely by this section.

(62 Del. Laws, c. 146, § 32; 63 Del. Laws, c. 242, § 1; 69 Del. Laws, c. 77, § 78(a), (b); 70 Del. Laws, c. 473, § 96; 71 Del. Laws, c. 406, § 1; 72 Del. Laws, c. 94, § 321; 73 Del. Laws, c. 65, §§ 36-39; 74 Del. Laws, c. 308, § 63(a).)

§ 7529. School building maintenance [Repealed].

Repealed by 74 Del. Laws, c. 308, § 63(b), effective July 1, 2004.

§ 7530. Guaranteed energy cost savings contracts.

School districts, notwithstanding any other provision of this Code, are authorized to enter into long term contracts known as "guaranteed energy cost savings." They are empowered to use their annual Division II energy appropriations to cover the costs of the contract. All such

contracts must contain provisions which allow termination of the contract by the district in the event of non-appropriation of sufficient identified funds to meet the terms of the contract. No additional State funds shall be available for this type of contract. Districts which enter into such an agreement, notwithstanding any change in regulations, shall be allowed to complete the contract using Division II energy appropriations. Where these contracts include hardware/material expenditures, such procurements will be subject to subchapter I of Chapter 69 of Title 29, whether the procurement is carried out by the district or vendor. In the event that the Division II energy appropriations are insufficient to meet the costs of the contract and energy used, districts shall be required to use other funds available to it for the costs exceeding the appropriations. The Division of Accounting is directed to assist school districts in implementing such contracts.

(70 Del. Laws, c. 390, § 1.)

Part VI
Budget, Fiscal, Procurement and Contracting Regulations

Chapter 76
Federal Grant and Nonfederal Grant Coordination

§ 7601. State Clearinghouse Committee.

(a) There is established the Delaware State Clearinghouse Committee ("Committee") for federal grant and nonfederal grant coordination.

(b) The Committee consists of the following members, or designee of the member:

(1) The Chairperson and the Vice Chairperson of the Joint Finance Committee, who serve as the Chairperson and Vice Chairperson, respectively, of the Committee.

(2) The Controller General, who services as the Chairperson of the Committee in the absence of both the Chairperson and Vice Chairperson.

(3) The Director of the Office of Management and Budget.

(4) The Secretary of State.

(5) The Secretary of Finance.

(6) Four members of the General Assembly, appointed as follows:

a. One member appointed by the President Pro Tempore of the Senate.

b. One member appointed by the Minority Leader of the Senate.

c. One member appointed by the Speaker of the House of Representatives.

d. One member appointed by the Minority Leader of the House of Representatives.

(7) In the absence of a quorum of the members heretofore listed, fiscal and policy staff of the Office of the Controller General shall serve as designees sufficient for a quorum.

(c) The Director of the Office of Management and Budget shall function as the Secretary of the Committee, and the Office of Management and Budget shall provide the necessary staff support. The Office of the Controller General shall provide staff support to the Committee, as required by the Chairperson or the Vice Chairperson.

(d) The members of the Committee shall serve until their successors are selected.

(e) A member of the Committee that desires to delegate another individual to serve in the member's place must make the designation in writing. The member must provide the written designation to the Secretary of the Committee and the Controller General. The designee serves at the pleasure of the member making the designation and has the same duties and rights as the member.

(61 Del. Laws, c. 116, § 75; 61 Del. Laws, c. 409, § 10; 63 Del. Laws, c. 191, § 3(a); 63 Del. Laws, c. 279, § 5; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(13); 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 20; 82 Del. Laws, c. 64, § 70; 82 Del. Laws, c. 242, § 76.)

§ 7602. Powers, duties and functions of Committee.

The Clearinghouse Committee shall:

(1) Establish state goals and objectives for maximizing the utilization of federal aid and nonfederal aid programs.

(2) Promulgate procedures and guidelines for all state departments, agencies, public and higher education covering applications for federal grants and nonfederal grants.

(3) Require, upon request, any state department, agency, public and higher education receiving a grant of money from the federal government or a nonfederal grant to submit a detailed report to members of the Committee of expenditures and program measures for the fiscal period in question. Such report shall also be sufficiently descriptive in nature so as to be concise and informative. The Committee may cause the agency submitting such a report to appear before the Committee and to answer such questions as the Committee may require.

(4) Meet as often, in person or virtually, as it is deemed necessary by the Chairperson of the Committee for the purpose of establishing policy, reviewing and approving or disapproving applications for federal and nonfederal grants.

(61 Del. Laws, c. 116, § 75; 61 Del. Laws, c. 409, § 10; 63 Del. Laws, c. 279, § 5; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 242, § 76.)

§ 7603. Submission of plans and applications.

Prior to submitting state or local plan(s) or application(s) to federal or nonfederal authorities for the purpose of receiving funds such plan(s) or application(s) shall be submitted to the Director of the Office Management and Budget for review and approval or disapproval by the Committee. Copies of plans and applications shall be provided to the chairperson of the appropriate legislative standing committee

in each House of the General Assembly for the chairperson's review. The chairperson of the legislative standing committee may submit comments on such plans and applications to the Delaware State Clearinghouse Committee. This section shall apply to:

(1) All state departments and agencies, including agencies of public and higher education, receiving funds pursuant to the annual Budget Appropriation Act; and

(2) Any other agency or entity, whether public or private, including political subdivisions of the State, receiving state funds to be used in part or in total as match for receiving federal or nonfederal funds or which through the receipt and expenditure of federal or nonfederal funds impact state expenditures.

(61 Del. Laws, c. 116, § 75; 61 Del. Laws, c. 409, § 10; 62 Del. Laws, c. 68, § 87; 63 Del. Laws, c. 191, § 3(b); 63 Del. Laws, c. 279, § 5; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(13).)

§ 7604. Required public hearing on applications for block grants.

(a) The Delaware State Clearinghouse Committee shall be the designated Committee to hold any required public hearing on an application for a block grant from the federal government for the following purposes:

(1) To permit public examination of the projected use and distribution of block grant funds;

(2) To allow affected residents of the State or appropriate units of local government to examine the application and submit comments; and

(3) To obtain views of residents of the State.

(b) The public hearing may, at the Committee's discretion, be held at the same time the agency's application for block grant funds is reviewed, approved or disapproved by the Committee. Notice of a public hearing shall be given, in addition to such other methods as the Committee may determine, on the Public Meeting Calendar at least 7 days preceding the date of said public hearing, except where a longer period is expressly provided by applicable law. The notice shall state the date, time, and place, or contain virtual meeting information, of the public hearing and specify the matters to be considered thereat.

(63 Del. Laws, c. 279, § 5; 82 Del. Laws, c. 242, § 76.)

Part VII
Continuity of Government

Chapter 77
Emergency Location of Government

Subchapter I

State Government

§ 7701. Proclamation of emergency temporary location of the seat of government.

(a) For purposes of this subchapter:

(1) "Attack" means any action or series of actions causing, or which may cause, substantial damage or injury to persons or property by any means, including through biological, chemical, radiological, or nuclear means or through the use of other weapons, technologies, or processes.

(2) "Emergency event" means an impending or existing attack, act of terrorism, disease, accident, or other natural or man-made disaster that does 1 or more of the following:

a. Threatens the life, health, or safety of the public.

b. Has, or has the potential to, damage or destroy property or disrupt service, commerce, or other economic activities.

c. Makes the continuation of normal government operations difficult or impossible.

(b) If the Governor determines that, due to the effects of an emergency event, or the anticipated effects of a threatened, perceived, or imminent emergency event, it is imprudent, inexpedient, or impossible to conduct the affairs of state government in Dover, the Governor shall, by proclamation, do all of the following:

(1) Declare an emergency temporary location of the seat of government.

(2) Take any action or issue any order as may be necessary for an orderly transition of the affairs of state government to such emergency temporary location.

(c) The emergency temporary location remains as the seat of government until 1 of the following occurs:

(1) The General Assembly, by law, establishes a new location.

(2) The Governor, by proclamation, determines that the affairs of state government may be conducted in Dover and returns the seat of government to Dover.

(29 Del. C. 1953, § 7701; 53 Del. Laws, c. 137; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 449, § 23.)

§ 7702. Legality of acts.

While the seat of government remains at the emergency temporary location established under § 7701(b) of this title, all official acts that are required by law to be performed in Dover by any officer, agency, department, or authority of this State, including the convening and meeting of the General Assembly in regular, extraordinary, or emergency session, are as valid and binding when performed at such emergency temporary location as if performed in Dover.

(29 Del. C. 1953, § 7702; 53 Del. Laws, c. 137; 81 Del. Laws, c. 449, § 24.)

§ 7703. Conflict with other laws.

Notwithstanding any other law to the contrary or in conflict with this subchapter, this subchapter controls and is supreme if it is employed as provided in this subchapter.

(29 Del. C. 1953, § 7703; 53 Del. Laws, c. 137; 81 Del. Laws, c. 449, § 25.)

Subchapter II

Political Subdivisions of the State

§ 7721. Purpose; establishment of new location.

(a) For purposes of this subchapter:

(1) "Attack" means any action or series of actions causing, or which may cause, substantial damage or injury to persons or property by any means, including through biological, chemical, radiological, or nuclear means or through the use of other weapons, technologies, or processes.

(2) "Emergency event" means an impending or existing attack, act of terrorism, disease, accident, or other natural or man-made disaster that does 1 or more of the following:

a. Threatens the life, health, or safety of the public.

b. Has, or has the potential to, damage or destroy property or disrupt service, commerce, or other economic activities.

c. Makes the continuation of normal government operations difficult or impossible.

(3) "Political subdivision of this State" or "political subdivision" means a county or municipality of this State.

(b) If the presiding officer or 2 members of a governing body of a political subdivision of this State determines that, due to the effects of an emergency event, or the anticipated effects of a threatened, perceived, or imminent emergency event, it is imprudent, inexpedient, or impossible to conduct the political subdivision's affairs at the regular or usual place, the political subdivision's governing body may meet at any place within or without the territorial limits of such political subdivision and do all of the following:

(1) Designate by ordinance, resolution, or other manner, an emergency temporary location of the political subdivision's government where all, or any part, of the public business may be transacted and conducted during the emergency. The location designated may be within or without the territorial limits of the political subdivision and may be within or without this State.

(2) Take any action or enact any ordinance, resolution, or other measure as may be necessary for an orderly transition of the affairs of the political subdivision's government to such emergency temporary location.

(29 Del. C. 1953, § 7721; 53 Del. Laws, c. 137; 81 Del. Laws, c. 449, § 26.)

§ 7722. Legality of acts.

While the political subdivision's public business is being conducted at the emergency temporary location established under § 7721(b) of this section, the governing body and other officers of the political subdivision shall have and possess and shall exercise, at such location, all of the executive, legislative, and judicial powers and functions conferred upon the governing body and officers by or under the laws of this State.

(1) All acts of the political subdivision's governing body and its officers are as valid and binding as if performed within the territorial limits of the political subdivision.

(2) The political subdivision's powers and functions may be exercised in the light of the exigencies of the emergency situation, without regard to or compliance with time consuming procedures and formalities ordinarily prescribed by law and pertaining to the political subdivision.

(29 Del. C. 1953, § 7722; 53 Del. Laws, c. 137; 81 Del. Laws, c. 449, § 27.)

§ 7723. Conflict with other laws.

Notwithstanding any law of this State, municipal charter, or ordinance of a political subdivision of this State to the contrary or in conflict with this subchapter, this subchapter controls and is supreme if it is employed as provided in this subchapter.

(29 Del. C. 1953, § 7723; 53 Del. Laws, c. 137; 81 Del. Laws, c. 449, § 28.)

Part VII
Continuity of Government
Chapter 78
Emergency Interim Executive Succession Act

§ 7801. Short title.

This chapter is known and may be cited as the "Emergency Interim Executive Succession Act."

(29 Del. C. 1953, § 7801; 54 Del. Laws, c. 108; 81 Del. Laws, c. 449, § 29.)

§ 7802. Statement of policy.

The General Assembly finds and declares that in the event of an emergency event, it is necessary to provide for emergency interim succession to governmental offices of this State, and its political subdivisions, if the incumbents of these offices or the deputies of these incumbents are unavailable to perform the duties and functions of these offices. The General Assembly further finds and declares that this emergency interim succession process is intended to do all of the following:

(1) Assure continuity of government through legally constituted leadership, authority, and responsibility in offices of the government of the State and its political subdivisions.

(2) Provide for the effective operation of governments during an emergency.

(3) Facilitate the early resumption of functions temporarily suspended.

(29 Del. C. 1953, § 7802; 54 Del. Laws, c. 108; 81 Del. Laws, c. 449, § 30.)

§ 7803. Definitions.

As used in this chapter:

(1) "Attack" means any action or series of actions causing, or which may cause, substantial damage or injury to persons or property by any means, including through biological, chemical, radiological, or nuclear means or through the use of other weapons, technologies, or processes.

(2) "Deputy" means an assistant or other subordinate officer who is authorized by law to exercise the powers and discharge the duties of a state or political subdivision office.

(3) "Emergency event" means an impending or existing attack, act of terrorism, disease, accident, or other natural or man-made disaster that does 1 or more of the following:

a. Threatens the life, health, or safety of the public.

b. Has, or has the potential to, damage or destroy property or disrupt service, commerce, or other economic activities.

c. Makes the continuation of normal government operations difficult or impossible.

(4) "Emergency interim successor" means an individual designated under this chapter to exercise the powers and discharge the duties of an office held by another individual who is unavailable until a successor is appointed or elected and qualified as may be provided by the Delaware Constitution, statutes, charters, or ordinances or until the other individual who is unavailable is able to resume the exercise of the powers and discharge the duties of the office.

(5) "Office" includes all state and political subdivision offices, the powers and duties of which are defined by the Delaware Constitution, statutes, charters, or ordinances. "Office" does not include the Office of Governor and members of the General Assembly and the Judiciary.

(6) "Political subdivision" includes counties, municipalities, districts, authorities, and other public corporations and entities whether organized and existing under a charter or general law.

(7) "Unavailable" means either that a vacancy in an office exists and there is no deputy authorized to exercise all of the powers and discharge the duties of the office, or that the lawful incumbent of the office, including any deputy exercising the powers and discharging the duties of an office because of a vacancy, and the lawful incumbent's duly authorized deputy are absent or unable to exercise the powers and discharge the duties of the office.

(29 Del. C. 1953, § 7803; 54 Del. Laws, c. 108; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 449, § 31.)

§ 7804. Emergency interim successors for state officers.

(a) All state officers shall do all of the following:

(1) Designate not less than 3 nor more than 7 emergency interim successors to the officer's powers and duties. The emergency interim successors under this paragraph (a)(1) are in addition to the officer's deputy.

(2) Specify the order of succession of the individuals selected under paragraph (a)(1) of this section.

(3) Review and revise the designations of emergency interim successors made under this chapter to ensure that at all times there are at least 3 qualified emergency interim successors.

(b) The power granted to state officers under subsection (a) of this section is subject to such regulations as the Governor or other official authorized under the Delaware Constitution to exercise the powers and discharge the duties of the office of Governor may issue.

(c) A state officer's designated emergency interim successor shall exercise the powers and discharge the duties of the officer's office if all of the following apply:

(1) The officer is unavailable following an emergency event.

(2) The officer's deputy is unavailable following an emergency event.

(d) An emergency interim successor shall exercise the powers and discharge the duties of a state officer's office until 1 of the following occurs:

(1) The Governor under the Delaware Constitution or authority other than this chapter, or other official authorized under the Delaware Constitution to exercise the powers and discharge the duties of the office of Governor, where a vacancy exists, appoint a successor to fill the vacancy.

(2) A successor is otherwise appointed or elected and qualified as provided by law.

(3) An officer or the officer's deputy or a preceding named emergency interim successor becomes available to exercise or resume the exercise of the powers and discharge the duties of the office.

(29 Del. C. 1953, § 7804; 54 Del. Laws, c. 108; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 449, § 32.)

§ 7805. Enabling authority for emergency interim successors for certain political subdivision offices.

(a) With respect to municipal and county offices for which the legislative bodies of municipalities and counties may enact resolutions or ordinances relative to the manner in which vacancies are to be filled or temporary appointments to office made, such legislative bodies are authorized to enact resolutions or ordinances providing for emergency interim successors to municipal and county offices.

(b) A resolution or ordinance adopted under this section may not be inconsistent with this chapter.

(29 Del. C. 1953, § 7805; 54 Del. Laws, c. 108; 81 Del. Laws, c. 449, § 33.)

§ 7806. Emergency interim successors for certain political subdivision officers.

(a) This section applies to officers of political subdivisions not included in § 7805 of this title.

(b) All officers governed by this section shall do all of the following:

(1) Designate by title not less than 3 nor more than 7 emergency interim successors to the officer's powers and duties. The emergency interim successors under this paragraph (b)(1) are in addition to the officer's deputy.

(2) Specify the order of succession of the individuals selected under paragraph (b)(1) of this section.

(3) Review and revise the designations of emergency interim successors made under this chapter to ensure that at all times there are at least 3 qualified emergency interim successors.

(c) The power granted to officers governed by this section under subsection (b) of this section is subject to such regulations as the chief executive officer of the political subdivision may issue.

(d) An emergency interim successor of an officer governed by this section shall exercise the powers and discharge the duties of the officer's office if all of the following apply:

(1) The officer is unavailable following an emergency event.

(2) The officer's deputy is unavailable following an emergency event.

(e) An emergency interim successor of an officer governed by this section shall exercise the powers and discharge the duties of the office until 1 of the following occurs:

(1) If a vacancy exists, it is filled in accordance with the Delaware Constitution or other law of this State.

(2) An officer or the officer's deputy or a preceding emergency interim successor becomes available to exercise the powers and discharge the duties of the office.

(29 Del. C. 1953, § 7806; 54 Del. Laws, c. 108; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 449, § 34.)

§ 7807. Formalities of taking office.

(a) At the time of an individual's designation as an emergency interim successor, the individual shall take such oath as may be required for the individual to exercise the powers and discharge the duties of the office to which the individual may succeed.

(b) Notwithstanding any other law, no individual, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which the individual succeeds, is required to comply with any other law relative to taking office.

(29 Del. C. 1953, § 7807; 54 Del. Laws, c. 108; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 449, § 35.)

§ 7808. Period in which authority may be exercised.

(a) An individual authorized to act as an emergency interim successor may exercise the powers and discharge the duties of an office as authorized by this chapter only after an emergency event has occurred.

(b) The General Assembly may, by concurrent resolution, terminate the authority of emergency interim successors to exercise the powers and discharge the duties of office as provided in this chapter.

(29 Del. C. 1953, § 7808; 54 Del. Laws, c. 108; 81 Del. Laws, c. 449, § 36.)

§ 7809. Removal of designees.

Until an individual who is designated as an emergency interim successor is authorized to exercise the powers and discharge the duties of an office, the individual serves at the pleasure of the designating authority and may be removed or replaced by the designating authority at any time, with or without cause.

(29 Del. C. 1953, § 7809; 54 Del. Laws, c. 108; 81 Del. Laws, c. 449, § 37.)

§ 7810. Disputes.

The Governor or other official authorized under the Delaware Constitution to exercise the powers and discharge the duties of the office of Governor shall settle any dispute concerning a question of fact arising under this chapter with respect to an office in the executive branch of the state government. The Governor's decision is final.

(29 Del. C. 1953, § 7810; 54 Del. Laws, c. 108; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 449, § 38.)

Part VIII
Departments of Government

Chapter 79
Department of Health and Social Services

Subchapter I
Establishment and Organization of Department

§ 7901. Establishment of Department of Health and Social Services.

A Department of Health and Social Services is established.

(29 Del. C. 1953, § 7901; 57 Del. Laws, c. 301, § 1.)

§ 7902. Secretary; Deputy Secretary; division directors; Acting Secretary; appointment.

(a) The administrator and head of the Department is the Secretary of the Department of Health and Social Services ("Secretary"), who must be a person qualified by training and experience to perform the duties of the office.

(1) The Secretary is appointed, confirmed, and holds office as provided in § 10 of Article III of the Delaware Constitution.

(2) The Secretary is to be paid an annual salary as determined by the General Assembly in the annual appropriations act.

(3) The Secretary must obtain and retain residency in this State as provided in § 10 of Article III of the Delaware Constitution.

(b) In the event the position of Secretary is vacant, the Governor, by appointment, shall have the power to fill the position of Deputy Secretary if vacant. A Deputy Secretary so appointed shall serve at the pleasure of the Governor and upon the position of Secretary being filled such Deputy Secretary may be removed from office by the Secretary with the written approval of the Governor.

(c) In the event of death, resignation, temporary incapacity or removal of the Secretary and prior to the appointment of a successor, the Governor may appoint the Deputy Secretary or the director of any division of the Department to serve as Acting Secretary. The Secretary may, during an absence from the State, appoint the Deputy Secretary or the director of any division of the Department to serve as Acting Secretary during such absence. In either case the Acting Secretary shall have all the powers and perform all the duties and functions of the Secretary during such absence or incapacity or until a successor is duly qualified and appointed.

(29 Del. C. 1953, § 7902; 57 Del. Laws, c. 301, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 140, § 1; 73 Del. Laws, c. 68, §§ 1-3; 84 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 455, § 5; 85 Del. Laws, c. 43, § 1.)

§ 7903. Powers, duties and functions of the Secretary [Effective until July 17, 2028].

The Secretary may:

(1) Supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees;

(2) Appoint and fix the salary, with the written approval of the Governor, of the Deputy Secretary and the following division directors and office heads, who may be removed from office by the Secretary with the written approval of the Governor, and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary:

a. A Director of the Division of Public Health, who shall be known as the Director of Public Health, and who shall be someone qualified by training, education, experience, or ability to perform the duties of Director;

b. A Director of the Division of Substance Abuse and Mental Health, who shall be known as the Director of Mental Health, and who shall be qualified by appropriate formal education in a field such as psychiatric medicine, psychiatric nursing, clinical psychology or psychiatric social work directly related to the care and treatment of persons with mental or emotional conditions, by direct experience in the care and treatment of persons with mental or emotional conditions and by demonstrated administrative competence;

c. A Director of the Division of Social Services, who shall be known as the Director of Social Services, and who shall be qualified by education, ability and experience in the administration of social work or services;

d. An administrator and head of the Division of Business Administration and General Services who shall be known as the Chief of Business Administration and General Services and who shall be a person qualified by training and experience to perform the duties of the division;

e. An administrator and head of the Division of Planning, Research and Evaluation who shall be known as the Chief of Planning, Research and Evaluation and who shall be a person qualified by training and experience to perform the duties of the division;

f. A Director of the Division of Child Support Services, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

g. A Director of the Division of Services for Aging and Adults with Physical Disabilities, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

h. A Director of the Division of State Service Centers, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

i. A Director of the Division of Health Care Quality, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

(3) Appoint such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law;

(4) Establish a Division of Business Administration and General Services in order to administer and coordinate the record keeping, transportation, fiscal affairs, data processing, statistics, accounting, personnel and such other general services for the Department as the Secretary may deem necessary for the proper, efficient and economical operation of the Department and to coordinate such general services and business administration with other departments, agencies and offices of the government of this State;

(5) Establish a Division of Planning, Research and Evaluation in order to provide for and carry out the future comprehensive planning of the programs, policies and operations of the Department and the evaluation, necessary research, data collection and analysis of the programs, policies and operations of the Department;

(6) Establish, consolidate, abolish, transfer or combine the powers, duties and functions of the divisions, subdivisions and offices within the Department as the Secretary, with the written approval of the Governor, may deem necessary, providing that all powers, duties and functions required by law shall be provided for and maintained;

(7) Make and enter into any and all contracts, agreements or stipulations, and retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract consulting, research, technical and other services and facilities, whenever the same shall be deemed by the Secretary necessary or desirable, in the performance of the functions of the Department and whenever funds shall be available for such purpose. All necessary legal services shall be provided pursuant to Chapter 25 of this title;

(8) Delegate any of the Secretary's powers, duties or functions to a director of a division, except the Secretary's power to remove employees of the Department or to fix their compensation;

(9) Establish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State;

a. The Secretary shall, in cooperation with the appropriate division directors and office heads, adopt regulations which require dementia specific training each year for persons who are certified, licensed, or registered by the State, and/or who are partially or fully funded by the State, to provide direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia. The mandatory training must include the following topics:

1. Communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia;

2. The psychological, social, and physical needs of those persons; and

3. Safety measures which need to be taken with those persons.

The mandatory training required under this paragraph applies only to those health-care providers who must participate in continuing education programs;

b. The provisions of paragraph (9)a. of this section do not apply to persons certified to practice medicine under the Medical Practice Act, Chapter 17 of Title 24 or first responders including police officers, firefighters and emergency medical technicians.

(10) Maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department;

(11) Adopt an official seal or seals for the Department;

(12) The Secretary in cooperation with the division directors shall prepare a proposed budget for the operation of the Department to be submitted for the consideration of the Governor and the General Assembly. The Department shall be operated within the limitations of the annual appropriation and any other funds appropriated by the General Assembly. Special funds may be used in accordance with approved programs, grants and appropriations;

(13) The Secretary shall be the successor to the State Board of Health exercising the powers and duties granted the Board by Title 16 or § 7904 of this title, which are not inconsistent with the laws of this State;

(14) The Secretary is empowered to administer a state revolving loan program in accordance with requirements set forth in the Federal Safe Drinking Water Act [42 U.S.C. § 300f et seq.].

a. *Delaware Safe Drinking Water Revolving Fund.* — There is hereby established a "Delaware Safe Drinking Water Revolving Fund" as contemplated by and to be administered pursuant to the Federal Safe Drinking Water Act. All federal capitalization grants received pursuant to the Federal Safe Drinking Water Act, all required matching state funds, and all loan repayments received by the State pursuant to any loan agreement made under the Delaware Safe Drinking Water Revolving Fund shall be credited to the Delaware Safe Drinking Water Revolving Fund. In addition, all proceeds of obligations issued by the State and supported by a pledge or other interest in the funds in the Delaware Safe Drinking Water Revolving Fund shall be held in or for such fund. The Delaware Safe Drinking Water Revolving Fund shall be deemed to be a special fund and shall be approved by the Governor for the following purposes:

1. To accept and retain the funds and revenues specified herein;

2. To make loans to eligible persons for qualifying purposes under the Federal Safe Drinking Water Act;

3. To buy or refinance debt obligations of eligible persons for qualifying purposes under the Federal Safe Drinking Water Act;

4. To guarantee or purchase insurance for obligations of eligible persons for qualifying purposes under the Safe Drinking Water Act;

5. To be a source of revenue or security for the payment of principal and interest on revenue bonds of the State if the proceeds of the sale of such bonds will be deposited in the Delaware Safe Drinking Water Revolving Fund;

6. To earn interest on amounts on deposit in such fund;

7. To establish all necessary interest bearing accounts for deposit of loan repayments;

8. To finance the reasonable costs incurred by the State in the administration of the Delaware Safe Drinking Water Revolving Fund as permitted under the Federal Safe Drinking Water Act; and

9. To accomplish any other allowable purpose under the Federal Safe Drinking Water Act.

The Department is designated as the administering agency of the Delaware Safe Drinking Water Revolving Fund and shall have such power necessary to administer such fund including, but not limited to, the power to enter into capitalization grant agreements with the Environmental Protection Agency, the power to accept capitalization grant awards made under the Federal Safe Drinking Water Act and the power to make loans in accordance with the requirements of the Federal Safe Drinking Water Act, and Chapter 61 of this title, or any successor statute. The Department shall coordinate implementation of the Delaware Safe Drinking Water Revolving Fund with the Delaware Department of Natural Resources and Environmental Control which shall be responsible for financial administration of the loan portion of the Drinking Water State Revolving Fund. The Department shall take all actions necessary to secure for the State the benefits of the Federal Safe Drinking Water Act.

b. *Standards and procedures.* — Before making any loan from the Delaware Safe Drinking Water Revolving Fund, the Department shall specify:

1. Standards for the eligibility of borrowers and the type of projects to be financed with loans;

2. Procedures for the preparation, review and approval of the "project priority" list, which must contain those projects for which financial assistance is sought;

3. Procedures for submitting applications for financial assistance and procedures for Department approval of such applications;

4. Procedures for completing an environmental review of projects otherwise qualifying under this paragraph which shall be sufficiently consistent with the provisions for environmental review established under applicable state and federal requirements;

5. Conditions for financial assistance; and

6. Other relevant criteria, standards and procedures.

Standards and procedures specified under this paragraph shall provide for final recommendations by the Water Infrastructure Advisory Council of any loan from the Delaware Safe Drinking Water Revolving Fund and the "project priority" list as required by Chapter 61 of this title, or any successor statute.

(29 Del. C. 1953, § 7903; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 591, § 58; 59 Del. Laws, c. 136, § 1; 59 Del. Laws, c. 273, § 1; 60 Del. Laws, c. 251, § 1; 61 Del. Laws, c. 274, § 1; 62 Del. Laws, c. 68, § 116; 62 Del. Laws, c. 86, § 11; 64 Del. Laws, c. 467, § 1; 65 Del. Laws, c. 89, § 2; 69 Del. Laws, c. 345, § 1; 70 Del. Laws, c. 149, § 220; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 212, § 1; 71 Del. Laws, c. 290, § 3; 71 Del. Laws, c. 486, § 3; 71 Del. Laws, c. 489, § 1; 73 Del. Laws, c. 41, § 1; 73 Del. Laws, c. 68, § 4; 77 Del. Laws, c. 246, § 1; 78 Del. Laws, c. 179, §§ 313, 314; 79 Del. Laws, c. 48, § 3; 79 Del. Laws, c. 265, § 2; 80 Del. Laws, c. 234, § 26; 81 Del. Laws, c. 209, § 11; 84 Del. Laws, c. 92, § 8.)

§ 7903. Powers, duties and functions of the Secretary [Effective July 17, 2028].

The Secretary may:

(1) Supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees;

(2) Appoint and fix the salary, with the written approval of the Governor, of the Deputy Secretary and the following division directors and office heads, who may be removed from office by the Secretary with the written approval of the Governor, and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary:

a. A Director of the Division of Public Health, who shall be known as the Director of Public Health, and who shall be a licensed physician who shall have had at least 1 year of postgraduate training in public health, or in lieu thereof at least 5 years of experience as a full-time health official;

b. A Director of the Division of Substance Abuse and Mental Health, who shall be known as the Director of Mental Health, and who shall be qualified by appropriate formal education in a field such as psychiatric medicine, psychiatric nursing, clinical psychology or psychiatric social work directly related to the care and treatment of persons with mental or emotional conditions, by direct experience in the care and treatment of persons with mental or emotional conditions and by demonstrated administrative competence;

c. A Director of the Division of Social Services, who shall be known as the Director of Social Services, and who shall be qualified by education, ability and experience in the administration of social work or services;

d. An administrator and head of the Division of Business Administration and General Services who shall be known as the Chief of Business Administration and General Services and who shall be a person qualified by training and experience to perform the duties of the division;

e. An administrator and head of the Division of Planning, Research and Evaluation who shall be known as the Chief of Planning, Research and Evaluation and who shall be a person qualified by training and experience to perform the duties of the division;

f. A Director of the Division of Child Support Services, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

g. A Director of the Division of Services for Aging and Adults with Physical Disabilities, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

h. A Director of the Division of State Service Centers, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

i. A Director of the Division of Health Care Quality, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

(3) Appoint such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law;

(4) Establish a Division of Business Administration and General Services in order to administer and coordinate the record keeping, transportation, fiscal affairs, data processing, statistics, accounting, personnel and such other general services for the Department as the Secretary may deem necessary for the proper, efficient and economical operation of the Department and to coordinate such general services and business administration with other departments, agencies and offices of the government of this State;

(5) Establish a Division of Planning, Research and Evaluation in order to provide for and carry out the future comprehensive planning of the programs, policies and operations of the Department and the evaluation, necessary research, data collection and analysis of the programs, policies and operations of the Department;

(6) Establish, consolidate, abolish, transfer or combine the powers, duties and functions of the divisions, subdivisions and offices within the Department as the Secretary, with the written approval of the Governor, may deem necessary, providing that all powers, duties and functions required by law shall be provided for and maintained;

(7) Make and enter into any and all contracts, agreements or stipulations, and retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract consulting, research, technical and other services and facilities, whenever the same shall be deemed by the Secretary necessary or desirable, in the performance of the functions of the Department and whenever funds shall be available for such purpose. All necessary legal services shall be provided pursuant to Chapter 25 of this title;

(8) Delegate any of the Secretary's powers, duties or functions to a director of a division, except the Secretary's power to remove employees of the Department or to fix their compensation;

(9) Establish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State;

a. The Secretary shall, in cooperation with the appropriate division directors and office heads, adopt regulations which require dementia specific training each year for persons who are certified, licensed, or registered by the State, and/or who are partially or fully funded by the State, to provide direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia. The mandatory training must include the following topics:

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2. The psychological, social, and physical needs of those persons; and

3. Safety measures which need to be taken with those persons.

The mandatory training required under this paragraph applies only to those health-care providers who must participate in continuing education programs;

b. The provisions of paragraph (9)a. of this section do not apply to persons certified to practice medicine under the Medical Practice Act, Chapter 17 of Title 24 or first responders including police officers, firefighters and emergency medical technicians.

(10) Maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department;

(11) Adopt an official seal or seals for the Department;

(12) The Secretary in cooperation with the division directors shall prepare a proposed budget for the operation of the Department to be submitted for the consideration of the Governor and the General Assembly. The Department shall be operated within the limitations of the annual appropriation and any other funds appropriated by the General Assembly. Special funds may be used in accordance with approved programs, grants and appropriations;

(13) The Secretary shall be the successor to the State Board of Health exercising the powers and duties granted the Board by Title 16 or § 7904 of this title, which are not inconsistent with the laws of this State;

(14) The Secretary is empowered to administer a state revolving loan program in accordance with requirements set forth in the Federal Safe Drinking Water Act [42 U.S.C. § 300f et seq.].

a. *Delaware Safe Drinking Water Revolving Fund.* — There is hereby established a "Delaware Safe Drinking Water Revolving Fund" as contemplated by and to be administered pursuant to the Federal Safe Drinking Water Act. All federal capitalization grants received pursuant to the Federal Safe Drinking Water Act, all required matching state funds, and all loan repayments received by the State pursuant to any loan agreement made under the Delaware Safe Drinking Water Revolving Fund shall be credited to the Delaware Safe Drinking Water Revolving Fund. In addition, all proceeds of obligations issued by the State and supported by a pledge or other interest in the funds in the Delaware Safe Drinking Water Revolving Fund shall be held in or for such fund. The Delaware Safe Drinking Water Revolving Fund shall be deemed to be a special fund and shall be approved by the Governor for the following purposes:

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2. To make loans to eligible persons for qualifying purposes under the Federal Safe Drinking Water Act;

3. To buy or refinance debt obligations of eligible persons for qualifying purposes under the Federal Safe Drinking Water Act;

4. To guarantee or purchase insurance for obligations of eligible persons for qualifying purposes under the Safe Drinking Water Act;

5. To be a source of revenue or security for the payment of principal and interest on revenue bonds of the State if the proceeds of the sale of such bonds will be deposited in the Delaware Safe Drinking Water Revolving Fund;

6. To earn interest on amounts on deposit in such fund;

7. To establish all necessary interest bearing accounts for deposit of loan repayments;

8. To finance the reasonable costs incurred by the State in the administration of the Delaware Safe Drinking Water Revolving Fund as permitted under the Federal Safe Drinking Water Act; and

9. To accomplish any other allowable purpose under the Federal Safe Drinking Water Act.

The Department is designated as the administering agency of the Delaware Safe Drinking Water Revolving Fund and shall have such power necessary to administer such fund including, but not limited to, the power to enter into capitalization grant agreements with the Environmental Protection Agency, the power to accept capitalization grant awards made under the Federal Safe Drinking Water Act and the power to make loans in accordance with the requirements of the Federal Safe Drinking Water Act, and Chapter 61 of this title, or any successor statute. The Department shall coordinate implementation of the Delaware Safe Drinking Water Revolving Fund with the Delaware Department of Natural Resources and Environmental Control which shall be responsible for financial administration of the loan portion of the Drinking Water State Revolving Fund. The Department shall take all actions necessary to secure for the State the benefits of the Federal Safe Drinking Water Act.

b. *Standards and procedures.* — Before making any loan from the Delaware Safe Drinking Water Revolving Fund, the Department shall specify:

1. Standards for the eligibility of borrowers and the type of projects to be financed with loans;

2. Procedures for the preparation, review and approval of the "project priority" list, which must contain those projects for which financial assistance is sought;

3. Procedures for submitting applications for financial assistance and procedures for Department approval of such applications;

4. Procedures for completing an environmental review of projects otherwise qualifying under this paragraph which shall be sufficiently consistent with the provisions for environmental review established under applicable state and federal requirements;

5. Conditions for financial assistance; and

6. Other relevant criteria, standards and procedures.

Standards and procedures specified under this paragraph shall provide for final recommendations by the Water Infrastructure Advisory Council of any loan from the Delaware Safe Drinking Water Revolving Fund and the "project priority" list as required by Chapter 61 of this title, or any successor statute.

(29 Del. C. 1953, § 7903; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 591, § 58; 59 Del. Laws, c. 136, § 1; 59 Del. Laws, c. 273, § 1; 60 Del. Laws, c. 251, § 1; 61 Del. Laws, c. 274, § 1; 62 Del. Laws, c. 68, § 116; 62 Del. Laws, c. 86, § 11; 64 Del. Laws, c. 467, § 1; 65 Del. Laws, c. 89, § 2; 69 Del. Laws, c. 345, § 1; 70 Del. Laws, c. 149, § 220; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 212, § 1; 71 Del. Laws, c. 290, § 3; 71 Del. Laws, c. 486, § 3; 71 Del. Laws, c. 489, § 1; 73 Del. Laws, c. 41, § 1; 73 Del. Laws, c. 68, § 4; 77 Del. Laws, c. 246, § 1; 78 Del. Laws, c. 179, §§ 313, 314; 79 Del. Laws, c. 48, § 3; 79 Del. Laws, c. 265, § 2; 80 Del. Laws, c. 234, § 26; 81 Del. Laws, c. 209, § 11; 84 Del. Laws, c. 92, § 8; 84 Del. Laws, c. 92, § 9.)

§ 7904. Division of Public Health; Department of Health and Social Services.

(a) There is hereby established the Division of Public Health under the direction and control of the Secretary of the Department of Health and Social Services for the purpose of protecting and promoting the health of the people.

(b) "Core public health and preventive services" as used in this section are those activities that lay the groundwork for health communities. They are activities that protect people from diseases and injury. They include activities that:

(1) Prevent and control communicable disease epidemics;

(2) Promote healthy behaviors to control chronic disease;

(3) Monitor the health of the population through data analysis and epidemiological studies;

(4) Result in policies to promote the health of the public;

(5) Assure quality health services and systems for the population;

(6) Result in the setting of standards for the protection of the public's health;

(7) Provide assistance during disasters;

(8) Assess environmental health risks; and

(9) Offer health protection strategies to environmental control agencies.

(c) The mission of the Division is to protect and promote the health of the people. The Division's responsibilities include the following:

(1) Monitor and assess the health status of the population of the State.

(2) Use scientific knowledge as the basis to promote public policy to protect the health of the people.

(3) Perform duties and functions as may be necessary to assure the protection of the public's health.

(d) The Division shall provide core public health and preventive services that include the following:

(1) Advocate for and facilitate a strong public health delivery system that assures all Delaware citizens have access to core public health and preventive services.

(2) Serve as the focal point in bringing together public and private entities to create public health objectives and strategies for Delaware.

(3) Facilitate and support community efforts, including the creation of public/private partnerships, for the prevention of disease and injury and the promotion of health.

(4) Monitor the health of the population through the collection and analysis of data on health status, including epidemiological and other studies of health problems.

(5) Develop and provide information on the prevention and control of health problems affecting the population, including environmentally-related illness, communicable disease, chronic disease, injury and such other problems as may affect the public's health.

(e) The Secretary of the Department of Health and Social Services shall receive and disburse all funds available to the State from any source including, but not limited to, the United States Government, to be used for the benefit of the public health, unless the receipt and disbursal of such funds is otherwise provided by law.

(f) The Director of the Division shall be the State Health Officer and State Registrar of Vital Statistics and shall have the power to perform and shall be responsible for the performance of all of the powers, duties and functions as delegated to the Director by the Secretary of the Department of Health and Social Services.

(g) The Division is authorized to operate the following programs for which a fee for service is charged to cover the cost of the program: Child Health, Vanity Birth Certificate, Public Water, Medicaid Enhancements, Infant Mortality, Medicaid Aids Waiver, Children with Special Needs, Family Planning, Newborn, Indirect Costs, Vaccines, Food Inspection, Medicaid Contractors/Lab Testing and Analysis, Tuberculosis (TB), Sexually Transmitted Diseases (STD), Preschool Diagnostic and Development Nursery (PDDN), Home Visits, Food Permit, Water Operator Certification, Long-Term Care Prospective Payment, Long-Term Care IV Therapy, and Health Statistics. Notwithstanding the provisions of § 6102 of this title, the Division shall be allowed to collect and expend fees from the aforementioned accounts except that the Children with Special Needs and Child Health programs shall continue to deposit 30 percent of program collections to the General Fund.

(29 Del. C. 1953, § 7904; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 591, § 58A; 60 Del. Laws, c. 207, § 1; 60 Del. Laws, c. 511, § 65; 60 Del. Laws, c. 716, § 1; 60 Del. Laws, c. 722, § 3; 62 Del. Laws, c. 68, § 117; 62 Del. Laws, c. 86, § 12; 70 Del. Laws, c. 148, § 1; 70 Del. Laws, c. 149, § 224; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 310, § 15; 83 Del. Laws, c. 213, § 7.)

§ 7905. Office of Women's Health.

(a) The Office of Women's Health is hereby established within the Division of Public Health, in the Department of Health and Social Services.

(b) For purposes of this section:

(1) "Department" means the Department of Health and Social Services.

(2) "Director" means the Director of the Office of Women's Health.

(3) "Division Director" means the Director of the Division of Public Health.

(4) "Office" means the Office of Women's Health.

(5) "Secretary" means the Secretary of the Department.

(c) The Office is established to address women's health issues across the lifespan for the following purposes:

(1) To facilitate appropriate forums, programs or initiatives designed to educate the public regarding women's health and health lifestyles.

(2) To assist the Division Director in identifying, coordinating and establishing priorities for programs, services and resources the State should provide for women's health issues across the lifespan, including concerns relating to reproductive, menopausal and postmenopausal phases of a woman's life.

(3) To serve as a resource for information regarding women's health data, strategies, services and programs that address women's health issues across the lifespan.

(4) To provide relevant research information and data conducted or compiled by the Department or other entities in collaboration with the Department.

(5) To seek funding from private or governmental entities to carry out the purposes of this chapter.

(6) To prepare materials for publication and dissemination to the public on women's health.

(7) To conduct public educational forums in Delaware to raise public awareness and to educate citizens about women's health programs, issues and services.

(8) To coordinate the activities and programs of the Office with other entities that focus on women's health or women's issues, including but not limited to other state agencies.

(d) The structure of the Office of Women's Health will be determined by the Department, including all of the following:

(1) The Director of the Office.

(2) Other necessary employees.

(73 Del. Laws, c. 119, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 106, § 8; 84 Del. Laws, c. 359, § 2.)

§ 7905A. Office of Women's Health.

Transferred to § 7905 of this title.

§ 7906. Community services.

There are established within the Department of Health and Social Services the programs and functions of community services involving all of the powers, duties and functions heretofore performed within the former Department of Community Affairs pursuant to § 4 of Executive Order Number 123 dated December 29, 1982.

(68 Del. Laws, c. 149, § 1.)

§ 7907. Delaware Residents' Protection Commission.

(a) (1) There is established a Delaware Residents' Protection Commission. The Commission's purpose is to monitor the quality of care, quality of life, and safety provided to Delaware's residents of monitored facilities in both privately-operated and state-operated facilities, and to ensure that the appropriate oversight agencies respond in a timely manner to complaints of abuse, neglect, mistreatment, financial exploitation, and other claims.

(2) As used in this chapter:

a. "Commission" means the Delaware Residents' Protection Commission.

b. "Monitored facility" means, collectively, a nursing facility, as "nursing facility" is defined in § 1102 of Title 16; an assisted living facility, as "assisted living facility" is defined in § 1102 of Title 16; and a secured memory care unit, as "secured memory care unit" is defined in § 1102 of Title 16.

c. "Secretary" means the Secretary of the Department of Health and Social Services.

(b) The Commission is staffed by an Executive Director and supporting staff, who are responsible for ensuring that the Commission fulfills its purpose. The Executive Director may speak on behalf of the Commission, consistent with the Commission's purpose.

(c) The Commission consists of the following members:

(1) One member appointed by the Speaker of the House of Representatives.

(2) One member appointed by the President Pro Tempore of the Senate.

(3) Six members serving by virtue of position, or a designee appointed by the member, as follows:

a. The Attorney General.

b. The Executive Director of the Community Legal Aid Society, Inc.

c. The Executive Director of the Delaware Health Care Facilities Association.

d. The Executive Director of the Delaware Healthcare Association.

e. The President of LeadingAge New Jersey/Delaware.

f. The Director of State Government Affairs, Delaware, of the Alzheimer's Association, Delaware Valley Chapter.

(4) Seven members appointed by the Governor as follows:

a. One member who is a resident or a family member of a resident of a monitored facility.

b. Three members, 1 from each county, who work or have worked in a monitored facility.

c. One member who is a health-care professional.

d. Two members who are each an advocate for individuals with disabilities, the elderly, or both.

(d) A member who may select a designee must select the designee only from that member's organization, to serve in the member's stead and at the member's pleasure. The member must provide the designation to the Chair in writing. A designee has the same duties and rights as the member the designee represents.

(e) Membership on the Commission must be geographically distributed so that there are members from each of the 3 counties.

(f) (1) The members that the Speaker and the President Pro Tempore appoint serve at the pleasure of their appointing authorities.

(2) The term of a member that the Governor appoints is 3 years; however, the Governor may appoint 1 or more members under paragraph (c)(4) of this section for a term of less than 3 years to ensure that terms are staggered.

(3) A member who is absent from 3 consecutive commission meetings or 4 out of 12 consecutive meetings is deemed to have resigned, and the member's appointing authority may accept the member's resignation.

(g) The members of the Commission shall elect a Chair.

(h) A majority of members must be present at a commission meeting in order to have quorum and conduct official business. A vacant position is not counted for purposes of quorum. A motion by the Commission is approved upon the affirmative vote of a majority of members who are present at the meeting.

(i) The Commission may adopt rules and bylaws necessary for its operation.

(j) The Commission, as operated within the limitation of the annual appropriation and any other funds the General Assembly appropriates, provides staff for the Commission. The Commission may seek grant funding to provide staff for the Commission and support the Commission's purpose.

(k) The Department of Justice shall provide legal advice to the Commission.

(*l*) The Commission shall meet, at a minimum, on a quarterly basis. The Commission may hold a virtual meeting under Chapter 100 of Title 29 (Freedom of Information Act), except that, for purposes of a commission meeting, "anchor location" means a physical location within the geographical jurisdiction of the Commission that is open to the public and at which 1 or more commission members or a member of the Commission's staff is present.

(m) The Commission's duties include all of the following:

(1) Examining policies and procedures and evaluating the effectiveness of the quality assurance and improvement system for residents of monitored facilities, including the respective roles of the Department of Health and Social Services, the Department of Justice and law-enforcement agencies, health-care professionals, and monitored facility providers.

(2) Monitoring data and analyzing trends in the quality of care, quality of life, and the safety of residents of monitored facilities.

(3) Reviewing and making recommendations to the Governor, Secretary, and the General Assembly concerning the quality assurance and improvement system and improvements to the overall quality of life, quality of care, and safety of residents of monitored facilities.

(4) Protecting the privacy of residents of monitored facilities, including complying with the guidelines for confidentiality of records that the Division of Health Care Quality establishes.

(5) Promoting coordination among programs and services established for or related to monitored facilities.

(6) Providing education and recommending policies aimed at improving the quality of care, quality of life, and safety of residents of monitored facilities.

(n) Subcommittees. —

The Commission may form subcommittees as necessary to carry out the Commission's work.

(1) The Commission and its subcommittees may hear testimony and gather information and advice from non-commission members.

(2) A subcommittee may act on behalf of the Commission, consistent with the Commission's purpose.

(o) The Commission shall prepare and publish an annual report to the Governor, Secretary, the General Assembly, and the Director and the Librarian of the Division of Legislative Services. The annual report must include at least all of the following:

(1) Aggregate data with analysis and monitoring of trends in the quality of care, quality of life, and safety of residents of monitored facilities.

(2) Findings and recommendations from each monitored facility visit.

(3) A summary of each recommendation and correspondence made to the Department of Health and Social Services, the Governor, the General Assembly, and other stakeholder organizations. The correspondence must be redacted to remove information that is not deemed a public record under § 10002 of this title.

(4) Summary of the Commission's review of relevant legislation, including the Commission's position on legislation and regulations affecting residents of monitored facilities.

(5) Advocacy efforts and goals for the upcoming year.

(6) Summary of the Executive Director's duties, including the percentage of time devoted to each duty.

(p) Members of the Commission serve without compensation. However, members may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Commission.

(29 Del. C. 1953, § 7907; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 591, § 62; 60 Del. Laws, c. 207, § 1; 66 Del. Laws, c. 315, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 199, § 1; 74 Del. Laws, c. 132, §§ 1, 2; 75 Del. Laws, c. 89, § 195; 77 Del. Laws, c. 201, § 17; 81 Del. Laws, c. 209, § 12; 82 Del. Laws, c. 29, § 1; 83 Del. Laws, c. 517, § 1; 84 Del. Laws, c. 255, § 49; 85 Del. Laws, c. 179, § 1.)

§ 7908. Division of Substance Abuse and Mental Health.

(a) There is hereby established the Division of Substance Abuse and Mental Health under the direction and control of the Secretary of the Department of Health and Social Services.

(b) The Division of Substance Abuse and Mental Health shall be responsible for providing and overseeing public mental health and substance use treatment services serving individuals who are 18 years old and older.

(c) The Division of Substance Abuse and Mental Health shall have the following powers and duties:

(1) To plan for, establish, implement, amend and revise standards for mental health programs serving individuals who are 18 years old and older.

(2) The authority to create, implement, and oversee licensing requirements for all mental health treatment programs serving individuals who are 18 years old and older.

(3) To provide, facilitate, and create educational and training programs related to mental health and substance use.

(4) To make contracts necessary or incidental to the performance of its duties and execution of its powers.

(5) To operate the Delaware Psychiatric Center, including maintaining a forensic unit as required by Chapter 51 of Title 16.

(6) To acquire, hold or dispose of real property or any interest therein, and construct, lease or otherwise provide treatment facilities for individuals in need of treatment.

(7) To carry out all powers and duties set forth in Chapters 22, 50, 51, 59, and 61 of Title 16.

(8) To coordinate with other divisions within the Department of Health and Social Services, as well as with the Department of Services for Children Youth and Their Families, as necessary to provide appropriate individualized treatment services and address systemic public health needs.

(9) To solicit and accept for use any money, real property or personal property made by will or otherwise and any grant of money, services or property from the federal government, the State or any political subdivision thereof or any private source, and take all actions necessary to cooperate with the federal government or any of its agencies in making an application for any grants.

(10) To administer or supervise the administration of the provisions relating to individuals in need of mental health or substance use treatment of any state plan submitted for federal funding pursuant to federal health, welfare or treatment legislation.

(11) To take all other actions necessary to execute the authority expressly granted to the Division of Substance Abuse and Mental Health.

(d) The Division of Substance Abuse and Mental Health shall be authorized to promulgate rules and regulations to implement this section.

(29 Del. C. 1953, § 7908; 57 Del. Laws, c. 301, § 1; 60 Del. Laws, c. 677, § 1; 64 Del. Laws, c. 467, § 1; 73 Del. Laws, c. 41, § 1; 82 Del. Laws, c. 50, § 1.)

§ 7908B. Division of Substance Abuse and Mental Health.

When a law-enforcement officer contacts Crisis Intervention Services or suspects an individual is experiencing an overdose or a suicide attempt, the law-enforcement officer may disclose the individual's identifying information and a brief event synopsis to the Division of Substance Abuse and Mental Health to connect the individual to behavioral health treatment services.

(82 Del. Laws, c. 200, § 1.)

§ 7909. Behavioral Health Planning and Advisory Council.

(a) The Advisory Council to the Division of Substance Abuse and Mental Health is hereby dissolved and reestablished as the Behavioral Health Planning and Advisory Council ("Council") to assume the functions of the Advisory Council to the Division of Substance Abuse and Mental Health and to administer and implement this chapter, and to perform such other responsibilities as may be entrusted to it by law.

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

(1) Review plans provided by the Division pursuant to Title XIX of the Public Health Service Act (42 U.S.C. § 300x-4(a)) to the Council and submit to the Division any recommendations of the Council for modifications to the plans.

(2) Serve as an advocate for adults and children with serious mental illness, children with a severe emotional disturbance, and other individuals with mental illnesses or emotional problems.

(3) Monitor, review, and evaluate, not less than once each year, the allocation and adequacy of mental health services within the State.

(c) The Council may study, research, plan, and advise the Governor, General Assembly, Secretary, and Director on matters related to behavioral health as it deems appropriate.

(d) The Council shall be comprised of 17 members as follows:

(1) The following individuals serve by virtue of position who may appoint a designee:

a. Director of the Division of Substance Abuse and Mental Health.

b. Secretary of the Department of Education.

c. Director of the Division of Vocational Rehabilitation.

d. Secretary of the Department of Safety and Homeland Security.

e. Director of the Delaware State Housing Authority.

f. Director of the Division of Social Services.

g. Director of the Division of Prevention and Behavioral Health Services.

(2) The following shall be appointed by the Governor:

a. A licensed medical provider of mental health services.

b. 9 individuals who are not employees of the State or providers of mental health care, as follows:

1. Two individuals with severe mental illness who are receiving, or have received, mental health services.

2. Two individuals with a substance use disorder who are receiving, or have received, mental health services.

3. A family member of an individual in recovery.

4. Three parents or guardians of children with a substance use disorder or serious emotional disturbance.

5. An individual who advocates on behalf of those with behavioral health issues.

(e) Members appointed by the Governor shall serve for a term of up to 3 years. The terms of no more than 3 members shall expire in the same year.

(f) The Director of the Division of Substance Abuse and Mental Health shall serve as the temporary chair, and shall set the date, time, and place for the initial organizational meeting where the members of the Council shall elect a Chair and Vice-Chair from among the members. The Vice-Chair's duty shall be to act as Chair in the absence of the Chair.

(g) The Council may adopt bylaws for operating procedures including the election of officers, the conducting of meetings, and other matters to promote the efficient operation of the Council in the performance of its duties under this section.

(h) Members of the Council shall serve without compensation; however, members may be reimbursed for reasonable and necessary expenses incidental to their duties as members of the Council.

(i) A majority of the membership of the Council shall constitute a quorum. A vacant position is not counted for quorum purposes.

(j) Administrative support for the Council shall be provided by the Division of Substance Abuse and Mental Health.

(k) The Council is a "public body,'' as defined in and for the purposes of the Freedom of Information Act, Chapter 100 of Title 29.

(*l*) The Council is designated as Delaware's State Mental Health Planning Council under Title XIX of the Public Health Service Act (42 U.S.C. § 300x).

(29 Del. C. 1953, § 7909; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 591, § 63; 60 Del. Laws, c. 677, § 1; 64 Del. Laws, c. 467, § 10; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 41, § 1; 82 Del. Laws, c. 271, § 1.)

§ 7909A. Division of Developmental Disabilities Services.

(a) There is hereby established the Division of Developmental Disabilities Services under the direction and control of the Secretary of the Department of Health and Social Services.

(b) The mission of the Division of Developmental Disabilities Services is to provide services and supports to individuals with developmental disabilities and their families which enable them to make informed choices that lead to an improved quality of life and meaningful participation in their communities.

(c) The Division of Developmental Disabilities Services shall have the following powers and duties:

(1) Provide case management and community-based services including family supports, advocacy, respite, residential setting options, nurse and behavioral consultation, day services, and supported employment services to assist individuals achieve their goals.

(2), (3) [Repealed.]

(4) Provide intermediate care facility residential services.

(d) The Division of Developmental Disabilities Services shall ensure the investigation of complaints of abuse, neglect, mistreatment and financial exploitation. Such investigations may be in coordination with the Attorney General's Office, law-enforcement or other appropriate agencies.

(e) The Division of Developmental Disabilities Services shall be authorized to promulgate rules and regulations to implement this statute.

(f) It is the intent of the General Assembly for the Division of Developmental Disabilities Services (DDDS) to phase in increases to the rate system for services to adults with intellectual and developmental disabilities (I/DD) based on the market study provided to the Office of Management and Budget and the Controller General on January 17, 2014, by the Department of Health and Social Services Secretary,

as subsequently updated with utilization data for fiscal year 2018 and updated component percentages. Subject to available funding, these rates shall be phased in to 100 percent of the benchmarked levels established.

(60 Del. Laws, c. 677, § 2; 73 Del. Laws, c. 97, § 5; 78 Del. Laws, c. 179, § 315; 81 Del. Laws, c. 407, § 1; 82 Del. Laws, c. 31, § 1.)

§ 7910. Advisory Council to the Division of Developmental Disabilities Services.

(a) There is established the Advisory Council to the Division of Developmental Disabilities Services.

(b) The Advisory Council to the Division of Developmental Disabilities Services serves in an advisory capacity to the Director of the Division of Developmental Disabilities Services, to consider matters relating to individuals diagnosed with intellectual disabilities or specific developmental disabilities in this State and other matters that the Governor, Secretary of the Department, or Director of the Division of Developmental Disabilities Services may refer to it. The Council may study, research, plan, and advise the Director, the Secretary, and the Governor on matters it deems appropriate to enable the Division to function in the best possible manner.

(c) The Advisory Council to the Division of Developmental Disabilities Services is composed of 17 members who are appointed by the Governor. Membership is comprised as follows:

(1) Seven members who represent families, service recipients, and self-advocates in the developmental disabilities community and currently receive services from the Division of Developmental Disabilities Services. An Advisory Council member appointed to represent a family member who received services may continue to serve the appointed term if the family member dies before the term expires.

(2) Five members who represent a cross section of service providers in the developmental disabilities community and currently operate in the Division of Developmental Disabilities Services system, including from any of the following:

a. Residential service providers.

b. Day habilitation service providers.

c. Employment service providers.

d. Clinical service providers.

e. Behavioral or mental health service providers.

(3) Five members who are professional advocates representing individuals with disabilities and represent each of the following:

a. Delaware Developmental Disabilities Council.

b. State Council for Persons with Disabilities.

c. Disabilities Law Program at Delaware Community Legal Aid Society, Inc.

d. The Arc of Delaware.

e. Center for Disabilities Studies at University of Delaware.

(d) [Repealed.]

(e) Members of the Council receive no compensation, but may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

(f) The Council shall annually elect a chair from among its members. The chair or vice chair must be an individual with a developmental disability.

(g) The Governor may appoint a member for a term of up to 3 years to ensure that no more than 3 members' terms expire in a year.

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

(i) The Governor may remove a member 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 or attends less than 50% of Council meetings in a calendar year. The Governor may consider the member to have resigned, and may accept the member's resignation.

(29 Del. C. 1953, § 7910; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 591, § 64; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 97, § 6; 78 Del. Laws, c. 179, § 316; 82 Del. Laws, c. 130, § 1; 83 Del. Laws, c. 101, § 1.)

§ 7911. Division of Social Services.

The Division of Social Services is established having the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the Department of Public Welfare and the Board of Welfare, pursuant to Chapter 1, subchapters I, III, IV, and VI of Chapter 3, and Chapters 5, 9, and 11 of Title 31.

(29 Del. C. 1953, § 7911; 57 Del. Laws, c. 301, § 1; 61 Del. Laws, c. 329, § 1; 64 Del. Laws, c. 108, § 2; 69 Del. Laws, c. 345, § 7.)

§ 7912. Council on Family Services.

(a) There is established the Council on Family Services.

(b) [Repealed.]

(c) The Council on Family Services shall be composed of 7 members who shall be appointed for 3-year terms by the Governor.

(d) At least 3, but no more than 4, members of the Council shall be affiliated with 1 of the major political parties and at least 2, but no more than 3, of the newly appointed members shall be affiliated with the other major political party; provided, however, that there shall be no more than a bare majority representation of 1 major political party over the other major political party. Any person who declines to announce such person's political affiliation shall also be eligible for appointment as a member of the Council.

(e) Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

(f) A Chairperson of the Council shall be chosen by the members of the Council from among its members and shall serve in that capacity for a term of 1 year and shall be eligible for reelection.

(g) Any replacement appointment to the Council to fill a vacancy prior to the expiration of a term shall be filled for the remainder of the term.

(29 Del. C. 1953, § 7912; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 591, § 65; 64 Del. Laws, c. 108, § 2; 70 Del. Laws, c. 186, § 1.)

§ 7913. Council on the Blind.

(a) The Council on the Blind is established.

(b) The Council on the Blind ("Council") serves in an advisory capacity to the Director of the Division for the Visually Impaired and considers matters relating to the supervision of the training of a "person with blindness" or "person with visual impairment," as defined in § 2101 of Title 31, and other matters that the Governor, the Secretary of the Department, or the Director may refer to it. The Council may study, research, plan, or advise the Director, Secretary, or Governor on matters it deems appropriate to enable the Division to function in the best possible manner.

(c) The Council is comprised of 7 members who are appointed by the Governor.

(d) [Repealed.]

(e) A council member does not receive compensation but may be reimbursed for the member's actual and necessary expenses incurred in the performance of the member's official duties.

(f) The Council shall annually elect a chair from among its members. A chair is eligible for reelection.

(g) Each council member is appointed for a term of 3 years. Each term of office expires on the date specified in the appointment; however, a member remains eligible to participate in council proceedings until the Governor replaces that member. The Governor may appoint a member for a term of less than 3 years to ensure that members' terms expire on a staggered basis.

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

(i) The Governor may remove a member for gross inefficiency, misfeasance, 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 or attends less than 50% of council meetings in a calendar year. The Governor may consider the member to have resigned and may accept the member's resignation.

(29 Del. C. 1953, § 7913; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 591, § 66; 61 Del. Laws, c. 329, § 2; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 317; 83 Del. Laws, c. 455, § 2.)

§ 7914. Volunteer services.

There are established within the Department of Health and Social Services the programs and functions of volunteer services involving all of the powers, duties and functions heretofore performed within the Division of Volunteer Services of the Department of Community Affairs pursuant to former § 8629 [repealed] of Title 29, as follows, which shall be performed by the Director, or the Director's duly authorized designee, with the approval of the Secretary:

(1) Encourage and enable persons from all walks of life and from all age groups to perform constructive volunteer services;

(2) Establish methods for supporting and promoting private sector leadership and responsibility for meeting public needs;

(3) Promote communication and collaboration between public and private volunteer programs in the State and between the State and the private sector's initiatives in meeting human needs;

(4) Develop, implement and maintain a volunteer clearing house to disseminate information on volunteer opportunities in the State;

(5) Develop strategies for more effective contributions of time, talent and resources for community projects by businesses, foundations, religious and civic groups and others;

(6) Collect, maintain and share information on private initiatives, community, partnerships and creative solutions undertaken by businesses, foundations, voluntary organizations, religious institutions and other private sector groups in the State, in order to promote their broader use;

(7) Provide, or arrange for training and technical assistance to public and private organizations engaged in volunteer recruitment and programming;

(8) Develop, implement and maintain a State plan for public recognition and support of individual volunteer efforts and successful or promising private sector initiatives and public/private partnerships which address community needs;

(9) Identify obstacles to private sector initiatives and citizen participation and develop resources and systems which not only eliminate such obstacles but which also provide new incentives to encourage citizens and the private sector to volunteer and/or undertake new community service initiatives;

(10) Directly administer those statewide volunteer programs which are currently administered within the Department of Health and Social Services and any other such volunteer program which may subsequently be assigned to this Department by the Governor or the General Assembly;

(11) Serve as the State's liaison to the Federal ACTION Agency and to other appropriate national and state organizations which relate to this section; and

(12) Assume such other powers, duties and functions as the Secretary may assign which are in keeping with this section and not otherwise inconsistent with the law.

(68 Del. Laws, c. 149, § 3; 69 Del. Laws, c. 114, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7914A. The Governor's Commission on Community and Volunteer Services.

(a) *Establishment and purpose. —*

The Governor's Commission on Community and Volunteer Services ("Commission") is established and serves in an advisory capacity to the Administrator of the State Office of Volunteerism ("Administrator"). The purpose of the Commission is to enrich lives and communities in Delaware by advocating service and volunteerism.

(b) *Duties. —*

(1) The Commission shall consider matters relating to volunteer services in this State and any other matter that the Governor, the Secretary of the Department of Health and Social Services ("Secretary"), the Director of the Division of State Service Centers ("Director"), or the Administrator of the State Office of Volunteerism ("Administrator") may refer to it.

(2) The Commission shall perform the duties required of state commissions on national and community service under the National and Community Service Act of 1990, as amended (42 U.S.C. § 12638(e)).

(3) The Commission may study, research, plan, and advise the Governor, Secretary, Director, and Administrator on matters the Commission deems appropriate to enable the State Office of Volunteerism to function in the best possible manner.

(c) *Commission members. —*

The Commission is composed of 15 to 25 voting members, as follows:

(1) *Required members. —*

Not less than 10 nor more than 22 individuals representing the broad diversity of this State, including members from the public sector, the private nonprofit sector, and the business community. The Governor appoints each member under this paragraph (c)(1), except for the Secretary of the Department of Education, who is a member by virtue of position. At least 10 of the members under this paragraph (c)(1) must meet the requirements of 42 U.S.C. § 12638(c)(1) and (2) of the National and Community Service Act of 1990, as amended, as follows:

a. An individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth.

b. An individual with experience in promoting the involvement of older adults in service and volunteerism.

c. A representative of community-based agencies or community-based organizations within this State.

d. The Secretary of the Department of Education, who serves by virtue of position.

e. A representative of local governments in this State.

f. A representative of local labor organizations in this State.

g. A representative of business.

h. An individual between the ages of 16 and 25 years who is a participant or supervisor in a program.

i. A representative of a national service program described in 42 U.S.C. § 12572(a), (b), or (c).

j. A representative of the volunteer sector.

(2) *Sources of other voting members. —*

The Governor shall appoint 1 representative each from up to 3 committees that serves in an advisory capacity to a volunteer program that the State Office of Volunteerism directly administers. When possible, appointments under this paragraph (c)(2) should be made from any of the following sources:

a. Local educators.

b. Experts in the delivery of human, educational, environmental, or public safety services to communities or individuals.

c. Native American tribes.

d. Out-of-school youth or other at-risk youth.

e. Entities that receive assistance under the Domestic Volunteer Service Act (42 U.S.C. § 4950 et seq.).

(3) The Commission's Executive Director is a nonvoting member and serves by virtue of position.

(d) *Governor appointments. —*

A member that the Governor appoints serves for a period of 3 years. Each term of office expires on the date specified in the appointment; however, a member remains eligible to participate in Commission proceedings until the Governor replaces that member. The Governor may appoint a member for a term of less than 3 years to ensure that the members' terms expire on a staggered basis. The Governor shall fill a vacancy on the Commission for the balance of the unexpired term. A member is eligible for reappointment to no more than 2 additional consecutive terms.

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

(f) The Commission shall elect a chair from among its members. A member may serve as chair for a term of 1 year and is eligible for reelection as chair not more than 2 additional consecutive terms.

(g) The Governor may remove a Governor-appointed Commission member for gross inefficiency, misfeasance, nonfeasance, malfeasance, or neglect of duty in office. A member is deemed in neglect of duty if the member has an unexcused absence from either 3 consecutive meetings or 4 out of 12 consecutive meetings. The Governor may consider the member to have resigned and may accept the member's resignation.

(h) *Quorum. —*

The number of members who must be present at a Commission meeting in order to have a quorum and conduct official business is the majority of members. A vacancy on the Commission is not counted for quorum.

(i) *Staffing. —*

The State Office of Volunteerism of the Division of State Service Centers shall provide reasonable staff support to assist the Commission in performing its duties under this section.

(j) *Executive Director. —*

The Administrator serves as the Commission's Executive Director. The Executive Director is responsible for the active direction and management of the Commission's business and affairs.

(1) The Executive Director's duties include all of the following:

a. Preparing each federal or state application, funding report, or reporting document.

b. Supervising Commission staff.

c. Providing staff support to each Commission committee.

d. Serving as liaison to each Commission-funded program.

e. Monitoring grantee compliance and progress.

f. Other duties as the Commission may assign to the Executive Director.

(2) The Executive Director may represent the Commission and manage the Commission's day-to-day business.

(3) The Executive Director may delegate the Executive Director's duties to other Commission staff.

(4) Commission members shall participate in the selection process for hiring the Executive Director.

(64 Del. Laws, c. 313, § 3; 68 Del. Laws, c. 149, §§ 4, 5; 71 Del. Laws, c. 305, §§ 1-6; 74 Del. Laws, c. 313, §§ 1-9; 84 Del. Laws, c. 57, § 1; 84 Del. Laws, c. 514, § 55.)

§ 7915. Council on Services for Aging and Adults with Physical Disabilities.

(a) The Council for Services for Aging and Adults with Physical Disabilities ("Council") serves in an advisory capacity to the Director of the Division of Services for Aging and Adults with Physical Disabilities ("DSAAPD") and considers matters relating to the coordination and effectiveness of programs and services for older Delawareans and adults with physical disabilities, and other matters as may be referred to it by the Governor, the Secretary of the Department, or the Director.

(b) The Council consists of at least 15 members appointed by the Governor. The Governor shall appoint members for terms of up to 3 years. Members' terms must be staggered so that the terms of no more than 7 members expire in 1 year. The Council is composed of the following:

(1) More than 50% of older persons, meaning persons aged 60 years or more, including minority individuals.

(2) Representatives of older persons, such as a caregiver of an aging or elderly person or a caregiver of an adult with a physical disability.

(3) Representatives of health-care provider organizations, including providers of veterans' health care, if appropriate.

(4) Representatives of supportive service provider organizations.

(5) Persons with leadership experience in the private and voluntary sectors.

(6) Local elected officials.

(7) The general public.

(8) Two members, each being from a public or nonprofit agency that provides services to "alleged victims" as defined in § 3902 of Title 31.

(9) An "adult with a physical disability," or a caregiver of an "adult with a physical disability," as defined in § 7920 of this title.

(10) Family caregivers, which may include older relative caregivers.

(11) As available:

a. Representatives from Indian tribes, pueblos, or tribal aging programs.

b. Older relative caregivers, including kin and grandparent caregivers of children or adults age 18 through 59 with a disability.

(c) *Conflict of interest policy. —*

In accordance with 45 C.F.R. §§ 1321.47 and 1321.63, members representing service providers may serve on the Council, but the appointed individual must not have any personal or financial interest and may not receive funding from DSAAPD. The Division shall adopt, amend, or repeal regulations to mitigate potential conflicts of interest to ensure compliance with federal requirements. For purposes of this section, the term "personal interest" includes the meanings set forth in § 5805 of this title and under applicable federal law and the term "financial interest" includes the meanings set forth in § 5804 of this title and under applicable federal law.

(d) [Repealed.]

(e) A Council member serves without compensation, except for reimbursement for reasonable and necessary expenses incident to duties as a member of the Council.

(f) Council members shall elect a chair for a 2-year term from among its members, with the chair alternating each term between a representative of the aging community and a representative of adults with physical disabilities. A chair may serve 2 nonconsecutive terms.

(g) An appointment to the Council to fill a vacancy prior to the expiration of a term shall fill the remainder of the term.

(h) The Council chair shall discharge a member who is absent from more than 3 consecutive meetings, unless excused by the Council.

(i) The Council may establish subcommittees and make appointments to the subcommittees with the approval of all members of the Council.

(j) A quorum of the Council is a majority of the council members.

(k) A Council decision relative to policy and budget must be made by a majority of the members present at a meeting that has a quorum. The Division of Services for Aging and Adults with Physical Disabilities shall provide staff assistance to Council and Council's subcommittees.

(29 Del. C. 1953, § 7915; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 591, § 68; 60 Del. Laws, c. 525, §§ 1-3; 62 Del. Laws, c. 318, §§ 1-4; 66 Del. Laws, c. 47, §§ 1-5; 69 Del. Laws, c. 345, § 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 228, §§ 1-3; 81 Del. Laws, c. 210, § 1; 83 Del. Laws, c. 313, § 1; 85 Del. Laws, c. 177, § 1.)

§ 7915A. Appointments to advisory commissions, boards and committees involved with the elderly.

The Governor, when making appointments to any advisory commission, board or committee, created by this chapter, which does or may have jurisdiction over or advisory status with state assisted activities for the elderly, shall appoint at least 1 senior citizen. For the purpose of this section a senior citizen shall be a person who was 62 years of age or more on his or her last birthday.

(63 Del. Laws, c. 102, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7916. Bureau of Health Equity.

(a) For purposes of this section:

(1) "Health disparity" means a preventable difference between 2 or more groups of people in the quality of health or health care based on all of the following:

a. A shared characteristic of the individuals within each group, such as race, ethnicity, or socioeconomic status.

b. The differences between the groups regarding access to health care or burdens, prevalence, or incidence of disease or violence.

(2) "Health equity" means the absence of systematic health disparities or disparities in the major social determinants of health between groups of people with different levels of underlying social advantage or disadvantage such as, wealth, power, or prestige.

(3) "Social determinants of health" mean conditions in the environments in which people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks.

(b) The Bureau of Health Equity (BHE) is established within the Division of Public Health (DPH), in the Department of Health and Social Services and includes all of the following:

(1) The Office of Minority Health.

(2) The Office of Women's Health.

(c) The purpose of the BHE is to ensure that everyone in Delaware will achieve their full health potential by promoting conditions that are vital for health and well-being, eliminating health disparities, particularly among all racial and ethnic minority groups. The BHE works with communities to address social determinants of health, focusing on prevention, health, and wellness of the broader population instead of treatment focused on individuals.

(d) The BHE shall do all of the following:

(1) Provide relevant statistical data to assess and identify the health status of groups of people with shared characteristics.

(2) Increase awareness of major health problems and factors that influence health.

(3) In collaboration with other DPH programs, identify needs and expand community-based health promotion and disease prevention outreach efforts, including working with communities to build capacity to meet the health needs in disease prevention, education, and health promotion.

(4) Establish and strengthen networks, coalitions, and partnerships to identify and address health problems, including identifying and supporting assets within Delaware's public health system to close the gap of health disparities.

(5) Collaborate with public health partners to develop and promote programs and best practices to achieve health equity, including all of the following:

a. The Primary Care Reform Collaborative of the Delaware Health Care Commission.

b. The Office of Value-Based Health Care Delivery in the Department of Insurance.

(84 Del. Laws, c. 359, § 1.)

§ 7917. Delaware Emergency Medical Service Advisory Council [Transferred].

Transferred.

§ 7918. Drug Control Coordinator; duties; powers [Repealed].

(29 Del. C. 1953, § 7921; 57 Del. Laws, c. 551, § 2; 60 Del. Laws, c. 251, §§ 2, 3; 70 Del. Laws, c. 186, § 1; repealed by 84 Del. Laws, c. 201, § 9, effective Sept. 11, 2023.)

§ 7919. Division of State Service Centers.

(a) There is hereby established the Division of State Service Centers under the direction and control of the Secretary of the Department of Health and Social Services.

(b) The Division of State Service Centers shall be responsible for the operation of Service Centers throughout the State as the General Assembly from time to time may provide for.

(c) The Division of State Service Centers shall coordinate the delivery of services and programs of various divisions within the Department of Health and Social Services, other State agencies, and nonprofit providers who are co-located in State Service Centers.

(d) The Division of State Service Centers shall report from time to time to the Secretary of the Department of Health and Social Services concerning the effectiveness of delivery of services by State Service Centers.

(e) The mission of the Division of State Service Centers is to alleviate crises, to foster self-sufficiency for vulnerable families, to provide volunteer and community service opportunities for all Delawareans and to address the causes and conditions of poverty.

(f) The Division of State Service Centers shall operate the State Office of Volunteerism, the Office of Community Services and the Office of Family Support.

(g) The Division of State Service Centers shall serve as a safety net for Delawareans by facilitating individual and community partnerships for the delivery of human services, and by advocating for vulnerable families.

(h) The Division of State Service Centers shall have the power to promulgate rules and regulations to implement this section.

(i) The Division of State Service Centers is authorized to solicit and accept contributions, grants, gifts and bequests from organizations including, but not limited to, private foundations or alliances, non-public agencies, institutions, organizations or businesses. All funds generated shall be retained by the Division of State Service Centers in order to defray costs associated with the volunteer and community service activities and events of the Division of State Service Centers. Funds received will not be used for employee salaries or benefits. All funds received are subject to audit by the Department of Health and Social Services and the Office of Management and Budget, and employees of the Division of State Service Centers are bound by § 5806 of this title when engaging in fundraising activities.

(j) All employees of Family Visitation Centers operated by the Division, either directly or through contractual agreement, shall be certified as to whether:

(1) The individual is named in the Central Register as the perpetrator of a reported case of child abuse. Costs associated with obtaining the Child Abuse Registry information shall be borne by the State.

(2) The individual has cleared state and federal criminal history background checks. Costs associated with obtaining the criminal history information shall be borne by the State for state employees.

The Division shall develop policies concerning the conditions of employment related to both Child Abuse Registry checks and criminal history background checks.

(71 Del. Laws, c. 290, § 1; 74 Del. Laws, c. 77, § 1; 75 Del. Laws, c. 88, § 21(13); 75 Del. Laws, c. 95, § 1; 75 Del. Laws, c. 273, § 1.)

§ 7919A. Advisory Council on State Service Centers [Repealed].

Repealed by 77 Del. Laws, c. 106, § 9, effective July 6, 2009.

§ 7920. Division of Services for Aging and Adults with Physical Disabilities.

(a) There is hereby established the Division of Services for Aging and Adults with Physical Disabilities within the Department of Health and Social Services.

(b) *Definitions.* — (1) As used in this section, "adults with physical disabilities" shall include persons who are age 18 or older; whose physical condition is anticipated to last 12 months or more; whose physical condition affects their ability to live independently; and who need ongoing assistance with daily living. Persons receiving primary case management services from other state agencies, if eligible, may receive services from the Division of Services for Aging and Adults with Physical Disabilities. Persons who have an assigned case manager from another state agency shall retain that case manager as a primary.

(2) As used in this section, "aging or elderly persons" shall have the same meaning as older and eligible individuals as defined in the Older Americans Act, 42 U.S.C. § 3001 et seq.

(c) The objective of the Division of Services for Aging and Adults with Physical Disabilities is to improve or maintain the quality of life for residents of Delaware at least 18 years of age with physical disabilities, or who are elderly. The Division is committed to the development and delivery of consumer-driven services. As such, these services will maximize independence through individual choice in the least restrictive environment possible, enable adults with physical disabilities and those who are elderly to continue living active and productive lives, and protect those who may be vulnerable and at risk.

(d) The Division shall have the following duties and functions:

(1) Serve as the focal point for the assessment, planning and development of service delivery systems designed to meet the needs of adults with physical disabilities and those who are elderly;

(2) Serve as an advocate for the needs of the elderly and adults with physical disabilities by supporting the individual, family and others who serve as the individual's support system through the provision and coordination of services designed to maximize independent living in the least restrictive manner possible;

(3) Provide information and training to those in the private and public sectors to increase awareness and encourage development of systems and services critical to improving the quality of life for the aging and adults with physical disabilities;

(4) Facilitate a strong service delivery system through promoting the creation of public/private partnerships which shall serve to develop, combine and maximize appropriate resources;

(5) Receive and disburse all funds available to the State from any source, including but not limited to the United States Government, to be used for the benefit of the aging and adults with physical disabilities, unless the receipt and disbursal of such funds is otherwise provided by law;

(6) Carry out a formal evaluation of the program to include, but not be limited to, organization, services, coordination, customer satisfaction, training and the role of the Advisory Council and its subcommittees after 2 years of operation, and report to the Secretary, the General Assembly and the Governor. In addition, the Division shall annually prepare a report on service requests, requests fulfilled, requests that could not be met and why and observed gaps in service delivery for the Secretary and the General Assembly; and

(7) The Division is authorized to solicit and accept contributions, grants, gifts, and bequests from individuals and/or organizations including, but not limited to, private foundations or alliances, nonpublic agencies, institutions, organizations, or businesses. All funds generated shall be retained by the Division in order to defray costs associated with the volunteer and community service activities and events of the Division. Funds received will not be used for employee salaries or benefits. All funds received are subject to audit by the Department of Health and Social Services and the Delaware Office of Management and Budget, and the employees of the Division are bound by § 5806 of this title when engaging in fundraising activities.

(29 Del. C. 1953, § 7923; 59 Del. Laws, c. 136, § 4; 60 Del. Laws, c. 251, §§ 2, 3; 69 Del. Laws, c. 345, § 4; 75 Del. Laws, c. 339, § 1; 75 Del. Laws, c. 385, § 1.)

§ 7920A. Division of Services for Aging and Adults with Physical Disabilities; Money Management Program.

(a) *Definitions.* — As used in this section, unless the context clearly indicates a different meaning:

(1) "Bill payer" shall mean a person appointed by the Division to provide 1 or more of those services set forth below for a low-income individual who is able to make responsible decisions about financial matters, but who needs assistance for any of the following:

a. Paying bills each month and keeping records;

b. Establishing a budget;

c. Opening, organizing and sending mail;

d. Check writing and balancing checkbook amounts;

e. Obtaining needed assistance from appropriate governmental agencies.

(2) "Representative payee" shall mean a person appointed by the United States Social Security Administration, the United States Office of Personnel Management, the United States Department of Veterans Affairs or the United States Railroad Retirement Board to provide 1 or more of the following financial management services, without compensation, in order to assist an individual who

is receiving government benefits but who is determined by the benefit-granting agency to be incapable of making certain financial decisions. The representative payee has responsibility for:

a. Allocating government benefits received by the individual in such individual's best interests, and providing for such individual's necessities, including but not limited to food, shelter and medical care;

b. Keeping an accurate record of the individual's financial transactions;

c. Maintaining responsibility and control over the individual's benefits, and signing all checks for expenditures from such government benefits; and

d. Referring the individual to other agencies if the individual needs additional assistance.

(b) *Money Management Program.* — (1) The Division may establish a Money Management Program to assist any low-income individual who is not able to manage such person's financial matters where there are no friends or relatives to assist such person in the management of financial affairs.

(2) The Division may administer the statewide Money Management Program; may provide such staff and other support for the program as its budget shall permit; and may, in accordance with the Division's rules and regulations, establish and direct an advisory council. The Division may negotiate bank services for the program.

(3) The Division shall have authority to monitor each bill payer and representative payee; may audit any transaction of any bill payer and any representative payee; and may review any or all bank statements or cancelled checks for any account managed by a representative payee or bill payor.

(c) *Volunteers; bill payers, representative payers.* — (1) The Division may designate unpaid volunteers, including but not limited to bill payers and representative payees, as information sources for the program, to inform interested persons and agencies about the program. The Division may provide for the training of bill payers and representative payees, and may otherwise assist such bill payers and representative payees.

(2) Any person acting as a bill payer or representative payee is also acting as a fiduciary, and is liable for any act or omission which constitutes the breach of any fiduciary duty or responsibility imposed by law.

(3) The Division shall safeguard participants through establishment of a screening system which includes, but is not limited to, the following features:

a. A standardized application comprehensively addressing each prospective bill payer and representative payee's background;

b. A criminal background check at state expense; and

c. A check of abuse, neglect, mistreatment and financial exploitation registries, including those authorized by Chapters 9 and 11 of Title 16.

(4) To effectively implement this screening system, the Division is vested with the following powers, duties and authority:

a. The Division shall require any person seeking to serve as a bill payer or representative payee under this chapter to share any and all information, including fingerprints, necessary to obtain a report of the person's entire criminal history record from the State Bureau of Identification and a report of the person's entire federal criminal history record;

b. Notwithstanding any requirements of Chapter 85 of Title 11 to the contrary, the State Bureau of Identification shall furnish information pertaining to the entire Delaware criminal history record of any person seeking to serve as a bill payer or representative payee under this chapter. Such information shall be provided to the Department of Health and Social Services pursuant to the procedures established by the Superintendent of the State Police;

c. Notwithstanding any contrary provision of Chapter 9 of Title 16, the Division is authorized to obtain child abuse and neglect registry information from the Department of Services for Children, Youth and Their Families pertaining to any person seeking to serve as a bill payer or representative payee under this chapter;

d. The Division shall adopt criteria through its regulations which shall disqualify a person from serving as a bill payer or representative payee under this chapter; and

e. The Division may adopt criteria through regulations authorizing exemption from this section for persons for whom a qualifying screening was conducted within the previous 5 years.

(5) Any person who either fails to make a full and complete disclosure on an application or a full and complete disclosure of any information required to obtain a registry or criminal background check as required in this section shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(d) *Memoranda of understanding.* — In order to obtain certain specialized assistance for the Program, the Division may enter into a memorandum of understanding with the legal counsel of any association which represents the interests of retired persons.

(73 Del. Laws, c. 168, § 1.)

§ 7921. Books, records; access; annual report of Governor's Council [Repealed].

(29 Del. C. 1953, § 7923; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 551, § 1; 59 Del. Laws, c. 136, § 3; 60 Del. Laws, c. 251, §§ 2, 3; 70 Del. Laws, c. 186, § 1; repealed by 84 Del. Laws, c. 201, § 10, effective Sept. 11, 2023.)

§ 7922. Exemptions.

The following positions set forth in this section shall be exempt from Chapter 59 of this title:

(1) Secretary of Health and Social Services;

(2) Director of Public Health;

(3) Director of the Division of Substance Abuse and Mental Health;

(4) Director of Social Services;

(5) Chief of Business Administration and General Services;

(6) Chief of Planning, Research and Evaluation;

(7) Director of Developmental Disabilities Services;

(8) Director of Child Support Services;

(9) Director of the Division of Services for Aging and Adults with Physical Disabilities;

(10) Director of State Service Centers;

(11) Director of Long-Term Care Resident Protection; and

(12) Deputy Secretary of the Department of Health and Social Services.

(29 Del. C. 1953, § 7924; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 551, § 1; 59 Del. Laws, c. 136, § 3; 60 Del. Laws, c. 251, § 4; 64 Del. Laws, c. 467, §§ 4, 5; 65 Del. Laws, c. 89, § 3; 69 Del. Laws, c. 345, § 6; 70 Del. Laws, c. 150, § 7; 73 Del. Laws, c. 41, § 1; 73 Del. Laws, c. 68, § 5; 73 Del. Laws, c. 97, § 6; 79 Del. Laws, c. 265, § 4; 80 Del. Laws, c. 234, § 27.)

§ 7923. Assumption of functions of prior agencies.

The Department, through appropriate divisions, subdivisions and offices, shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions vested by law in the State Board of Health, the Board of Trustees of the Delaware Hospital for the Chronically Ill, the Hospital Advisory Council, the Department of Mental Health, the Board of Trustees of the Department of Mental Health, the Department of Public Welfare, the Board of Welfare, the Commission for the Blind [repealed], and the Commission for the Aging immediately prior to June 12, 1970, and which are not otherwise specifically transferred to the Department by this chapter.

(29 Del. C. 1953, § 7925; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 551, § 1; 59 Del. Laws, c. 136, § 3; 60 Del. Laws, c. 207, § 1; 60 Del. Laws, c. 251, § 5; 64 Del. Laws, c. 108, § 3; 79 Del. Laws, c. 265, § 5; 83 Del. Laws, c. 455, § 5.)

§ 7924. Appeals.

Any and all rights of appeal now existing by law with respect to any act or acts constituting the exercise of any function or functions transferred to the Department or to any division or subdivision thereof shall continue to exist with respect to such act or acts as hereafter performed by the Department or by the division, subdivision or office to which such function is transferred and each such appeal shall be perfected in the manner heretofore provided by law.

(29 Del. C. 1953, § 7926; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 551, § 1; 59 Del. Laws, c. 136, § 3; 60 Del. Laws, c. 251, § 6.)

§ 7925. Definitions and references in other laws.

(a) All definitions and references to any commission, board, department, authority or agency which appear in any other act or law shall, to the extent that the same are consistent with this chapter and in connection with a function transferred to the Department, be construed as referring and relating to the Department of Health and Social Services as created and established by this chapter.

(b) All definitions and references to any director, commissioner, executive secretary, commission, board or council member or other similar person which appear in any other act or law shall, to the extent that same are consistent with this chapter, and in connection with a function transferred to the Department, be construed as referring or relating to such person or persons and their powers, duties and functions as established and created by this chapter.

(29 Del. C. 1953, § 7927; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 551, § 1; 59 Del. Laws, c. 136, § 3; 60 Del. Laws, c. 251, § 6.)

§ 7926. Annual report.

The Secretary of the Department shall make an annual report to the Governor and the General Assembly of the Department's operations and render such other reports as the Governor or General Assembly may from time to time request or as may be required by law.

(29 Del. C. 1953, § 7928; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 551, § 1; 59 Del. Laws, c. 136, § 3; 60 Del. Laws, c. 251, § 6.)

§ 7927. Misnomer of Department in donation.

Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Department if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey to the Department or to any commission,

board, department, authority, council or agency, to which, by this chapter, the powers, duties and functions have been transferred to the Department, the estate or interest therein expressed or described.

(29 Del. C. 1953, § 7929; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 551, § 1; 59 Del. Laws, c. 136, § 3; 60 Del. Laws, c. 251, § 6.)

§ 7928. Budgeting and financing.

(a) The Secretary, in cooperation with the division directors, shall prepare a proposed budget for the operation of the Department to be submitted for the consideration of the Governor and the General Assembly. The Department shall be operated within the limitation of the annual appropriation and any other funds appropriated by the General Assembly.

(b) Special funds may be used in accordance with approved programs, grants and appropriations.

(29 Del. C. 1953, § 7930; 57 Del. Laws, c. 301, § 1; 57 Del. Laws, c. 551, § 1; 59 Del. Laws, c. 136, § 3; 60 Del. Laws, c. 251, § 6.)

§ 7929. Division for the Visually Impaired.

(a) The Division for the Visually Impaired ("Division") has the power, duties, and functions necessary to provide services for persons with blindness and persons with visual impairment, including the powers, duties, and functions under this section, Chapter 21 of Title 31, and Chapter 23 of Title 31 [repealed.].

(b) The Division may establish, monitor, and oversee the operation of business programs for the purpose of providing training and employment for Delaware residents who are visually impaired under the Randolph-Sheppard Act (20 U.S.C. 107 et seq.). The business programs are known collectively as the "Business Enterprise Program" and may include vending, retail food services, meal preparation and distribution, concession stands, or other business programs that the Director of the Division may deem appropriate.

(1) The Division may promulgate rules and regulations to implement and operate the Business Enterprise Program. The rules and regulations must include provisions relating to participant eligibility, personnel management, fiscal controls, marketing plans, and enforcement of production quality standards.

(2) A participant in the Business Enterprise Program is not an employee of the Business Enterprise Program and may continue in the program only under the rules of the program. Each participant shall adhere to the rules and regulations that the Division promulgates.

(c) The Director of the Division is an exempt employee, and must be knowledgeable and skilled in the field of services to the visually impaired and responsive to the needs and concerns of that population.

(d) This State accepts the provisions and benefits of the Vocational Rehabilitation Act of 1973 (P.L. 93-112) (29 U.S.C. § 701 et seq.), as amended. The Department of Health and Social Services is a designated state agency, with the Secretary of the Department as the State Officer and the Division of the Visually Impaired as a designated state unit for all moneys from the Act that are designated for persons with visual impairment or persons with blindness. This is defined in a cooperative agreement dated December 1985 among the Department of Labor, Division for the Visually Impaired, and the Division of Vocational Rehabilitation. The Department of Health and Social Services shall cooperate with the United States Department of Education, Rehabilitation Services Administration, and, in accordance with all state laws, prepare the state plan and carry out the Rehabilitation Act of 1973 and its amendments.

(61 Del. Laws, c. 329, § 3; 69 Del. Laws, c. 291, § 172; 70 Del. Laws, c. 425, § 159; 73 Del. Laws, c. 310, § 17; 83 Del. Laws, c. 455, § 3; 84 Del. Laws, c. 233, § 59.)

§ 7930. Division of Child Support Enforcement [Repealed].

Repealed by 71 Del. Laws, c. 216, § 159, effective July 25, 1997.

§ 7931. Division of Medicaid and Medical Assistance.

(a) There is hereby established the Division of Medicaid and Medical Assistance under the direction and control of the Secretary of the Department of Health and Social Services.

(b) The mission of the Division of Medicaid and Medical Assistance is to maximize the well-being and quality of life for eligible low-income individuals and other vulnerable populations through the provision of overall leadership and direction in administering responsive, effective, and efficient health-care benefits.

(c) The Division of Medicaid and Medical Assistance shall have the power to perform and is responsible for the performance of all of the powers, duties, and functions specifically related to, Medicaid, the Delaware Healthy Children Program, the Delaware Prescription Assistance Program, the Chronic Renal Disease Program, and other health insurance related programs as administered through the Department of Health and Social Services.

(d) In the absence of an alternative agreement for a nonfee-for-service reimbursement mechanism approved by the Department of Health and Social Services between a home health-care nursing services provider and a Medicaid-contracted organization, all hourly home health-care nursing services paid for by Medicaid-contracted organizations will be reimbursed at a rate equal to or more than the rate set by the Division of Medicaid and Medical Assistance for equivalent services.

(e) The Division of Medicaid and Medical Assistance shall have the power to promulgate rules and regulations to implement this section.

(f) In the absence of an alternative agreement for a nonfee-for-service reimbursement mechanism approved by the Department of Health and Social Services between a home health or home care services provider and a Medicaid-contracted organization, all home health or home care services for Medicaid long-term care services and support providers paid for by Medicaid-contracted organizations will be reimbursed at a rate equal to or more than the rate set by the Division of Medicaid and Medical Assistance for equivalent services.

(75 Del. Laws, c. 350, § 183; 81 Del. Laws, c. 58, § 39; 81 Del. Laws, c. 146, § 1; 81 Del. Laws, c. 328, § 2; 83 Del. Laws, c. 234, § 1.)

Subchapter II

The Chronic Renal Diseases Program

§ 7932. Establishment of a program.

The State Department of Health and Social Services, hereafter referred to as the Department, shall establish a program for the care and treatment of persons suffering from chronic renal diseases. This program shall assist persons suffering from chronic renal diseases who require lifesaving care and treatment but who are unable to pay for such services on a continuing basis.

(29 Del. C. 1953, § 7931; 57 Del. Laws, c. 622, § 1; 59 Del. Laws, c. 136, § 3.)

§ 7933. Advisory Committee.

The Secretary of the Department of Health and Social Services, hereafter referred to as the Secretary, shall appoint a Renal Disease Advisory Committee, hereafter referred to as the Committee, to consult with the Secretary in the administration of this subchapter. The Committee shall be composed of 11 persons representing hospitals and medical centers which establish dialysis centers, voluntary agencies interested in kidney diseases, related public agencies, physicians licensed to practice medicine and the general public. Each member shall hold office for a term of 4 years and until a successor is appointed and qualified, except that the terms of the members first taking office shall expire, as designated at the time of appointment, 2 at the end of the first year, 3 at the end of the second year, 3 at the end of the third year and 3 at the end of the fourth year, after the date of appointment. Any person appointed to fill a vacancy occurring prior to the expiration of the term for which such person's predecessor was appointed shall be appointed for the remainder of such term. The Committee shall meet as frequently as the Secretary deems necessary, but not less than once each year. The Committee members shall receive no compensation, but shall be reimbursed for actual expenses incurred in carrying out their duties as members of this Committee.

(29 Del. C. 1953, § 7932; 57 Del. Laws, c. 622, § 1; 59 Del. Laws, c. 136, § 3; 70 Del. Laws, c. 186, § 1.)

§ 7934. Powers and duties of the Secretary.

The Secretary shall:

(1) With the advice of the Committee, develop standards for determining eligibility for care and treatment under this program;

(2) Assist in the development and expansion of programs for the care and treatment of persons suffering from chronic renal diseases, including dialysis and other medical procedures and techniques, which will have a lifesaving effect in the care and treatment of persons suffering from these diseases;

(3) Assist in the development of programs for the prevention of chronic renal diseases;

(4) Extend financial assistance to persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical and technical services necessary in caring for such diseases, including the renting or purchase of home dialysis equipment;

(5) Assist in equipping dialysis centers;

(6) Institute and carry on an educational program among physicians, hospitals, public health departments and the public concerning chronic renal diseases, including the dissemination of information and the conducting of educational programs concerning the prevention of chronic renal diseases and the methods for the care and treatment of persons suffering from these diseases.

(29 Del. C. 1953, § 7933; 57 Del. Laws, c. 622, § 1; 59 Del. Laws, c. 136, § 3.)

§ 7935. Supremacy.

All other laws or parts of laws now in effect inconsistent with this subchapter are repealed, superseded, modified or amended so far as necessary to conform to and give full force and effect to this subchapter.

(29 Del. C. 1953, § 7934; 57 Del. Laws, c. 591, § 57; 59 Del. Laws, c. 136, § 3.)

Subchapter III

Payment for Services

§ 7940. Financial liability of persons served by the Department.

(a) Any person committed to or accepting the services of any hospital, home, clinic or other facility of the Department and that person's spouse or parents in the order named, except for persons committed to a prison or correctional institution, shall at all times be jointly and severally liable for the full cost of the care, treatment or both provided such person, except as may be specifically set forth in this

section. Notwithstanding any other provision of the Delaware Code, parents and spouses of a patient shall not be required to pay all or part of any of the cost of care of any patient if:

(1) With respect to parental liability, the patient shall have attained the age of 18 years; or

(2) With respect to spousal liability, the patient shall have attained the age of 18 years and shall have been a patient in 1 or more of the institutions served by the Department for a period of 5 years.

(b) The "cost of care, treatment or both" per diem for an inpatient facility such as, but not limited to, a hospital or home shall be deemed to mean the total disbursements made by or on behalf of such facility during a fiscal year, divided by the number of patient-days during such fiscal year. Such cost shall be computed based on the experience of the previous fiscal year and the revised rate shall be charged beginning on the first day of the fourth month following the end of said fiscal year. In the event the inpatient facility has not been operational during the previous fiscal year, the "cost of care, treatment or both" shall be the amount determined by the Department within the guideline of available appropriations and anticipated patient-days. In the event an inpatient facility provides various services that have substantially different costs, and such different costs may be reasonably identified, the Department may determine the "cost of care, treatment or both" based upon the particular service provided. In the case of outpatient or clinic services, the "cost of care, treatment or both" shall be determined by the Department based upon the most recent available experience of actual cost.

(c) The Department is authorized and empowered to accept partial payments from any person committed to, or accepting the services of, any hospital, home clinic or other facility of the Department, or from any other person liable for the cost of care of such person, in an amount less than the full cost of care, treatment or both based upon the financial ability of such person or persons as determined by the Department. In determining financial ability to pay, the Department shall take into account the assets, liabilities, income, expenses, number of dependents of the entire family and any other relevant factors. The Department shall also promulgate such rules and regulations under subsection (i) of this section as may be necessary to insure that the enforcement of this obligation shall be as uniform as possible; provided, however, that such rules and regulations limit the financial liability of a spouse or parents to no more than 10 percent of their annual disposable income in any 12-month period of care or treatment.

(d) Except in cases committed by order of the courts of this State, the Department may require, before or after the patient is admitted or treated, the written agreement of those persons receiving or to receive care, treatment or both from the Department, and of those other persons who are liable under this section, concerning the payments required by this section. Such agreements may be reviewed from time to time at the request of the Department or the person liable and in any event shall be automatically reviewed at least once every 2 years and may be amended if the cost of care, treatment or both has changed or if the ability to pay of the person liable has changed in the judgment of the Department. The Department may require the person receiving or to receive care, treatment or both or from persons liable for the cost of care, treatment or both under this section such evidence of ability to pay as copies of federal income tax returns, tax withholding forms and statements of bank accounts and property holdings. Failure to provide such evidence may be grounds to refuse or terminate such care, treatment or both. Except in the case of the Delaware Hospital for the Chronically Ill, such evidence of ability to pay shall not be required of liable persons if they agree to pay the full cost of care, treatment or both and so long as such payments are timely rendered.

(e) Any court of this State committing a person to the jurisdiction of the Department, may, at its discretion, order said person, and such other persons liable for the payment of costs under this section over which the court has jurisdiction, to pay for the costs of care, treatment or both in such amounts as may be fixed by the Department under this subchapter.

(f) The Department, after full investigation of collectibility and/or reasons for nonpayment, shall proceed for the recovery of the moneys owed for such care, treatment or both in an action to be brought in any court of the State in the name of the Department, where such action is deemed justified. The Department of Justice of the State shall represent the Department in such cases and any costs to the State arising from such action shall be paid by the State Treasurer from moneys in the General Fund not otherwise appropriated.

(g) The Department may partially or totally waive liability for persons receiving services from a facility such as, but not limited to, a clinic when the Department determines that the cost of computing ability to pay and making collection would exceed the sums to be collected or when the Department determines that such liability would jeopardize the health of the community.

(h) In the event any person, juvenile or adult is committed to a prison or correctional institution, and in the event a court of this State has not ordered payment of the full cost of care, the Department may require such payments from such juvenile or adult while on a work release or similar program as it may deem appropriate provided that the total payment shall not exceed the actual cost of care while on the work release program.

(i) The Delaware Hospital for the Chronically Ill and any similar facility of the Department may continue, as heretofore, to refuse admission to persons adjudged to have adequate resources, either personally or from others legally liable for them, to secure such services from private facilities.

(j) The Secretary of the Department shall have the power to promulgate any rules and regulations not contrary to the laws of the State which the secretary deems necessary to carry out this section and such rules and regulations shall have the full force and effect of law.

(k) If it appears to the satisfaction of the Department that a person receiving or to receive care, treatment or both will be institutionalized for a long period of time and that the expected income of such person from all sources (including any portion of the cost of care to be paid by legally liable relatives) will be insufficient to pay for the full cost of care, treatment or both, the Department may require that all or part of the assets of such person be transferred and conveyed to the State to be applied to the cost of care as the same shall come

due, any balance thereof to be returned to such person or such person's estate upon such person's discharge or death. In carrying out this provision, the Department may bring suit in any court having jurisdiction to require the transfer of such assets and may also apply for the appointment of a guardian or trustee of such person. The court, after giving appropriate notice and after hearing the evidence, shall enter such order as it deems appropriate.

(l) Nothing herein contained shall be construed to prevent the Department from refusing to admit or from discharging any patient who, for reasons other than nonpayment of cost of care, treatment or both, in the opinion of the Department, does not qualify for admission under the law or who will not benefit from the care, treatment or both available, or whose presence in any such institution will be detrimental to others.

(m) In the event that any person is aggrieved by any decision of the Department with respect to the payment of fees, refusal of admission or discharge for other than medical reasons, the person may appeal to a Special Appeals Committee consisting of the Chairpersons of the respective advisory Councils to the Division of Developmental Disabilities Services and on Substance Abuse and Mental Health and Delaware Home and Hospital and Physical Health by petition in writing stating the substance of the decision appealed from, the facts in support of the appeal and the relief sought. The Department shall reply to the petition within 10 days. The Committee shall hold a hearing within 60 days and shall render its decision promptly. The Committee's decision shall be final and binding. The Committee may establish its own rules of evidence not inconsistent with this subchapter.

(29 Del. C. 1953, § 7940; 58 Del. Laws, c. 217; 59 Del. Laws, c. 48, § 6; 60 Del. Laws, c. 207, § 1; 64 Del. Laws, c. 166, § 1; 64 Del. Laws, c. 467, § 6; 68 Del. Laws, c. 418, §§ 1-3; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 41, § 1; 78 Del. Laws, c. 179, § 318.)

§ 7941. Disclosure of income.

Notwithstanding § 1241 [repealed] of Title 30, the Secretary of Finance shall, upon the written request of the Secretary of the Department of Health and Social Services, provide the Secretary with the gross and net income, as defined in Chapter 11 of Title 30, and all other available financial data concerning those persons who are liable under this subchapter for payments for the care, treatment or both of any persons in facilities operated by the Department of Health and Social Services and who are not paying the full cost of such care, treatment or both monthly. The Secretary shall certify that information so received shall be used only for the purpose of collecting sums due the State and any employee of the Department found guilty of disclosing such information for any other purpose shall be subject to the same penalties as provided in § 1241 [repealed] of Title 30.

(29 Del. C. 1953, § 7941; 58 Del. Laws, c. 217.)

Subchapter IV

Emergency Housing Fund

§ 7950. Emergency Housing Fund Administration Board.

The Emergency Housing Fund Administration Board is authorized to promulgate regulations and procedures and administer all funds collected in the Emergency Housing Assistance Fund. The Board will consist of:

(1) An administrator appointed by the Secretary of the Department of Health and Social Services as specified in § 8603 [repealed] of this title. This administrator will act as Chairperson of the Board.

(2) Five Board members shall be appointed by the Secretary for staggered terms and shall be composed of persons who have demonstrated an interest in emergency housing.

(3) This Board will review proposals and allocate funds. The Board will be responsible for monitoring expenditures, authorizing the adjustment of funds and reallocating funds from 1 organization to another. In order to be eligible for these funds, an organization must:

a. Be a private, nonprofit agency operating within this State.

b. Have a generally accepted system of accounting and must conduct an annual audit.

c. Agree to submit to a programmatic review and financial audit of their program each year that funds are received.

(64 Del. Laws, c. 425, § 2; 68 Del. Laws, c. 149, §§ 20, 21.)

§ 7951. Definitions.

(a) "Department" means the Department of Health and Social Services.

(b) "Emergency housing shelter" refers to a temporary housing intervention for a period of 90 days or less operated by a qualified organization that provides short-term housing and supportive services that address the needs of persons experiencing homelessness. The shelter must be a facility which meets all local building codes.

(64 Del. Laws, c. 425, § 2; 68 Del. Laws, c. 149, §§ 20, 22; 80 Del. Laws, c. 396, § 1.)

§ 7952. Voluntary funding of emergency housing program through income tax return check-off [Repealed].

Repealed by 73 Del. Laws, c. 179, § 5, effective July 12, 2001.

§ 7953. Emergency Housing Assistance Fund.

(a) There is hereby created a special fund, which shall be known as the Emergency Housing Assistance Fund of the Treasury of the State.

(b) All moneys received from the voluntary contribution system established in § 7952 [repealed] of this title shall be deposited in said Fund.

(c) The General Assembly shall make no appropriation into said Fund, but individuals and organizations may, from time to time, make contributions or bequests to the Fund.

(d) The moneys contained in said Fund shall be continuously transferred to the Department of Health and Social Services for the exclusive purpose of carrying out the objectives of §§ 7950-7953 of this title, including administration thereof.

(e) From time to time as determined by the Delaware State Clearinghouse Committee, the Department shall submit a detailed report to members of the Committee of revenues, expenditures and program measures for the fiscal period in question. Such report shall also be sufficiently descriptive in nature so as to be concise and informative. The Committee may cause the Department to appear before the Committee and to answer such questions as the Committee may require.

(64 Del. Laws, c. 425, § 2; 68 Del. Laws, c. 149, §§ 20, 25.)

§§ 7954, 7955. [Transferred].

Transferred.

Subchapter V

Minimum Standards for Congregate Housing Facilities for the Homeless

§ 7960. Definitions.

As used in this subchapter, except where the context clearly indicates a different meaning:

"Congregate housing facility" means a facility housing 8 or more homeless adults and children on a temporary basis.

(67 Del. Laws, c. 303, § 1; 71 Del. Laws, c. 357, § 4.)

§ 7961. Resident manager required.

The sponsor of any congregate housing facility shall be responsible for having a responsible adult resident manager on the premises of such facility at all times.

(67 Del. Laws, c. 303, § 1; 71 Del. Laws, c. 357, § 4.)

§ 7962. Maintaining records.

(a) The sponsor and resident manager of any congregate housing facility shall be responsible for maintaining a day-to-day record of residents of the facility, such record to include:

(1) The name, last known residence, and Social Security number, if any, of each resident of the facility; and

(2) The destination of each resident when the resident leaves the facility.

(b) The information contained in such record shall be confidential and shall not be disclosed except to authorized agents of the facility's public funding sources as required by the terms of their funding agreements or as a result of a court order.

(67 Del. Laws, c. 303, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 357, § 4.)

§ 7963. Premises to be kept clean.

The sponsor and the resident manager shall be responsible for keeping the interior and exterior premises of a congregate housing facility at all times in a clean and sanitary condition and in compliance with all federal, state or local laws, rules, and regulations relating to the cleanliness of multi-family dwellings in general.

(67 Del. Laws, c. 303, § 1; 71 Del. Laws, c. 357, § 4.)

§ 7964. Standard of conduct.

The sponsor and resident manager of each congregate housing facility shall be responsible for publishing and posting in prominent places a standard of conduct for residents which is not disruptive to others within the facility, to the community, or to the residents of neighboring residences or businesses. The use of alcohol or illegal drugs in such facilities is prohibited. Loud or boisterous behavior, music or other noise in violation of state or local noise laws, rules and regulations that deprives other residents of the quiet enjoyment of the facility shall be prohibited at all times, especially between sunset and sunrise.

(67 Del. Laws, c. 303, § 1; 71 Del. Laws, c. 357, § 4.)

§ 7965. Enlistment of services to assist residents.

The sponsor or resident manager of a congregate housing facility shall be responsible for making every effort to enlist the services of social agencies, public or private, to assist residents to move back into the mainstream of society, including, but not limited to, Alcoholics Anonymous, substance abuse counseling, employment counseling, and skills training.

(67 Del. Laws, c. 303, § 1; 71 Del. Laws, c. 357, § 4.)

§ 7966. Notification of authorities.

The sponsor or resident manager of each congregate housing facility shall be responsible for notifying the chief executive officer of the county or municipality in which the facility is located that it is, or intends to be, conducting such a facility and the location thereof.

(67 Del. Laws, c. 303, § 1; 71 Del. Laws, c. 357, § 4.)

§ 7967. Penalties.

Whoever violates the provisions of this subchapter is guilty of a violation and shall be fined not less than $50 nor more than $200 for a first offense and not less than $100 nor more than $500 for each subsequent like offense. The Superior Court shall have jurisdiction over all violations of this subchapter.

(67 Del. Laws, c. 303, § 1; 71 Del. Laws, c. 357, § 4.)

§ 7968. Enforcement authority.

The Department of Health and Social Services shall be responsible for enforcing the provisions of this subchapter.

(67 Del. Laws, c. 303, § 1; 68 Del. Laws, c. 149, § 29; 71 Del. Laws, c. 357, § 4.)

Subchapter VI

Division of Health Care Quality

§ 7970. Intent.

(a) It is the intent of the General Assembly that the primary purpose of this subchapter, known as the "Health Care Quality Act," is as follows:

(1) To ensure that individuals receiving health-care services in long-term, acute, or outpatient settings are safe and secure, receive quality care, and are free from abuse, neglect, mistreatment and financial exploitation.

(2) To promote the quality of care and quality of life for individuals receiving long-term, acute, or outpatient health-care services.

(3) To ensure that training programs for certified nursing assistants:

a. Comply with state and federal statutes and regulations.

b. Are regularly monitored for compliance.

c. Are subject to sanctions for violations.

(b) Further, it is the intent of the General Assembly to ensure that in carrying out the State's quality assurance services, the responsible state agencies and law-enforcement agencies will coordinate and communicate effectively and will respond to and investigate complaints in a timely and effective manner and undertake enforcement action, civil or criminal, as warranted.

(71 Del. Laws, c. 486, § 2; 77 Del. Laws, c. 382, § 1; 81 Del. Laws, c. 208; 84 Del. Laws, c. 514, § 56.)

§ 7971. Division of Health Care Quality.

(a) There is hereby established the Division of Health Care Quality within the Department of Health and Social Services.

(b) *Definitions. —*

(1) "Adult Abuse Registry" means a central registry of information established by § 8564 of Title 11 that relates to substantiated cases of adult abuse, neglect, mistreatment, or financial exploitation. Long-term care facility, home-care agency, adult day care facility, and prescribed pediatric extended care center employers must check the Adult Abuse Registry before hiring employees who would have direct access to residents and patients.

(2) "Department" means the Department of Health and Social Services.

(3) "Director" means the Director of the Division of Health Care Quality of the Department of Health and Social Services.

(4) "Division" means the Division of Health Care Quality of the Department of Health and Social Services.

(5) "Long-term, acute, or outpatient health-care services" means those services as defined in § 122(3)m., § 122(3)o., § 122(3)p., § 122(3)q., § 122(3)s., § 122(3)x., § 122(3)y., § 122(3)z., § 122(3)aa. of Title 16; Chapter 10 of Title 16; or Chapter 11 of Title 16.

(c) The purpose of the Division of Health Care Quality is to promote the quality of life of individuals receiving long-term, acute, and outpatient health-care services and to ensure that they are safe and secure, receive quality care, and are free from abuse, neglect, mistreatment, and financial exploitation.

(d) The Division has all of the following duties and functions:

(1) Establish and implement policies and procedures, promulgate regulations, enforce state statutes and regulations regarding the quality of care and quality of life of individuals receiving long-term, acute, and outpatient health-care services and refer federal violations to the appropriate authorities with recommendations for enforcement.

(2) License facilities and services on an annual basis and conduct a variety of surveys and inspections including regular, complaint, and unannounced or unexpected surveys and inspections to determine compliance with federal and state statutes and regulations.

(3) Receive and investigate complaints of abuse, neglect, mistreatment, financial exploitation, and other concerns which may adversely affect the health, safety, welfare, or rights of such individuals including alleged violations of federal and state statutes and regulations and in connection with such duties and functions has the authority to obtain all of the following:

a. An individual's hospital records in cases where the Division is engaged in an investigation or survey involving the care or treatment of the individual at a facility or agency licensed by the Division, and the individual has been admitted to a hospital from the facility or agency or discharged from a hospital to the facility or agency.

b. An individual's emergency medical system and paramedic records in cases where the Division is engaged in an investigation or survey involving the care or treatment of the individual at a facility or agency licensed by the Division, and the individual has been transported to a hospital from a facility or agency or from a hospital to a facility or agency.

(4) Provide for systematic and timely notification, coordinated investigation, and referral of abuse, neglect, mistreatment, and financial exploitation complaints to the appropriate law-enforcement agencies and the Attorney General's office.

(5) Protect the privacy of the individual receiving long-term, acute, or outpatient health-care services and that individual's family.

a. The Division shall establish guidelines regarding the disclosure of information concerning abuse, neglect, mistreatment, and financial exploitation involving long-term, acute and outpatient health-care services.

b. The Division may require persons to make written requests for access to records maintained by the Division.

c. The Division may only release information to persons who have a legitimate public safety need for such information and such information shall be used only for the purpose for which the information is released.

(6) Maintain the Adult Abuse Registry as established by § 8564 of Title 11.

(7) In conjunction with the Attorney General's Office, develop and conduct training for Department staff and providers of long-term, acute, or outpatient health-care services on applicable statutes and regulations, as well as provide other educational workshops, including accident prevention and health promotion training, and other technical assistance as needed.

(8) Promote and advocate for consumer, resident, and patient rights.

(9) Meet regularly with individuals receiving long term care services and their families.

(10) Publish a report, as determined by the Division, to the Governor, Secretary, and General Assembly on the Division's activities, including comprehensive data analysis and monitoring of trends in the quality of care and quality of life of individuals receiving long-term care services in Delaware.

(11) Conduct quality assurance demonstration projects.

(12) Provide updated consumer information materials on an ongoing and as needed basis.

(13) Establish, maintain, and publicize a 24-hour state-wide toll free telephone hotline operating at all times and capable of receiving reports of abuse, neglect, mistreatment, and financial exploitation.

(14) Regulate the certification of nursing assistants, by doing all of the following:

a. Certifying nursing assistants pursuant to Chapter 30A of Title 16 and certifying nursing assistants from out of state who meet Delaware requirements.

b. Suspending or revoking the certificate of a certified nursing assistant for cause. Cause to suspend or revoke a certificate includes the following:

1. Placement of a finding of abuse, neglect, mistreatment, and financial exploitation against a certified nurse assistant on the Delaware Certified Nurse Assistant Registry.

2. The suspension or revocation of the certified nursing assistant's certificate by another state.

3. Circumstances where the certificate was obtained using false information.

4. Failure to complete bi-annual educational requirements.

(15) Regulate nurse assistant training by doing the following:

a. Approve curricula and develop criteria and standards for evaluating such training programs.

b. Provide for surveys of such programs at such times as it may deem necessary.

c. Ensure that such programs meet the requirements of Chapter 30A of Title 16 and 42 C.F.R., Ch. IV, Subchapter G, Part 483.

d. Deny or withdraw approval from training programs for failure to meet approved curricula or other criteria.

e. Establish requirements for mandatory continuing education.

f. Provide public access through an online source to the pass rates of all approved training programs.

(16) The Division may impose civil penalties against any nurse assistant training program, whether approved or not, for violations of the provisions of this subchapter or of Chapter 30A of Title 16, or the regulations adopted under this subchapter or Chapter 30A of Title 16. The maximum civil penalty is $5,000 per violation.

a. In determining the amount of the penalty to be assessed, the Division shall consider all of the following:

1. The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation.

2. The history of violations committed by the person or the person's affiliate, employee, or controlling person.

3. The efforts made to correct the violation.

4. The culpability of the person or persons who committed the violation.

5. Whether a misrepresentation was made to the Division or to another person regarding any of the following:

A. The quality of services provided.

B. The academic performance of the program.

C. The identity of an owner or controlling person of the program.

6. Whether the program refused to allow a representative of the Division to inspect without notice at any time any of the following:

A. Any portion of the premises of the program.

B. Any documents, records, or files required to be maintained by the program.

7. Whether the program wilfully interfered with the work of a representative of the Division or with the enforcement of any statute or regulations.

8. Any other matter that affects the operating requirements of the program, or the educational experience of its students.

b. Each day of a continuing violation constitutes a separate violation.

c. All civil penalties collected under this subchapter must be remitted to the State Civil Penalty Trust Fund.

d. The Division may add the amount of the civil penalty to the licensing fee for the program. If the licensee refuses to make the payment at the time of the application for renewal of its license, the Division may not renew the license.

e. The Division may also proceed for the collection of the civil money penalty in an action brought in the name of the Department in any court of competent jurisdiction.

f. Any entity upon which a penalty is imposed may request an administrative hearing under Department regulations before such penalty becomes final.

1. The hearing officer for the administrative hearing may compel the attendance of witnesses and the production of evidence.

2. The finding by the hearing officer constitutes the final decision of the Department and is appealable, on the record, by either party to Superior Court.

(17) Develop a format, known as the Interagency Transfer Form, for exchange of information between health-care agencies and facilities regarding consumer, resident, or patient health conditions and care needs to ensure ongoing quality of care and consumer, resident, or patient centered care for the consumer, resident, or patient in any care setting.

(18) The Director, or the Director's designee, may issue subpoenas for named respondents or witnesses or documents, financial records, physical evidence, or any other source of evidence needed during the course of an investigation of a complaint or for a public hearing on a complaint. If a person subpoenaed fails to comply, the Division may compel compliance with the subpoena by filing a motion to compel in the Superior Court, which has jurisdiction to compel compliance.

(19) Regulate, oversee, and monitor "temporary staffing agencies," as defined under § 1102 of Title 16.

(71 Del. Laws, c. 486, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 489, § 1; 75 Del. Laws, c. 387, §§ 2, 5; 77 Del. Laws, c. 89, §§ 4, 6; 77 Del. Laws, c. 382, §§ 2, 3; 81 Del. Laws, c. 208; 84 Del. Laws, c. 411, § 2; 84 Del. Laws, c. 514, § 57.)

§ 7972. Background Check Center.

(a) *Purpose.*

(1) It is the purpose of this section to establish an electronic system (Background Check Center) for the consolidation of various data streams necessary to provide a prospective employer or a current employer with information related to the suitability for employment of a person who provides care or services as follows:

a. In any capacity, including as an employee, an agent, or an independent contractor working in a long-term care facility licensed under Chapter 11 of Title 16.

b. As an employee of a hospice agency, a home health agency, or a personal assistance services agency (home care agency) licensed under § 122(3)m., 122(3)o., and 122(3)x. of Title 16 working in a private residence.

c. As an employee of a prescribed pediatric extended care center licensed under § 122(3)q. of Title 16.

(2) It is the further purpose that the Background Check Center be self-supporting after the initial construction and initial operational phase.

(3) Utilization of the Background Check Center by an employer is mandatory to ensure that all individuals working in a long-term care facility, a home care agency, or a prescribed pediatric extended care center are subject to comprehensive screening and updating of their criminal record.

(4) The Background Check Center must be a reliable source of information which enables prompt decision making.

(5) Each person screened through the Background Check Center has a right of appeal.

(b) *Definitions.*

As used in this chapter:

(1) “Background Check Center” (“BCC”) means the electronic system which combines the data streams from various sources within and outside the State in order to assist an employer in determining the suitability of a person for employment in a long-term care facility, home care agency, or prescribed pediatric extended care center.

(2) “Department” means the Department of Health and Social Services.

(3) “Employer” means a person or other legal entity that employs individuals to work in long-term care facility, home care agency, or for a prescribed pediatric extended care center.

(4) “Home care agency” means all programs or agencies licensed under § 122(3)m., 122(3)o., and 122(3)x. of Title 16.

(5) “Long-term care facility” means any facility licensed under Chapter 11 of Title 16.

(6) “Prescribed pediatric extended care center” means any facility licensed under § 122(3)q. of Title 16.

(7) “Private residence” means the domicile of the individual in need of care, either personally owned by that individual or considered the place of residence of that individual.

(c) All employers who are required to secure criminal background checks under § 1141, § 1145, or § 1190 of Title 16 must process all applicants for employment through the BCC.

(d) The Department shall establish the appropriate fee to collect from BCC users.

(1) The fee shall approximate and reasonably reflect all costs necessary to defray the maintenance, operation, and development of the BCC.

(2) At the beginning of each calendar year the Department shall compute the appropriate fee and determine the effective date of any fee modification.

(3) All revenue generated under this section must be deposited in a special BCC fund account in the Department.

(e) Due process protections of notice and opportunity to be heard must be provided to an applicant for employment who wishes to appeal BCC errors, or to appeal the imposition of sanctions under § 1141 or § 1145 of Title 16. The hearing process shall be consistent with the Administrative Procedures Act, Chapter 101 of this title.

(f) (1) The Department may require all employees, contractors, and volunteers who are required to secure a background check under § 7999 of this title to process all background checks through the BCC.

(2) If the Department requires use of the BCC under paragraph (f)(1) of this section, the State Bureau of Identification shall provide the criminal background information and the Department of Services for Children, Youth and Their Families shall provide the Child Protection Registry check information to the individual and to the BCC for any background check required by § 7999 of this title.

(3) If the Department requires use of the BCC under paragraph (f)(1) of this section, The State Bureau of Identification (SBI) and the Delaware Justice Information System shall provide all subsequent Delaware criminal history of any individual subject to a background check under this section to the BCC. If the “Rap Back System” as defined by § 8502 of Title 11 is available to SBI, SBI shall provide all subsequent criminal history record information available through the Rap Back System to the BCC.

(78 Del. Laws, c. 303, § 1; 81 Del. Laws, c. 208; 81 Del. Laws, c. 280, § 183; 83 Del. Laws, c. 491, § 2.)

Subchapter VII

Occupational Health Program

§ 7980. Establishment of a program.

(a) The Division of Public Health under the direction and control of the Secretary of the Department of Health and Social Services in collaboration with the Department of Natural Resources and Environmental Control shall, by rules and regulations, establish an Occupational Health Program (“the Program”). The Program will include a statewide statistical assessment of the degree to which Delawareans are exposed to hazardous substances in the workplace and the nature of that exposure.

(b) The Program shall offer voluntary and confidential educational and consultation services for employers and employees in the public sector based on the Program’s assessment. In collaboration with the Department of Labor Office of Occupational Safety and Health Consultation, which conducts private sector consultations only, the Program will work to improve the workplace environment in Delaware.

(c) Any statewide statistical assessment of hazardous substances in the workplace shall not include specific findings from the Department of Labor’s Office of Occupational Safety and Health Consultation in the private sector.

(75 Del. Laws, c. 84, § 1.)

§ 7981. Assessment of occupational exposure to hazardous substances.

(a) For the purpose of this subchapter, a hazardous substance shall be considered any substance in the workplace which is capable of causing harm, which an employee may be exposed to, including, but not limited to, fumes, dust, mold and carcinogens.

(b) The Division of Public Health, in collaboration with the Department of Natural Resources and Environmental Control, shall develop criteria and methodology for the statewide statistical assessment of exposure to hazardous substances in the workplace.

(c) The Program shall, upon request, assess occupational exposure to hazardous substances in the workplace and compile data and information to be used for consultation and educational purposes.

(75 Del. Laws, c. 84, § 1.)

§ 7982. Education and outreach.

The Department of Labor's Office of Occupational Safety and Health Consultation currently provides educational programs for private sector employers concerning exposure to hazardous substances in the workplace, including the dissemination of information concerning the prevention, containment and removal of such hazards. The Department of Labor's Office of Occupational Safety and Health Consultation, in collaboration with the Department of Public Health, shall expand its current educational programs concerning exposure to hazardous substances in the workplace, including the dissemination of information concerning the prevention, containment and removal of such hazards, to include public sector employers.

(75 Del. Laws, c. 84, § 1.)

Subchapter VIII

Delaware Rare Disease Advisory Council

§ 7985. Delaware Rare Disease Advisory Council.

(a) The Delaware Rare Disease Advisory Council (Council) shall be established within the Office of the Lieutenant Governor to advise the General Assembly and other government agencies and departments, as appropriate, on the needs of individuals with rare diseases living in Delaware.

(b) The Council shall conduct the following activities to benefit rare disease patients in Delaware:

(1) Convene public hearings, make inquiries, and solicit comments from the general public in Delaware to assist the Council with a landscape or survey of the needs of rare disease patients, caregivers, and providers in the State.

(2) Consult with experts on rare diseases on the Council and externally, as needed, to develop policy recommendations to improve patient access to and quality of rare disease specialists, affordable and comprehensive health-care coverage, relevant diagnostics, timely treatment, and other needed services.

(3) Research and make recommendations to state agencies and insurers that provide services to persons with a rare disease on the impact of coverage, cost-sharing, tiering, or other utilization management procedures on the provision of treatment and care services.

(4) Research and identify priorities related to treatments and services provided to persons with rare diseases in Delaware, and develop policy recommendations that include safeguards against discrimination for these populations on such issues, including in disaster and public health emergency-related planning.

(5) Publish a list of existing, publicly-accessible resources on research, diagnosis, treatment, and education relating to the rare diseases in Delaware on the Council's website.

(6) Identify areas of unmet need for research that can inform future studies and reports by the Council.

(7) Establish resources for academic institutions, state agencies, health-care professionals, and other entities to provide training to employees on rare diseases in Delaware.

(8) Identify and distribute educational resources for health-care providers to foster recognition and optimize treatment of rare diseases in Delaware.

(9) Research and identify best practices to reduce health disparities and achieve health equity in the research, diagnosis, and treatment of rare disease in Delaware.

(10) Establish best practices and protocols to use during a state of emergency to aid rare disease patients.

(c) The Council is comprised of 14 members:

(1) One representative from an academic research institution in the State that receives any grant funding for rare disease research, appointed by the Governor.

(2) One member of the Delaware House of Representatives, appointed by the Speaker of the House.

(3) One member of the Delaware State Senate, appointed by the President Pro Tempore.

(4) The Secretary of the Department of Health and Social Services serving by virtue of position, or the Secretary's designee.

(5) The Insurance Commissioner serving by virtue of position, or the Commissioner's designee.

(6) One geneticist licensed and practicing in Delaware, appointed by the Governor.

(7) One registered physician, nurse, or advanced practice registered nurse licensed and practicing in Delaware with experience treating rare diseases, appointed by the Governor.

(8) One hospital administrator, or their designee, from an acute care hospital in Delaware that provides care to persons diagnosed with a rare disease, appointed by the Governor.

(9) A Delaware resident who either has a rare disease or has experience caring for a person with a rare disease.

(10) A second Delaware resident who either has a rare disease or has experience caring for a person with a rare disease.

(11) One administrator, or their designee, from a biopharma manufacturer, appointed by the Governor.

(12) One licensed genetic counselor, appointed by the Governor.

(13) A pharmacist with experience dispensing drugs used to treat rare diseases, appointed by the Governor.

(14) A member of the scientific community who is engaged in rare disease research, including, but not limited to, a medical researcher with experience conducting research on rare disease, appointed by the Governor.

(d) The Council shall annually elect a chair from among its members. A chair is eligible for reelection.

(e) Each council member is appointed for a term of 3 years. Each term of office expires on the date specified in the appointment; however, a member remains eligible to participate in council proceedings until the Governor replaces that member. The Governor may appoint a member for a term of less than 3 years to ensure that members' terms expire on a staggered basis.

(f) *Reporting. —*

(1) The Council shall submit a report to the Governor by July 26, 2026, and every 3 years thereafter.

(2) A draft of the annual report shall be provided for public comment and discussed at an open public meeting, before it is completed and submitted to the Governor.

(3) Reports shall:

a. Describe the accomplishments and progress of the Council in conducting the activities set forth above.

b. Provide recommendations to the Governor and General Assembly on ways to address the needs of people living with rare diseases in Delaware.

(g) The University of Delaware Institute for Public Administration shall staff the Council. An annual line item allocation of funding must be provided to the Council to support the operational services carried out by the University of Delaware.

(84 Del. Laws, c. 123, § 1.)

Subchapter IX

Sterile Needle and Syringe Service Program for the Prevention of AIDS and Other Diseases

(84 Del. Laws, c. 160, § 1.)

§ 7990. Definitions.

As used in this subchapter:

(1) "Director" means the Director of the State Division of Public Health.

(2) "Division" means the State Division of Public Health within the Department of Health and Social Services of the State.

(3) "HIV" means the Human Immunodeficiency Virus that causes Acquired Immune Deficiency Syndrome (AIDS).

(4) "Participant" means an injection drug user who obtains a sterile needle and syringe unit under the program established in § 7991 of this title.

(75 Del. Laws, c. 428, § 1; 78 Del. Laws, c. 86, § 1; 84 Del. Laws, c. 160, § 2.)

§ 7991. Establishment of program.

The Director of the State Division of Public Health shall maintain a sterile needle and syringe service program. The program is to be administered by the Director or the Director's designees. The Director may designate private providers of services to operate the program.

(75 Del. Laws, c. 428, § 1; 78 Del. Laws, c. 86, § 1; 84 Del. Laws, c. 160, § 3.)

§ 7992. Operation of the program.

The program shall:

(1) Operate for the purposes of:

a. Preventing the transmission of HIV, the Hepatitis B virus, and other blood borne diseases; and

b. Providing injection drug users with referrals to appropriate treatment and other health and social services programs.

(2) Provide needles and syringes on an as-needed basis, whereby a participant receives sterile needles and syringes based on need and usage.

(3) Be designed to prevent noninjection drug users from participating in the program.

(4) Be designed and maintained to provide maximum security of program sites and equipment, including security measures that shall be required to allow for: identification of program needles; a full accounting of the number of needles distributed; the number in storage; safe disposal of returned needles, and any other measures that may be required to control the use and dispersal of sterile needles and syringes, provided however that a participant may return used needles and syringes at any program site if more than 1 site is available.

(5) Include appropriate levels of staff expertise in working with injecting drug users and adequate staff training in providing community referrals, counseling, and preventive education.

(6) Include services to:

a. Educate the participants about the dangers of contracting HIV or hepatitis viruses through needle-sharing practices and unsafe sexual behaviors;

b. Provide HIV testing and other communicable disease testing as appropriate when available;

c. Provide a linkage for referrals to drug counseling and treatment services, and follow-up to those referrals to assure that participants are retained in care and receive available treatment.

(7) Establish procedures for identifying participants consistent with the confidentiality provisions of this subchapter.

(8) Establish a method of identification and authorization for program staff members who have access to hypodermic needles, syringes, or program records.

(9) Program structure and delivery methods will be designed in response to the local community in which the program operates.

(10) [Repealed.]

(75 Del. Laws, c. 428, § 1; 78 Del. Laws, c. 86, § 1; 80 Del. Laws, c. 398, § 1; 84 Del. Laws, c. 160, § 4.)

§ 7993. Criminal liability.

(a) Distribution or return of needles and syringes under the sterile needle and syringe service program is exempt from the provisions of § § 4762, 4771, and 4772 of Title 16 for the participant or for the employees of the Division or designated program staff, whenever the possession or distribution of the controlled paraphernalia or hypodermic syringe or needle is a direct result of the employee's or participant's activities in connection with the work of the program authorized under this subchapter.

(b) Notwithstanding the provisions of subsection (a) of this section, a program staff member or program participant is not immune from criminal prosecution for:

(1) The redistribution of hypodermic needles or syringes in any form;

(2) Any activities not authorized or approved by the program; or

(3) Violation of laws prohibiting or regulating the use, possession, dispensing, distribution, or promotion of controlled substances.

(75 Del. Laws, c. 428, § 1; 78 Del. Laws, c. 13, § 50; 78 Del. Laws, c. 86, § 1; 84 Del. Laws, c. 160, § 5.)

§ 7994. Oversight Committee.

The Director shall appoint an Oversight Committee for the program to provide assistance and advice in the oversight of the program. The Committee shall include: 1 representative of law enforcement from each county in Delaware and 1 representative of law enforcement from the City of Wilmington; 1 physician; 1 injecting drug user or former injecting drug user from each county in Delaware and the City of Wilmington, and up to 2 other individuals who the Director determines to be appropriate for appointment; 1 legislator from the Senate appointed by the President Pro Tem and 1 legislator from the House of Representatives appointed by the Speaker of the House; 1 elected official from each county in Delaware and the City of Wilmington; and 1 citizen from each county in Delaware and the City of Wilmington. The Committee shall meet periodically to monitor the progress and effectiveness of the program and to examine data compiled by the program pursuant to § 7995 of this title.

(75 Del. Laws, c. 428, § 1; 78 Del. Laws, c. 86, § 1; 80 Del. Laws, c. 398, § 1.)

§ 7995. Data collection and program reports.

The program shall collect the following data for the Director and the Oversight Committee:

(1) Information on the number of participants served and the number of needles and syringes distributed;

(2) A demographic profile of the participants served, including but not limited to: age, sex, ethnicity, area of residence, types of drugs used, length of drug use, and frequency of injection;

(3) The number of participants entering drug counseling and treatment, and the number of referrals made by the program for drug counseling and treatment;

(4) Data on participants regarding HIV testing and other communicable disease testing, counseling, or other social services;

(5) Assessment of the impact of the program on needle and syringe sharing and other high risk behaviors;

(6) Impact on the transmission of HIV and hepatitis infection among injection drug users and their contacts;

(7) Other data as requested by the Director or Oversight Committee to assess the cost effectiveness and strengths and weaknesses of the program.

(75 Del. Laws, c. 428, § 1; 78 Del. Laws, c. 86, § 1; 80 Del. Laws, c. 398, § 1.)

§ 7996. Identification of participants and confidentiality.

(a) Each program participant shall be issued an identification card with an identification number. The identification number shall be cross-indexed to a confidential record containing pertinent data on the participant.

(b) Information obtained by the program that would identify program participants, including program records is:

(1) Confidential;

(2) Not open to public inspection or disclosure; and

(3) Not discoverable in any criminal or civil proceeding.

(c) Upon the written consent of a program participant, information obtained by the program may be released or disclosed to a person or agency as directed by the participant.

(d) If a program participant raises the issue of participation in the program either as a subject matter or legal defense in an administrative, civil, or criminal proceeding, the program participant waives the confidentiality of identity provided under subsections (a) and (b) of this section.

(75 Del. Laws, c. 428, § 1; 78 Del. Laws, c. 86, § 1.)

Subchapter X

Office of Financial Empowerment

§ 7997. Office of Financial Empowerment.

(a) The Office of Financial Empowerment is hereby established within the Office of the Secretary, Department of Health and Social Services.

(b) As used in this section:

(1) "Office" means the Office of Financial Empowerment.

(2) "Secretary" means the Secretary of the Department of Health and Social Services.

(c) The Office is established to address financial literacy and empowerment issues for the following purposes:

(1) To facilitate appropriate forums, programs or initiatives designed to educate the public regarding financial literacy and empowerment and provide personal financial coaching to economically vulnerable Delawareans.

(2) To assist the Secretary in identifying, coordinating and establishing priorities for programs, services, and resources the State should provide for financial literacy and personal financial empowerment.

(3) To serve as a resource to a broad variety of organizations in Delaware, including state agencies, employers, educational institutions, and nonprofits, for information and services regarding financial literacy and empowerment.

(4) To provide relevant research information on economic security and financial empowerment and data conducted or compiled by Delaware Health and Social Services and other entities in collaboration with the Department.

(5) To seek funding from private or governmental entities to carry out the purposes of this chapter.

(6) To prepare materials for publication and dissemination to the public on financial literacy and empowerment.

(7) To conduct public educational forums in Delaware to raise public awareness and to educate citizens about financial literacy and empowerment.

(8) To coordinate the activities and programs of the Office with other entities that focus on financial literacy and empowerment, including other state agencies.

(d) The structure of the Office of Financial Empowerment will be determined by the Secretary, and such other employees as shall be determined by the Secretary.

(80 Del. Laws, c. 82, § 1.)

Subchapter XI

Background Checks for Employees, Contractors, and Volunteers

(83 Del. Laws, c. 491, § 1.)

§ 7998. Purpose; application; definitions.

(a) The purpose of this subchapter is to protect the safety and well-being of children who receive services from the Department of Health and Social Services by requiring individuals who visit children in their homes and in the community or have regular, direct access to children or adolescents under the age of 18 to submit to a criminal background check.

(b) All of the following individuals must submit to a criminal background check:

(1) A current employee, contractor, or volunteer of the Department who has not completed a criminal background check.

(2) A current employee of the Department who is seeking a promotion within the same program or another child-serving program.

(3) An individual seeking to become an employee, contractor, or volunteer of the Department.

(4) A current employee, contractor, or volunteer of the Department who the Department has a reasonable basis to suspect has been arrested for a disqualifying crime since becoming employed or commencing work with the Department.

(5) All students volunteering for the Department, including those completing required clinical hours.

(c) As used in this subchapter:

(1) “Child Protection Registry” means as defined under § 921 of Title 16.

(2) “Criminal background check” means a report of an individual’s federal and state criminal history record from the Delaware State Bureau of Identification and the Federal Bureau of Investigation.

(3) “Conviction” or “convicted” means as defined under § 902 of Title 16.

(4) “Department” means the Department of Health and Social Services.

(5) “Direct access” means the opportunity to have personal, unsupervised contact with persons receiving care or education during the course of one’s assigned duties.

(6) “Disqualifying criminal conviction” means those convictions set forth in § 309(d)(1) of Title 31 and the length of prohibition is the same as that set forth under that paragraph.

(d) This subchapter does not apply to individuals who are otherwise required by state or federal law or regulation to submit to a background check.

(83 Del. Laws, c. 491, § 1.)

§ 7999. Background checks for employees, contractors, and volunteers of the Department.

(a) An employee, contractor, or volunteer of the Department who visits children in their homes and in the community or has regular, direct access to children or adolescents under the age of 18 is required to obtain a background check.

(b) An individual who has a disqualifying criminal conviction or is on the Child Protection Registry at Level III or Level IV may not be an employee, contractor, or volunteer for the Department in any capacity where that individual would visit children in their home or in the community or have regular, direct access to children or adolescents under the age of 18.

(c) An employer may not employ an employee, contractor, or volunteer for work with the Department, if that individual will visit children in their homes and in the community or have regular, direct access to children or adolescents under the age of 18, before obtaining a criminal background check. The criminal history of any individual not employed directly by the Department must be provided to the Department upon the individual’s commencement of work. The Department shall have the right to review every criminal background check obtained under this subchapter and make its own determination of the individual’s qualification for employment. If the Department determines that an individual has a disqualifying criminal conviction, the individual may not continue in employment.

(d) An employer may conditionally hire an employee, contractor or volunteer covered by this subchapter who has been fingerprinted pending the determination of suitability for employment. An employer may not employ or continue to employ an individual with a disqualifying criminal conviction. Subject to the Department’s right to review every background check obtained under this subchapter, each employer is responsible for making the determination of suitability for employment.

(e) Costs associated with obtaining a criminal background check shall be borne by the employee, contractor, or volunteer or prospective employee, contractor, or volunteer.

(f) The Department shall promulgate regulations to implement this subchapter and may develop rules or procedures governing the authorization of a contractor covered by this subchapter to provide the Department with the results of a background check required under this subchapter at the request of a current or potential employee, volunteer, or contractor.

(g) The State Bureau of Identification shall provide the criminal background information and the Department of Services for Children, Youth and Their Families shall provide the Child Protection Registry check information required by this section to the individual and the employer or prospective employer, unless the Department requires that background checks required under this section be processed through the Background Check Center pursuant to § 7972 of this title. The State Bureau of Identification and the Delaware Justice Information System shall provide all subsequent Delaware criminal history of any individual subject to a background check under this section to the employer or prospective employer. If the “Rap Back System” as defined by § 8502 of Title 11 is available to SBI, SBI shall provide all subsequent criminal history record information available through the Rap Back System to the employer or prospective employer.

(83 Del. Laws, c. 491, § 1.)

Part VIII
Departments of Government

Chapter 79A
Cemetery Registration and Distressed Cemetery Fund

§ 7901A. Objectives.

The primary objective of this chapter is to provide for the registration of cemeteries in Delaware. The secondary objectives are to appropriately refer complaints from the public relating to cemeteries and to create a fund that can be used to ameliorate the conditions in a distressed cemetery.

(76 Del. Laws, c. 317, § 1; 79 Del. Laws, c. 116.)

§ 7902A. Definitions [For application of this section, see 84 Del. Laws, c. 261, § 16].

As used in this chapter unless otherwise stated:

(1) "Abandoned cemetery" means a cemetery where there is no owner of record in the respective county's recorder of deeds records.

(2) "Board" means the Cemetery Board established in this chapter.

(3) "Cemetery" means land or structure used or intended to be used for the interment or entombment of human remains including facilities used for the final disposition of final remains following cremation or "natural organic reduction," as defined under § 3101 of Title 16.

(4) "Cemetery company" means a person engaged in the business of 1 more of the following:

a. Selling or offering for sale any grave or entombment right in a cemetery and representing to the public that the entire cemetery property, a single grave, or entombment right therein will be indefinitely cared for.

b. Maintaining a facility used for the interment of human remains, whether a full body, cremated remains, or remains following "natural organic reduction," as defined under § 3101 of Title 16.

(5) "Department" means Department of Health and Social Services.

(6) "Distressed cemetery" means any land or structure used or intended to be used for the interment or entombment of human remains including facilities used for the final disposition of cremated remains or remains following "natural organic reduction," as defined under § 3101 of Title 16, whereby the owner lacks sufficient financial resources for the maintenance or preservation of the cemetery as determined by the Board. An abandoned cemetery may qualify as a distressed cemetery if registered with the State by a responsible party or volunteer.

(7) "Distressed Cemetery Fund" or "Fund" means the money collected under this chapter for maintenance or preservation of a distressed cemetery.

(76 Del. Laws, c. 317, § 1; 79 Del. Laws, c. 116; 84 Del. Laws, c. 261, § 14.)

§ 7903A. Cemetery Board.

(a) There is established a Cemetery Board that shall consist of 5 members appointed by the Secretary of the Department of Health and Social Services including 3 who are owners or operators of cemeteries and 2 who are public members. Each member shall serve for a term of 3 years, and may successively serve additional terms. Any person appointed to fill a vacancy on the Board shall hold office for the remainder of the unexpired term of the former member.

(b) Members of the Board shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties, to the extent that funds are available and the expenditures are in accordance with state laws. A Chairperson of the Board shall be chosen by members of the Board from among its members, shall serve in that capacity for a term of 3 years, and shall be eligible for reelection.

(c) The Board shall hold regularly scheduled meetings at least twice each year, and at such times as the Chairperson deems necessary; or at the request of a majority of the Board members.

(76 Del. Laws, c. 317, § 1; 79 Del. Laws, c. 116.)

§ 7904A. Powers and duties.

The Cemetery Board shall have authority to:

(1) Promulgate rules and regulations necessary to implement this chapter;

(2) Designate the registration form to be used by all registrants;

(3) Administer the Distressed Cemetery Fund;

(4) Designate the form to be submitted by applicants for assistance from the Fund;

(5) Designate a cemetery as "distressed" based on standards set forth herein and in the rules and regulations;

(6) Authorize payment to a distressed cemetery from the Fund. Decisions can be conditional but the conditions must be related to the specific project in question;

(7) Require a thorough accounting of each recipient's use of money from the Fund;

(8) Receive and forward to appropriate agencies of the State, or other organizations, complaints from any person relating to a Delaware cemetery;

(9) Address specific cemetery issues as requested by the Governor or the General Assembly.

(76 Del. Laws, c. 317, § 1; 79 Del. Laws, c. 116.)

§ 7905A. Records.

The Department shall keep a register of cemeteries in this State and records relating to meetings of the Board.

(76 Del. Laws, c. 317, § 1.)

§ 7906A. Registration required.

All cemetery companies and cemetery owners in this State shall register every 5 years or upon change of ownership with the Cemetery Board and pay the registration fee determined by Department of Health and Social Services in an amount that approximates and reasonably reflects the costs necessary to defray the expenses of the Board. A volunteer may register an abandoned cemetery.

(76 Del. Laws, c. 317, § 1; 79 Del. Laws, c. 116.)

§ 7907A. Distressed Cemetery Fund.

(a) The Distressed Cemetery Fund is funded by adding $2.00 to the fee established in § 3132 of Title 16 for each copy of a certificate of death. Individuals and organizations may also make contributions or bequests to the Fund.

(b) Administrative support shall be provided by the Division of Public Health of the Department of Health and Social Services.

(c) The Office of Auditor of Accounts shall audit the Distressed Cemetery Fund at least once every 5 years.

(76 Del. Laws, c. 317, § 1; 85 Del. Laws, c. 165, § 1.)

Part VIII
Departments of Government
Chapter 80
Department of Natural Resources and Environmental Control
Subchapter I
Natural Resources and Environmental Control

§ 8001. Establishment of Department of Natural Resources and Environmental Control.

A Department of Natural Resources and Environmental Control is established and shall have, in addition to the other powers, duties and functions vested in the Department by this chapter, the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the Highway Department pursuant to Chapter 45 of Title 7.

(29 Del. C. 1953, § 8001; 57 Del. Laws, c. 302, § 1; 57 Del. Laws, c. 739, § 221A.)

§ 8002. Secretary; division directors; Acting Secretary; appointment.

(a) The administrator and head of the Department is the Secretary of the Department of Natural Resources and Environmental Control ("Secretary"), who must be a person qualified by training and experience to perform the duties of the office.

(1) The Secretary is appointed, confirmed, and holds office as provided in § 10 of Article III of the Delaware Constitution.

(2) The Secretary is to be paid an annual salary as determined by the General Assembly in the annual appropriations act.

(3) The Secretary must obtain and retain residency in this State as provided in § 10 of Article III of the Delaware Constitution.

(b) In the event the position of Secretary is vacant, the Governor, by appointment, shall have the power to fill the position or positions of division director as are vacant. Directors so appointed shall serve at the pleasure of the Governor, and, upon the position of Secretary being filled, such directors may be removed by the Secretary with the written approval of the Governor.

(c) In the event of death, resignation, temporary incapacity or removal of the Secretary and prior to the appointment of a successor, the Governor may appoint the Deputy Secretary of the Department to serve as Acting Secretary. The Secretary or the Acting Secretary may, during an absence from the State, appoint the Deputy Secretary or a Division Director of the Department to serve as Acting Secretary during such absence. In either case, the Acting Secretary shall have all the powers and shall perform all the duties and functions of the Secretary during the absence or incapacity or until a successor is duly qualified and appointed.

(29 Del. C. 1953, § 8002; 57 Del. Laws, c. 302, § 1; 69 Del. Laws, c. 291, § 225; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 140, § 2; 72 Del. Laws, c. 395, § 275; 84 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 455, § 6; 85 Del. Laws, c. 43, § 1.)

§ 8003. Powers, duties and functions of the Secretary.

The Secretary may:

(1) Supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, including an Office of Natural Resources and an Office of Environmental Protection, functions, and employees. The Office of Natural Resources may include the Divisions of Fish and Wildlife, Parks and Recreation, and Watershed Stewardship. The Office of Environmental Protection may include the Divisions of Air Quality, Waste and Hazardous Substances, and Water.

(2) Appoint and fix the salary, with the written approval of the Governor, of the following personnel, who may be removed from office by the Secretary, with the written approval of the Governor, and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary:

a. A Deputy Secretary position in the Department who shall be known as the Deputy Secretary and who shall be qualified by training and experience to perform the duties of the office;

b. A Director of the Division of Fish and Wildlife, who shall be known as the Director of Fish and Wildlife and who shall be qualified by training and experience to perform the duties of the office;

c. A Director of the Division of Parks and Recreation, who shall be known as the Director of Parks and Recreation and who shall be qualified by training and experience to perform the duties of the office;

d. A Director of the Division of Watershed Stewardship, who shall be known as the Director of Watershed Stewardship and who shall be qualified by training and experience to perform the duties of the office;

e. A Director of the Division of Air Quality, who shall be known as the Director of Air Quality and who shall be qualified by training and experience to perform the duties of the office;

f. A Director of the Division of Water, who shall be known as the Director of Water and who shall be qualified by training and experience to perform the duties of the office;

g. A Director of the Division of Waste and Hazardous Substances who shall be known as the Director of Waste and Hazardous Substances and who shall be qualified by training and experience to perform the duties of the office; and

h. [Repealed.]

i. A Director of the Division of Climate, Coastal and Energy, who shall be known as the Division of Climate, Coastal and Energy, who shall serve as the State Energy Coordinator and who shall be qualified by training and experience to perform the duties of the office.

(3) Appoint such additional personnel as may be necessary for the administration and operation of the Department. Those positions in the classified service shall be hired through the Office of Personnel. Those positions not in the classified service shall not be hired through the Office of Personnel and shall not receive an appointment exceeding 180 days in any calendar year. No pro rata share of employee administration costs shall be paid to the Office of Personnel;

(4) Establish, consolidate, abolish or transfer or combine the powers, duties and functions of the divisions, subdivisions and offices within the Department as the Secretary, with the written approval of the Governor, may deem necessary, provided that all powers, duties and functions required by law shall be provided for and maintained;

(5) Make and enter into any and all contracts, agreements or stipulations, and retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract, consulting, research, technical and other services and facilities, whenever the same shall be deemed by the Secretary necessary or desirable in the performance of the functions of the Department and whenever funds shall be available for such purposes. All necessary legal services shall be provided pursuant to Chapter 25 of this title;

(6) Delegate any of the Secretary's powers, duties or functions to a director of a division except the Secretary's power to remove employees of the Department or to fix their compensation;

(7) Establish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State;

(8) Maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department;

(9) Adopt an official seal or seals for the Department;

(10) To require, prior to any exploration or exploitation of offshore minerals, or any pumping or transfer operation of offshore minerals from a ship to another ship, or from a ship to land, or vice versa, that a bond in the amount of at least $1,000,000 be posted to secure to the State any damages and claims arising from the operations;

(11) The Secretary is empowered to administer and distribute funds in the form of grants to qualified agencies for the construction of treatment works from such funds as may be appropriated from time to time for this purpose.

a. *Definitions.* — 1. "Council" shall mean the Water Infrastructure Advisory Council.

2. "Department" shall mean the Department of Natural Resources and Environmental Control.

3. "Inflow and infiltration" shall mean any rainwater, melted snow, ground water or stream water entering a sanitary sewer system designed to transport sewage and industrial wastes only.

4. "Qualified agency" shall mean any legally incorporated town or city, Levy Courts or other governments of the counties, state agencies, nonprofit corporations providing water or wastewater services as a regulated utility pursuant to a certificate of public convenience and necessity granted by the Public Service Commission, and sewer districts authorized by law and organized to provide publicly owned and operated treatment works.

5. "Secretary" shall mean the Secretary of the Department of Natural Resources and Environmental Control or the Secretary's duly authorized representative.

6. "Treatment works" shall mean any device and system used in the storage, treatment, recycling and reclamation of municipal sewage, "domestic wastewater" as defined in Chapter 60 of Title 7, or industrial wastes of a liquid nature, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power and other equipment, and their appurtenances; extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities and improvements to exclude or minimize inflow and infiltration.

b. *Treatment works projects.* — 1. The Secretary shall promulgate procedures for the administration and distribution of grants.

2. The State's share of any treatment works shall be a minimum of 25% of the eligible costs as determined by the Environmental Protection Agency pursuant to 33 U.S.C. § 1251 et seq., only if:

A. The treatment works, having received federal approval, has awarded contracts for start of construction after January 1, 1970;

B. The treatment works has received a grant offer from the Environmental Protection Agency prior to October 18, 1972; or

C. The treatment works has received a grant offer from the Environmental Protection Agency after September 30, 1984, and the treatment works project has not been segmented or phased prior to October 1, 1984, entitling it to a 75% federal grant.

3. The state's share of any treatment works which has received a grant offer from the federal government pursuant to § 202 of PL 92-500 [33 U.S.C. § 1282] shall be a minimum of 10% of the treatment works cost. The acquisition of real property shall not be included in the project cost.

4. The state's share of any treatment works may be reduced by the Secretary if the cumulative share of state and federal grants exceed 85% of the total treatment works costs.

5. The Secretary may, with the consent of the Governor, make emergency grants and/or loans to any treatment works if the qualified agency demonstrates, to the satisfaction of the Secretary, the need for such funds. No project shall receive more than $33^{1}/_{3}$ percent of the total project cost as state grants except as provided in paragraph (11)c.2.B. of this section.

6. No treatment works project shall receive a state grant unless it is certified by the Secretary to receive priority for funding based on the priority list.

c. *Inflow and infiltration control.* — 1. The Secretary shall promulgate procedures for making grants to qualified agencies for the purpose of reducing infiltration and inflow into existing sewer systems.

2. No inflow and infiltration reduction project shall receive more than:

A. 10% of the costs of such a project if the project also receives a federal grant;

B. 50% of the costs of such a project if the project is required by the Department to improve the performance of the sewerage system and federal funds are not available;

C. The cost of legal, engineering and administrative services, and the cost of television inspection shall be included in the cost of the inflow and infiltration reduction project.

d. *Priority list.* — 1. The Secretary shall, at least annually, submit to the Council a list of treatment works projects and inflow-infiltration reduction projects. The list shall be comprised of applications submitted by qualified agencies pursuant to procedures promulgated by the Secretary and arranged in an order of priority.

2. The Council shall hold a public hearing on the list submitted by the Secretary. The Council shall review the testimony received and comment upon, approve or rearrange the priority list. While rearranging the priority list, the Council shall give due recognition to regulations promulgated by the Department and the United States Environmental Protection Agency. The Secretary shall make grants utilizing the priority list and all applicable procedures and regulations.

3. The Secretary's list shall become the approved list if the Council fails to hold a hearing, comment upon, approve or rearrange the list within 30 days of submission to the Council.

e. *Appropriations and disbursements.* — The Secretary may allocate up to 15% of the total funds appropriated by the General Assembly for state grants to fund projects specified in paragraph (11)c. of this section.

f. *Advancements.* — 1. The Secretary may allocate up to 5% of the total funds appropriated by the General Assembly for state grants to a revolving advancement fund.

2. The Secretary may adopt procedures for providing advancement to qualified agencies for the purpose of initiating the necessary planning studies required under the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. § 1314 et seq.) and the federal grant regulations promulgated thereunder, or for state funded projects. A qualified agency may receive an advancement when it is demonstrated by such agency to the satisfaction of the Secretary that the referenced planning activities place an undue financial burden on the agency.

3. When a qualified agency receives federal and/or state grants for a project for which an advancement is made, and construction of the project commences, the amount of the advancement shall be subtracted from the state grant payment. In no event shall an advancement under this paragraph entitle a qualified agency to a greater amount of state grant moneys than specified in this paragraph.

4. In the event a qualified agency fails to proceed with the construction of project after the completion of necessary planning studies, the Secretary may seek recovery of moneys advanced to the qualified agency. If the qualified agency refuses to return advancement moneys after written request by the Secretary, the Secretary may seek the recovery of such advancement money in a civil lawsuit in the Superior Court.

(12) The Secretary is empowered to administer a state revolving loan program in accordance with the requirements set forth in Title VI of the Federal Water Pollution Control Act [33 U.S.C. § 1381 et seq.].

a. *Definitions.* — 1. "Delaware Water Pollution Control Revolving Fund" shall mean the special fund created pursuant to this subsection.

2. "Department" shall mean the Department of Natural Resources and Environmental Control.

3. "Federal Water Pollution Control Act" shall mean the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. and regulations promulgated thereunder.

4. "Person" shall mean any individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, state, municipality, commission, political subdivision of a state or any interstate body. For purposes of this subsection, the term "municipality" includes a nonprofit corporation providing water or wastewater services as a regulated utility pursuant to a certificate of public convenience and necessity granted by the Public Service Commission.

5. "Secretary" shall mean the Secretary of the Department of Natural Resources and Environmental Control.

b. *Delaware Water Pollution Control Revolving Fund.* — There is hereby established a "Delaware Water Pollution Control Revolving Fund" as contemplated by and to be administered pursuant to Title VI of the Federal Water Pollution Control Act. All federal capitalization grants received pursuant to the Federal Water Pollution Control Act, any state reallocations of federal construction grants funds pursuant to the Federal Water Pollution Control Act, all required matching state funds and all loan

repayments received by the State pursuant to any loan agreement made under the Delaware Water Pollution Control Revolving Fund, shall be credited to the Delaware Water Pollution Control Revolving Fund. In addition, all proceeds of obligations issued by the State and supported by a pledge or other interest in the funds in the Delaware Water Pollution Control Revolving Fund, shall be held in or for such Fund. The Delaware Water Pollution Control Revolving Fund shall be deemed to be a special fund and shall be approved by the Governor for the following purposes:

1. To accept and retain the funds and revenues specified herein;

2. To make loans to eligible persons for qualifying purposes under the Federal Water Pollution Control Act;

3. To buy or refinance debt obligations of eligible persons for qualifying purposes under the Federal Water Pollution Control Act;

4. To guarantee or purchase insurance for obligations of eligible persons for qualifying purposes under the Federal Water Pollution Control Act;

5. To make loans to eligible persons to implement a nonpoint source pollution control management program under the Federal Water Pollution Control Act;

6. To make loans to eligible persons to implement an estuary conservation and management program under the Federal Water Pollution Control Act;

7. To be a source of revenue or security for the payment of principal and interest on revenue bonds of the State if the proceeds of the sale of such bonds will be deposited in the Delaware Water Pollution Control Revolving Fund;

8. To earn interest on amounts on deposit in such Fund;

9. To finance the reasonable costs incurred by the State in the administration of the Delaware Water Pollution Control Revolving Fund as permitted under the Federal Water Pollution Control Act;

10. To accomplish any other allowable purpose under the Federal Water Pollution Control Act.

The Department is designated as the administering agency of the Delaware Water Pollution Control Revolving Fund and shall have such powers necessary to administer such Fund including, but not limited to, the power to enter into capitalization grant agreements with the Environmental Protection Agency, the power to accept capitalization grant awards made under the Federal Water Pollution Control Act and the power to manage and make loans from the Fund in accordance with the requirements of the Federal Water Protection Control Act. The Department shall take all actions necessary to secure for the State the benefits of Title VI of the Federal Water Pollution Control Act.

c. *Standards and procedures.* — Before making any loan from the Delaware Water Pollution Control Revolving Fund, the Department shall specify:

1. Standards for the eligibility of borrowers and the type of projects to be financed with loans;

2. Procedures for the preparation, review and approval of the “project priority” list which must contain those projects for which financial assistance is sought;

3. Procedures for submitting applications for financial assistance and procedures for Department approval of such applications;

4. Procedures for completing an environmental review of projects pursuant to paragraph (12)d. of this section;

5. Conditions for financial assistance; and

6. Other relevant criteria, standards or procedures.

Standards and procedures specified under this paragraph shall provide for a final approval by the Water Infrastructure Advisory Council of any loan from the Delaware Water Pollution Control Revolving Fund and the “project priority” list.

d. The Secretary shall conduct an environmental review of projects otherwise qualifying under this subsection which shall be sufficiently consistent with the provisions for environmental review established under 40 C.F.R., Part 6, and the Secretary’s environmental review standards and procedures established in Title 7.

(13) Establish, supervise, direct and account for the operations and functions of the personnel responsible for the enforcement of the laws, regulations, rules, permits, licenses, orders and program requirements of the Department of Natural Resources and Environmental Control. In exercising the powers, duties and functions under this paragraph, the Secretary may:

a. Employ enforcement personnel who shall be officially known as law-enforcement officers of the Department of Natural Resources and Environmental Control, but who may be designated as Natural Resources Police Officers and shall include environmental protection officers, Fish and Wildlife Agents and park rangers;

b. Classify law-enforcement officers of the Department of Natural Resources and Environmental Control according to rank, title or duties assigned as deemed appropriate;

c. Assign or reassign law-enforcement officers of the Department of Natural Resources and Environmental Control to the divisions, subdivisions and offices of the Department to perform enforcement duties as deemed appropriate;

d. Provide law-enforcement training for law-enforcement officers of the Department of Natural Resources and Environmental Control; and

e. Establish a central filing system to record and maintain a record of violations of statutes, rules, regulations, permit conditions, licenses, orders and program requirements administered by the Department of Natural Resources and Environmental Control.

(14) The Secretary is empowered to apply for and accept grants which the Secretary deems necessary or desirable to the performance of the functions of the Department, subject to Chapter 76 of Title 29. The Secretary is empowered to administer and distribute those funds in the form of grants to qualified entities when funds are available for such purposes. Qualified entities may include, but are not limited to, state, county and local agencies, educational institutions, not-for-profit organizations, corporations, and other businesses, and individual citizens.

(15) Not, any other law or regulation to the contrary notwithstanding, have authority to enter into any agreement with any person or entity subject to the Secretary's review or control which requires said person or entity to pay moneys to any third party other than the Department as part of an enforcement action, or to induce the Department to refrain from taking an enforcement action provided said limitation shall not apply for any provision negotiated as part of a settlement agreement or conciliatory order that would allow such person to undertake a supplemental environmental project that would result in an environmental benefit beyond that which is required under existing or anticipated regulations or standards.

(16) a. The Secretary shall be responsible for the administration and operation of the State Energy Office, and shall supervise all the required and discretionary programs currently underway within the State Energy Office. These include programs to promote energy efficient lighting and thermal systems, transportation programs aimed at reducing traffic and fuel usage and the procurement of energy efficient products and services. In addition, the State Energy Office shall work in cooperation with the State Public Service Commission and other State agencies and departments in the promotion of renewable fuels and energy supplies, improving the adequacy and reliability of energy supplies in Delaware and in assessing the environmental consequences of energy usage in Delaware. Further, the Secretary shall develop suitable and appropriate performance measures for the Energy Office and shall submit them as a component of the Department's annual budget submission.

b. The Secretary shall also be responsible for development of a state facilities energy management plan. The state facilities energy management plan shall be developed in conjunction with the Division of Facilities Management to ensure that energy conservation methods are employed in all new and existing facilities owned by state agencies or local school districts. The plan shall be approved by the Secretary of the Department of Natural Resources and Environmental Control and Director of the Office of Management and Budget. The state facilities energy management plan shall provide for, but not be limited to:

1. Development and maintenance of energy conservation standards for the purpose of reviewing the design, construction, renovation and maintenance of facilities owned by state agencies or local school districts;

2. A program of energy audits of facilities owned by state agencies or local school districts in cooperation with designated representatives of said facilities;

3. Development, maintenance and distribution to facilities owned by state agencies or local school districts of guidelines, recommendations and technical assistance for energy conservation measures to be employed, installed and monitored in said facilities;

4. A detailed description of the estimated energy and monetary savings, and environmental benefits.

(29 Del. C. 1953, § 8003; 57 Del. Laws, c. 302, § 1; 57 Del. Laws, c. 579; 57 Del. Laws, c. 739, § 222; 58 Del. Laws, c. 76; 59 Del. Laws, c. 176, § 1; 59 Del. Laws, c. 372, § 2; 59 Del. Laws, c. 526, § 1; 60 Del. Laws, c. 258, § 1; 60 Del. Laws, c. 448, § 1; 64 Del. Laws, c. 331, § 1; 65 Del. Laws, c. 431, §§ 1, 2; 67 Del. Laws, c. 291, § 1; 69 Del. Laws, c. 291, §§ 226, 227; 69 Del. Laws, c. 303, §§ 2-4; 70 Del. Laws, c. 74, § 1; 70 Del. Laws, c. 105, § 25; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 482, § 1; 73 Del. Laws, c. 74, § 150(c); 74 Del. Laws, c. 110, § 121; 75 Del. Laws, c. 88, § 16(5); 75 Del. Laws, c. 353, § 81(a), (b); 77 Del. Laws, c. 430, §§ 61-65; 78 Del. Laws, c. 127, §§ 1, 13, 14; 78 Del. Laws, c. 290, § 230; 79 Del. Laws, c. 40, § 1; 82 Del. Laws, c. 201, § 1; 84 Del. Laws, c. 141, § 2.)

§ 8003A. Powers, duties and functions of law-enforcement officers of the Department of Natural Resources and Environmental Control.

(a) The law-enforcement officers of the Department of Natural Resources and Environmental Control shall see to the enforcement of all laws, regulations, rules, permits, licenses, orders, and program requirements of the Department of Natural Resources and Environmental Control.

(b) Law-enforcement officers of the Department of Natural Resources and Environmental Control shall have police powers similar to those of constables, peace officers, and other police officers when enforcing the laws, regulations, rules, permits, licenses, orders, and program requirements of the Department of Natural Resources and Environmental Control. Such police powers shall include powers of investigation, search, seizure, detention, and arrest conferred by law on constables, peace officers, and other police officers.

(c) Law-enforcement officers of the Department of Natural Resources and Environmental Control have the authority to serve and return summonses, subpoenas, and warrants.

(d) Nothing contained in this section may be construed to limit the statutory enforcement authorities, responsibilities, or powers of enforcement personnel of the Department of Natural Resources and Environmental Control.

(e) If a law-enforcement officer of the Department of Natural Resources and Environmental Control finds that a violation of a requirement under the Department of Natural Resources and Environmental Control occurs in a manufactured home community, the Department of Natural Resources and Environmental Control must send a copy of the notice of the violation, summons, or order to all of the following:

(1) The elected Council or Levy Court members of the county in which the violation occurred.

(2) The elected Council members of the municipality in which the violation occurred.

(3) The State Representatives and Senators in whose district the violation occurred.

(4) The Department of Justice.

(5) The Delaware Manufactured Home Relocation Authority.

(59 Del. Laws, c. 526, § 3; 63 Del. Laws, c. 436, §§ 1, 2; 70 Del. Laws, c. 105, §§ 26-28; 78 Del. Laws, c. 266, § 20; 83 Del. Laws, c. 341, § 10.)

§ 8004. Relocation assistance.

The Secretary of the Department of Natural Resources and Environmental Control is hereby empowered to expend state funds appropriated to the Department for land acquisition; to make relocation payments and to provide assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; provided, that the Secretary must expend funds for this purpose that are federally reimbursable under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646.

(29 Del. C. 1953, § 8003A; 58 Del. Laws, c. 195.)

§ 8005. Division of Fish and Wildlife.

The Division of Fish and Wildlife is established having powers, duties and functions as follows:

(1) The Division of Fish and Wildlife shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in:

a. The Board of Game and Fish Commissioners of this State pursuant to Chapters 1, 3 [repealed], 5, 7, 9, 11, 13, 17 and 58 [repealed] of Title 7.

b. The Delaware Commission of Shell Fisheries pursuant to Chapters 19, 21, 23 and 27 of Title 7 and Chapter 21 of Title 23.

(2) The administrative, ministerial, fiscal and clerical functions of the Atlantic States Marine Fisheries Commission set forth in Chapter 15 of Title 7 shall be performed by the Division of Fish and Wildlife. Except as otherwise provided in this subdivision, the membership, remuneration, organization, meetings, powers, duties and functions of the Atlantic States Marine Fisheries Commission shall remain as prescribed by Chapter 15 of Title 7.

(29 Del. C. 1953, § 8004; 57 Del. Laws, c. 302, § 1.)

§ 8006. Council on Game and Fish.

(a) There is established the Council on Game and Fish.

(b) The Council on Game and Fish shall serve in an advisory capacity to the Director of Fish and Wildlife and shall consider matters relating to the protection, conservation and propagation of all forms of fish and protected wildlife of this State and such other matters as may be referred to it by the Governor, Secretary of the Department or Director of Fish and Wildlife. The Council may also study, research, plan and advise the Director, the Secretary, and the Governor on matters it deems appropriate to enable the Division to function in the best possible manner.

(c) The Council on Game and Fish shall be composed of 9 members who shall be appointed for 3-year terms by the Governor.

(d) At least 4, but no more than 5, of the members of the Council shall be affiliated with 1 of the major political parties. At least 3, but no more than 4, of the members of the Council shall be affiliated with the other major political party; provided, however, that there shall be no more than a bare majority representation of 1 major political party over the other major political party. Any person who declines to announce such person's political affiliation shall also be eligible for appointment as a member of the Council.

(e) Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

(f) A Chairperson of the Council shall be chosen by the members of the Council from among its members and shall serve in that capacity for a term of 1 year and shall be eligible for reelection.

(g) Any replacement appointment to the Council to fill a vacancy prior to the expiration of a term shall be filled for the remainder of the term.

(29 Del. C. 1953, § 8005; 57 Del. Laws, c. 302, § 1; 57 Del. Laws, c. 739, § 238; 63 Del. Laws, c. 316, §§ 1, 2; 70 Del. Laws, c. 186, § 1.)

§ 8006A. Council on Recreational Fishing Funding.

(a) There is established the Council on Recreational Fishing Funding.

(b) The Council on Recreational Fishing Funding shall serve in an advisory capacity to the Director of Fish and Wildlife and shall consider matters relative to funding of fishery-related projects as related to this State and such other matters as may be referred to it by the Governor, Secretary of the Department or Director of Fish and Wildlife.

(c) The Council on Recreational Fishing Funding shall be composed of 10 members as follows:

(1) Six members appointed by the Governor;

(2) One member appointed by the President Pro Tempore of the Senate;

(3) One member appointed by the Speaker of the House;

(4) The President of the Delaware Mobile Surf Fisherman Association or a designee appointed by the President;

(5) The Director of the Division of Fish and Wildlife or a designee appointed by the Director to serve as an ex-officio nonvoting member.

(d) Appointments made by the Governor shall be appointed for a 3-year term and all other members shall serve at the pleasure of the appointing authority.

(e) The Council shall elect a Chair and Vice Chair.

(f) The Division ex-officio nonvoting member shall prepare minutes of each Council meeting. These minutes must be approved by a quorum of Council members in order to be official.

(g) All members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council from the fishing license account.

(h) The Council shall meet no less than once per year. The Council shall provide nonbinding advice to the Department on fishery related construction priorities for the expenditure of funds generated from the sale of recreational fishing licenses in the coming year.

(76 Del. Laws, c. 71, § 14; 82 Del. Laws, c. 96, § 1.)

§ 8007. Council on Shell Fisheries.

(a) There is established the Council on Shell Fisheries.

(b) The Council on Shell Fisheries shall serve in an advisory capacity to the Director of Fish and Wildlife and shall consider matters relating to the control and direction of the shellfish industry and the protection, conservation and propagation of shellfish of this State and such other matters as may be referred to it by the Governor, Secretary of the Department or Director of Fish and Wildlife. The Council may also study, research, plan and advise the Director, the Secretary and the Governor on matters it deems appropriate to enable the Division to function in the best possible manner.

(c) The Council on Shell Fisheries shall be composed of 7 members who shall be appointed by the Governor. The Council shall be composed of the following members:

One person engaged in commercial lobstering or conching;

One person engaged in commercial crabbing;

One person engaged in commercial oystering;

One person engaged in commercial clamming;

One person knowledgeable in marine fisheries;

One person representing recreational shell fishing;

One person, the Chairperson, to serve at the pleasure of the Governor.

The terms of the members shall be staggered. The first 2 appointees shall serve for a term of 1 year, the next 2 appointees shall serve for a term of 2 years and the next 2 shall serve for a term of 3 years. Thereafter, all new appointees shall serve for a term of 3 years.

(d) At least 3, but no more than 4, of the members of the Council shall be affiliated with 1 of the major political parties and at least 2, but no more than 3, of the members of the Council shall be affiliated with the other major political party; provided, however, there shall be no more than a bare majority representation of 1 major political party over the other major political party. Any person who declines to announce such person's political affiliation shall also be eligible for appointment as a member of the Council. Additionally, at least 1 member of the Council shall be a resident of New Castle County, at least 1 member of the Council shall be a resident of Kent County and at least 1 member of the Council shall be a resident of Sussex County.

(e) Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

(f) Any replacement appointment to the Council to fill a vacancy prior to the expiration of a term shall be filled for the remainder of the term.

(29 Del. C. 1953, § 8006; 57 Del. Laws, c. 302, § 1; 57 Del. Laws, c. 739, § 239; 59 Del. Laws, c. 238, § 1; 67 Del. Laws, c. 289, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 294, §§ 1, 2.)

§ 8008. Division of Parks and Recreation.

The Division of Parks and Recreation is hereby established having powers, duties and functions as follows:

(1) The Division of Parks and Recreation shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the State Park Commission of Delaware pursuant to Chapters 45, 47 and 58 [repealed] of Title 7.

(2) To help supplement general funds the Division of Parks and Recreation shall be authorized to solicit donations, sponsorships and sell advertisements to support park operations, to maintain park facilities and to support park programs including but not limited to concerts and events. All of the funds collected pursuant to this paragraph shall be deposited in the General Fund of this State and designated solely for park operations and maintenance. Persons or entities that donate, sponsor or advertise shall receive no special benefits other than, at the Division's discretion, recognition in the park program guides, website and/or at the parks.

(29 Del. C. 1953, § 8007; 57 Del. Laws, c. 302, § 1; 57 Del. Laws, c. 739, § 223; 59 Del. Laws, c. 372, §§ 3, 4; 78 Del. Laws, c. 209, § 1; 80 Del. Laws, c. 128, § 1.)

§ 8009. Parks and Recreation Council.

(a) There is established the Parks and Recreation Council.

(b) The Parks and Recreation Council shall serve in an advisory capacity to the Director of Parks and Recreation and shall consider matters related to the planning, acquisition, development, management, conservation, and programming of lands and services under the jurisdiction of the Division, and such other matters as may be referred to it by the Governor, the Secretary of the Department of Natural Resources and Environmental Control or the Director. The Council shall review and recommend to the Department the approval of funding from the Outdoor Recreation Parks and Trails (ORPT) program for park development projects and serve as the review authority for other state and federal funding programs if called upon to do so. The Council may also study, research, plan, and advise the Director, the Secretary, and the Governor on matters it deems appropriate to enable the Division to function in the best manner possible. The Council may also recommend to the Department for adoption, after public hearing, any rules and regulations as may be necessary to carry out any provisions of the section.

(c) The Parks and Recreation Council shall be composed of 16 members who shall be appointed as follows:

(1) Eleven members shall be appointed by the Governor and shall be eligible for reappointment. The term of any member serving shall be for 3 years.

(2) At least 6 of the 11 members appointed by the Governor shall have experience or expertise, or both, in the management of recreation programs and parks. The remaining members may be composed of other related disciplines and interests including cultural affairs, trails and greenways, fish and wildlife, tourism, finance, conservation, marketing, special populations, education, and Delaware State Parks friends organizations.

(3) The Natural Areas Advisory Council shall annually appoint a member to represent the Council.

(4) The remaining 4 members will be members of the General Assembly. One member from the majority party and 1 member from the minority party of the Delaware House of Representatives will be appointed by the Speaker of the House, and 1 member from the majority party and 1 member from the minority party of the Delaware State Senate will be appointed by the President Pro Tempore. The term of the General Assembly members serving shall be for 3 years.

(d) No more than 6 of the members appointed by the Governor shall be affiliated with the same political party. Any person who declines to announce such person's political affiliation shall also be eligible for appointment as a member of the Council.

(e) Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incurred incident to their duties as members of the Council.

(f) Failure to attend 3 consecutive regular meetings of the Council in the absence of mitigating circumstances shall be construed as a request by that member to resign from the Council and a replacement may thereafter be appointed in the member's stead.

(g) A Chairperson and Vice Chair shall be chosen by the members of the Council from among its membership and shall serve in that capacity for a term of 1 year. The Chairperson and Vice Chair shall be eligible for reelection.

(h) Any replacement appointment to the Council to fill a vacancy prior to the expiration of a term shall serve out the remainder of the term.

(29 Del. C. 1953, § 8008; 57 Del. Laws, c. 302, § 1; 57 Del. Laws, c. 739, § 240; 59 Del. Laws, c. 372, § 5; 67 Del. Laws, c. 430, § 2; 69 Del. Laws, c. 342, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 236, § 2; 78 Del. Laws, c. 209, § 2; 83 Del. Laws, c. 310, § 1; 84 Del. Laws, c. 42, § 1.)

§ 8010. Recreation Advisory Council [Repealed].

(29 Del. C. 1953, § 8009; 57 Del. Laws, c. 302, § 1; 59 Del. Laws, c. 372, § 6; repealed by 78 Del. Laws, c. 209, § 3, eff. Feb. 3, 2012.)

§ 8011. Water Infrastructure Advisory Council.

(a) The Water Infrastructure Advisory Council serves in an advisory capacity to the Secretaries, as defined in this section.

(b) Definitions. —

As used in this section:

(1) "Council" means the Water Infrastructure Advisory Council.

(2) "Secretaries" means, collectively, the Secretaries of the Departments of Natural Resources and Environmental Control (DNREC), Agriculture (DDA), Health and Social Services (DHSS), Transportation (DelDOT), and Finance (DOF).

(3) "Surface water management" means a strategy for the integration of drainage, flood control, and stormwater management through habitat protection, restoration, and other green infrastructure.

(4) "Wastewater facility" or "wastewater infrastructure" means a property, easement, equipment, pipe, pump, plant, or appurtenance used in any way to collect, transport, store, handle, treat, or dispose of wastewater.

(5) "Water supply facility," "water supply infrastructure," "drinking water infrastructure," or "drinking water supply facility" means a property, equipment, pipe, or other conveyance, pump, tower, tank or other storage device, well, filter, or other appurtenance used to collect, treat, store, and distribute the best quality water available to address strategies to correct, present, or prevent future violations of health-based drinking water standards.

(c) (1) The Council is composed of 16 members appointed by the Governor with the advice and consent of the Senate.

(2) The Governor shall appoint the Council's chair. The chair serves at the Governor's pleasure. The Governor may remove the chair from the Council entirely if the Governor removes the chair from the chair position.

(3) A council member other than the chair serves for a term of 3 years.

(4) The Governor may appoint a council member for a term of less than 3 years to ensure that terms expire on a staggered bases of no more than 4 expiring terms in a calendar year.

(5) Council members must be comprised of at least 1 member who is a resident of New Castle County, 1 member who is a resident of Kent County, 1 member who is a resident of Sussex County, and 1 member who is a resident of the City of Wilmington.

(6) Council members must represent interest and possess expertise in the areas of wastewater infrastructure, stormwater infrastructure, agricultural water use infrastructure, and drinking water infrastructure.

(7) Council members may include representatives from local government, public health, agriculture, and financial management. Up to 3 members may represent nonprofit environmental organizations, 1 of whom may represent an environmental justice organization.

(8) Council membership must be balanced so that no more than 9 voting members are from 1 political party. An individual who declines to announce a political party affiliation is eligible for appointment as a voting member.

(9) The Governor shall appoint 3 of the Council's 16 members as nonvoting members who serve at the Governor's pleasure: 1 member representing the water utilities, 1 member who is the district coordinator of 1 of the conservation districts, and 1 member representing the Farm Bureau. These members may provide annual recommendations to the Council relating to stormwater, drainage, flood protection, resource and conservation development projects, agricultural and conservation cost share, cover crops, conservation reserve enhancement, or tax ditches.

(d) A council member does not receive compensation but may be reimbursed for the member's actual and necessary expenses incurred in the performance of the member's official duties.

(e) The Council's duties and responsibilities include all of the following:

(1) To evaluate, establish, recommend, and adopt all of the following:

a. A long-term plan for the public funding of drinking water supply facility and wastewater facility infrastructure projects. The plan must cover a period of not less than 6 years, be updated and prioritized on an annual basis, and incorporated into DNREC's and DHSS's annual capital budget requests to the Governor. The Council shall submit a copy of the adopted plan to the General Assembly and the Director and the Librarian of the Division of Legislative Services on or before November 15 of each year.

b. Annual advisory recommendations related to wastewater infrastructure, stormwater infrastructure, and drinking water infrastructure addressing the elements required for inclusion in the strategic plan for clean water under § 8082(d) of this title. The Council shall submit the recommendations to the Clean Water Trust Fund Oversight Committee on or before September 15 of each year.

(2) a. To establish standards and procedures for persons to submit requests for funding the construction, repair, renovation, or expansion of water supply facilities and wastewater facilities. Using the standards and procedures that the Council establishes, the Council shall recommend specific grants or loans, or both, using funds authorized for the grants or loans by act of the General Assembly or funds that the Delaware State Clearinghouse Committee approves.

b. To develop and recommend projects for the planning, construction, repair, renovation, or expansion of water supply facilities and wastewater facilities to be funded in whole or in part by the Delaware Water Pollution Control Revolving Fund, the Drinking Water State Revolving Loan Fund, or another source of funding that the General Assembly authorizes.

(3) a. To develop and periodically update a nonbinding comprehensive, statewide water supply facilities and wastewater facilities assessment to be presented in 3 sections, 1 for each county. The Council may retain the services of necessary professionals and may enter into agreements in order to prepare the assessment.

b. A county may, at its option, designate a county agency responsible for preparing the assessment for that county, but the assessment must be prepared in a uniform manner that the Council establishes. In the absence of the designation of a county agency to prepare an assessment, DNREC and DHSS are the lead agencies in coordinating preparation of the assessment.

c. The assessment must include at least all of the following:

1. A description of the status of existing water supply facilities and wastewater facilities.

2. The current usage of existing water supply facilities and wastewater facilities.

3. The adequacy of existing water supply facilities and wastewater facilities.

4. Projected long range requirements for existing water supply facilities and wastewater facilities.

5. The compatibility of existing land use plans with existing and long range requirements of water supply facilities and wastewater facilities.

6. Recommendations for improvements to existing water supply facilities and wastewater facilities.

(4) To recommend affordability standards for water supply facility and wastewater facility infrastructure projects. Each recommendation must reflect the goals of establishing fair rates that equitably distribute the costs of water supply facilities and wastewater facilities using public funds, based on usage, and relying on private firms to provide services if it is economical and in the public interest to do so.

(5) To review and recommend To DNREC and DHSS the payment of the Council's administrative and operating expenses.

(6) To make funding recommendations to the Secretary of DNREC and Secretary of DHSS regarding drinking water infrastructure and wastewater infrastructure projects that are considered ready to proceed.

(f) (1) A majority of the voting members must be present at a council meeting in order to have a quorum and conduct official business. A vacant voting member position is not counted for quorum purposes.

(2) Each motion, the plan under paragraph (e)(1)a. of this section, the assessment under paragraph (e)(3) of this section, or a recommendation for a loan or grant under paragraph (e)(2) of this section may be adopted only by a majority of the voting members. A vacant voting member position is not counted under this paragraph.

(3) The Council shall conduct a public meeting in each county prior to voting on the annual adoption of the water supply infrastructure and wastewater infrastructure plan under paragraph (e)(1)a. of this section.

(4) The Council is subject to the applicable provisions of the Administrative Procedures Act (Chapter 101 of this title).

(g) The Council shall work in concert with DNREC, DHSS, DelDOT, DDA, the Conservation Districts, the Delaware Geological Survey, the Public Service Commission, DOF, the Cabinet Committee on State Planning Issues, and any other appropriate department, agency, or committee focusing on statewide planning issues. Each agency shall provide reasonable staff time and resources as the Council may require to fulfill the Council's duties and responsibilities. The Council shall also work in concert with the Water Resources Agency of New Castle County and each appropriate agency that a county may designate. DNREC and DHSS are the lead agencies in coordinating support for the Council.

(h) (1) The Council shall provide guidance and policy advice to the Governor and Secretaries and assist in the statewide effort to develop infrastructure programs related to water supply, drainage, stormwater management, and flood control. The guidance must include state-level direction to DNREC, DHSS, and local agencies and operating units in the development of standardized processes and procedures for identifying and prioritizing problems and development of watershed-based solutions.

(2) The Council shall provide guidance to the State in improving the quality of customer service and reviewing annual localized work plans.

(i) The Council shall assist in defining areas of responsibility among state and local agencies, and coordinating implementation and operations.

(j) The Council shall assist the State in establishing a central response unit that DNREC coordinates to handle public calls relating to drainage, stormwater, and flood control.

(k) The Council shall assist in the statewide effort for the development of sustainable program funding options.

(*l*) (1) The Council shall assist in the development and evaluation of criteria for watershed-based plans for surface water management.

(2) The Council shall assist in developing the priority needs for watershed plans.

(3) The Council shall assist in developing a strategy for long term planning for future growth relating to surface water management. This strategy may include options for private-public partnerships for infrastructure improvement and regional solutions.

(m) The Council may adopt procedural rules to carry out its functions under this section.

(69 Del. Laws, c. 303, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 219, §§ 1-5; 75 Del. Laws, c. 353, § 81(c)-(e); 77 Del. Laws, c. 430, § 66; 79 Del. Laws, c. 48, § 1; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 21; 83 Del. Laws, c. 84, §§ 2, 3; 83 Del. Laws, c. 495, § 1; 84 Del. Laws, c. 233, § 60; 84 Del. Laws, c. 255, § 50; 85 Del. Laws, c. 68, § 44.)

§ 8012. Division of Watershed Stewardship.

The Division of Watershed Stewardship is established having powers, duties and functions as follows:

(1) The Division of Watershed Stewardship shall have the power to perform and shall be responsible for the performance of all of the powers, duties and functions heretofore vested in the Delaware Soil and Water Conservation Commission, pursuant to Chapters 39 and 41 of Title 7.

(2) The administrative, ministerial, fiscal and clerical functions of the Boards of Ditch Commissioners, set forth in Chapter 41 of Title 7, shall be performed by the Division of Watershed Stewardship. Except as otherwise provided in this subdivision, the membership,

remuneration, organization, meetings, powers, duties and functions of the Boards of Ditch Commissioners shall remain as prescribed by Chapter 41 of Title 7.

(29 Del. C. 1953, § 8011; 57 Del. Laws, c. 302, § 1; 77 Del. Laws, c. 430, § 67.)

§ 8013. Council on Soil and Water Conservation [Repealed].

Repealed by 77 Del. Laws, c. 341, § 1, effective July 2, 2010.

§ 8014. Division of Air Quality, Division of Waste and Hazardous Substances and Division of Water.

The Division of Air Quality, Division of Waste and Hazardous Substances and Division of Water is established having powers, duties and functions as follows:

(1) The Division of Air Quality, Division of Waste and Hazardous Substances and the Division of Water shall have the power to perform and shall be responsible for the performance of all of the powers, duties and functions heretofore vested in the Delaware Water and Air Resources Commission.

(2) The administrative, ministerial, fiscal and clerical functions of this State as a member of the Delaware River Basin Commission, set forth in Chapter 65 of Title 7, shall be performed by Division of Air Quality, the Division of Waste and Hazardous Substances and the Division of Water. Except as otherwise provided in this subdivision, the membership, remuneration, organization, meetings, powers, duties and functions of the Delaware River Basin Commission shall remain as prescribed by Chapter 65 of Title 7.

(3) The Division of Air Quality, the Division of Waste and Hazardous Substances and the Division of Water shall have the power to perform and shall be responsible for the performance of all of the powers, duties and functions heretofore vested in the Mosquito Control Commission and the State Highway Department pursuant to Chapter 19 of Title 16.

(4) The Division of Air Quality, the Division of Waste and Hazardous Substances and the Division of Water shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the Department of Health and Social Services pursuant to § 122(3)d. of Title 16 only.

(5) The Division of Air Quality and the Division of Waste and Hazardous Substances shall have primary authority under this section for matters concerning solid and hazardous waste, underground and aboveground storage tanks, boiler safety, hazardous materials emergency response, accident release prevention, emergency planning and community right to know, hazardous substance site investigation and restoration, and air resources of the State. The Division of Water shall have primary authority under this section for matters concerning surface and groundwater, underwater and wetland resources of the State.

(29 Del. C. 1953, § 8013; 57 Del. Laws, c. 302, § 1; 57 Del. Laws, c. 739, §§ 224-227; 58 Del. Laws, c. 52, § 2; 65 Del. Laws, c. 431, §§ 3, 4; 77 Del. Laws, c. 430, §§ 68, 69; 78 Del. Laws, c. 127, §§ 2, 3.)

§ 8015. Council on Environmental Control [Repealed].

Repealed by 77 Del. Laws, c. 341, § 2, effective July 2, 2010.

§ 8016. Governor’s Council on Natural Resources and Environmental Control.

(a) There is established the Governor’s Council on Natural Resources and Environmental Control.

(b) The Governor’s Council on Natural Resources and Environmental Control shall be composed of the chairpersons of the councils to the respective divisions of the Department, as provided in this chapter, 1 of whom shall be designated by the Governor as Chairperson of the Governor’s Council on Natural Resources and Environmental Control, and the Chairperson shall serve, as such, at the pleasure of the Governor.

(c) The terms of the members of the Governor’s Council on Natural Resources and Environmental Control shall coincide with the terms for which the members serve as chairpersons of their respective councils.

(d) The Governor’s Council on Natural Resources and Environmental Control shall advise, recommend and refer to the Secretary of the Department matters which, in its opinion, are of Departmental concern and shall consider such other matters as may be referred to it by the Governor or the Secretary of the Department. The Council may also study, research, plan and advise the Secretary and the Governor on matters it deems appropriate to enable the Department to function in the best possible manner.

(e) Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

(29 Del. C. 1953, § 8015; 57 Del. Laws, c. 302, § 1; 57 Del. Laws, c. 739, §§ 234, 235; 70 Del. Laws, c. 186, § 1.)

§ 8016A. Community Involvement Advisory Council and Community Ombudsman.

(a) There is established the Community Involvement Advisory Council.

(b) The Community Involvement Advisory Council shall serve in an advisory capacity to the Secretary of the Department of Natural Resources and Environmental Control and shall consider such matters as the relationships and interactions between the Department and local communities throughout the State, communication and information flow between the Department and these communities, public participation in the decision-making processes of the Department, ensuring, to the extent practicable, that no community in the State is disparately affected by environmental impacts, matters related to addressing adverse environmental impacts on communities and other

such matters as may be referred to it by the Governor or the Secretary. The Council may also study, research, plan and advise the Secretary on matters it deems appropriate to enable the Department to relate to and interact with communities in the best manner possible.

(c) The Community Involvement Advisory Council shall be composed of 11 members who shall be appointed by the Governor as follows:

(1) Four members shall be appointed for 3-year terms.

(2) Four members shall be appointed for initial 2-year terms.

(3) Three members shall be appointed for initial 1-year terms.

(4) Thereafter, all new appointees shall serve for a term of 3 years.

(d) Council membership shall include representatives from communities, community-based nonprofit organizations, environmental organizations, health-care providers, local government, academic institutions and business/industry. Community representation shall include representatives of communities that potentially may be adversely impacted by environmental factors or conditions.

(e) Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incidental to their duties as members of the Council.

(f) A Chairperson of the Council shall be chosen by the members of the Council from among its members and shall serve in that capacity for a term of 1 year and shall be eligible for reelection.

(g) Any replacement appointment to the Council to fill a vacancy prior to the expiration of a term shall be filled for the remainder of the term.

(h) The Department shall establish a position of Community Ombudsperson to serve as a liaison between the Department and communities statewide. The Department may establish Community Assistance Providers as may be appropriated by the General Assembly. The Community Ombudsperson and Community Assistance Providers shall engage communities in identifying and understanding environmental issues and addressing or resolving environmental problems, advocate for communities, assist communities in obtaining information on environmental issues, and serve as a point of contact for the Department with communities and community organizations. The Secretary shall provide to the General Assembly annually a summary of the activities and an assessment of the effectiveness of the Community Ombudsperson program.

(73 Del. Laws, c. 117, § 9.)

§ 8017. Books; records; access; annual report.

(a) The Governor's Council on Natural Resources and Environmental Control shall have access to all books, records, reports and other documents relating to the Department of Natural Resources and Environmental Control unless otherwise prohibited by law.

(b) The various councils of the divisions of the Department of Natural Resources and Environmental Control shall have access to all books, records, reports and other documents relating to their respective divisions unless otherwise prohibited by law.

(c) The Chairperson of the Governor's Council on Natural Resources and Environmental Control and the chairmen of the councils of the divisions of this Department shall make an annual report of the activities of each of the councils to the Secretary of the Department, the Governor and the General Assembly and render such other reports as the Secretary, the Governor or the General Assembly may from time to time request or as may be required by law.

(29 Del. C. 1953, § 8016; 57 Del. Laws, c. 302, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8017A. Delaware Council on Greenways and Trails [Repealed].

(68 Del. Laws, c. 377, § 1; 70 Del. Laws, c. 210, § 28; 70 Del. Laws, c. 290, §§ 11, 41; 77 Del. Laws, c. 236, §§ 1, 3, 4; 81 Del. Laws, c. 78, § 13; repealed by 83 Del. Laws, c. 310, § 1, effective June 14, 2022.)

§ 8018. Exemptions.

The following positions set forth in this section shall be exempt from Chapter 59 of this title:

(1) Secretary of Natural Resources and Environmental Control;

(2) Director of Fish and Wildlife;

(3) Director of Parks and Recreation;

(4) Director of Watershed Stewardship;

(5) Director of Air Quality;

(6) Director of Waste and Hazardous Substances;

(7) Director of Water;

(8) [Repealed.]

(9) Director of Energy and Climate.

(29 Del. C. 1953, § 8017; 57 Del. Laws, c. 302, § 1; 59 Del. Laws, c. 372, § 8; 65 Del. Laws, c. 431, §§ 6, 7; 74 Del. Laws, c. 110, § 122; 77 Del. Laws, c. 430, § 70; 78 Del. Laws, c. 127, §§ 4, 5; 78 Del. Laws, c. 290, § 231.)

§ 8019. Assumption of functions of prior agencies.

The Department, through appropriate divisions, subdivisions and offices, shall have the power to perform and shall be responsible for the performance of all of the powers, duties and functions vested by law in the Board of Game and Fish Commissioners, Delaware Commission of Shell Fisheries, State Park Commission, Delaware Soil and Water Conservation Commission and Delaware Water and Air Resources Commission immediately prior to the effective date of this chapter and which are not otherwise specifically transferred to the Department by this chapter, excepting only those powers, duties and functions expressly vested in or retained by any such commission.

(29 Del. C. 1953, § 8018; 57 Del. Laws, c. 302, § 1; 57 Del. Laws, c. 739, § 236; 59 Del. Laws, c. 372, § 9.)

§ 8020. Appeals.

Any and all rights of appeal now existing by law with respect to any act or acts constituting the exercise of any function or functions transferred to the Department or to any division or subdivision thereof shall continue to exist with respect to such act or acts as hereafter performed by the Department or by the division, subdivision or office to which such function is transferred, and each such appeal shall be perfected in the manner heretofore provided by law.

(29 Del. C. 1953, § 8019; 57 Del. Laws, c. 302, § 1.)

§ 8021. Definitions and references in other laws.

(a) All definitions and references to any commission, board, department, council or agency which appear in any other act or law shall, to the extent that the same are consistent with this chapter and in connection with a function transferred to the Department, be construed as referring and relating to the Department of Natural Resources and Environmental Control as created and established by this chapter.

(b) All definitions and references to any director, commissioner, executive secretary, commission, board or council member or other similar person which appear in any other act or law shall, to the extent that same are consistent with this chapter and in connection with a function transferred to the Department, be construed as referring or relating to such person or persons and their powers, duties and functions as established and created by this chapter.

(29 Del. C. 1953, § 8020; 57 Del. Laws, c. 302, § 1.)

§ 8022. Annual report.

The Secretary of the Department shall make an annual report of the Department's operations to the Governor and the General Assembly, and render such other reports as the Governor or General Assembly may from time to time request or as may be required by law.

(29 Del. C. 1953, § 8021; 57 Del. Laws, c. 302, § 1.)

§ 8023. Misnomer of Department in donation.

Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Department if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey thereby to the Department or to any commission, board, department, authority, council or agency, to which, by this chapter, the powers, duties and functions have been transferred to the Department, the estate or interest therein expressed or described.

(29 Del. C. 1953, § 8022; 57 Del. Laws, c. 302, § 1.)

§ 8024. Budgeting and financing.

(a) The Secretary, in cooperation with the division directors, shall prepare a proposed budget for the operation of the Department to be submitted for the consideration of the Governor and the General Assembly. The Department shall be operated within the limitation of the annual appropriation and any other funds appropriated by the General Assembly.

(b) Special funds may be used in accordance with approved programs, grants and appropriations.

(29 Del. C. 1953, § 8023; 57 Del. Laws, c. 302, § 1.)

§ 8025. Supremacy.

All other laws or parts of laws now in effect inconsistent with this chapter are repealed, superseded, modified or amended so far as necessary to conform to, and give full force and effect to, this chapter.

(29 Del. C. 1953, § 8025; 57 Del. Laws, c. 739, § 237.)

§ 8026. Disposition of lost, abandoned or stolen property in custody of Department.

(a) Whenever any personal property of any kind, except money, comes into the custody of the Department of Natural Resources and Environmental Control, and the person entitled to possession of said property cannot be located or fails to claim the property for a period of at least 30 days, the Secretary of the Department of Natural Resources and Environmental Control may dispose of the property by turning possession and custody of the property over to the Superintendent of the State Police for disposition pursuant to procedures set forth in § 8307 of Title 11.

(b) Upon receipt of any personal property of any kind, except money, from the Department of Natural Resources and Environmental Control, the Superintendent of the State Police may dispose of said personal property at public sale upon proof that said property was

held by the Department of Natural Resources and Environmental Control and/or the State Police for a period of not less than 1 year, and upon proof that the person entitled to possession of said property has failed to claim the property during the 1 year period the Department of Natural Resources and Environmental Control and/or the State Police held the property.

(c) After payment of expenses to the Department of Natural Resources and Environmental Control and the State Police for the amount of any storage or tow charges that are incurred by said Department and State Police during the period in which the property was in custody, and after the payment of all liens to which said property was subject in the order of their priority, the proceeds from the sale of said property shall be disposed of in accordance with the procedures of § 8307 of Title 11.

(d) Employees of the Department of Natural Resources and Environmental Control shall deliver custody of lost, abandoned or stolen money which comes into their possession in connection with the performance of their duties to the Secretary or such person the Secretary may designate and whenever any lost, abandoned or stolen money comes into the custody of the Department of Natural Resources and Environmental Control, the Secretary of said Department shall make a reasonable effort to locate the owner thereof. If the owner of any stolen money cannot be located or fails to claim such stolen money within 1 year from the date that it came into the custody of said Department, such money shall become the property of the State, and shall be transferred to the General Fund of the State. If the owner of any lost or abandoned money cannot be located or fails to claim such lost or abandoned money within 1 year from the date that it came into the custody of said Department, such money shall become the property of the person who delivered custody of such money to the Department and shall be returned by the Secretary of the Department to such person as soon as is practicable after the 1-year period. However, if the person who delivered custody of such lost or abandoned money is an employee of said Department such money shall become the property of the State and shall be transferred to the General Fund of the State after the 1-year period.

(e) This section shall apply to any personal property of any kind, which comes into the custody of the Department of Natural Resources and Environmental Control as a result of either finding lost, abandoned or stolen property, or an investigation or enforcement action made pursuant to Title 7.

(63 Del. Laws, c. 299, § 2; 70 Del. Laws, c. 186, § 1.)

§ 8027. Notification.

Except for land acquired by approval of the Open Space Council or approved through a bond and capital improvements act, land shall not be purchased by the Department of Natural Resources and Environmental Control without prior approval of the Cochairs of the Joint Legislative Committee on the Capital Improvement Program; provided, however, that the Department is not prohibited from conducting studies, surveys or other contractual arrangements that would normally precede land acquisition procedures. The Department is also required to provide cost estimates to the cochairs of the Joint Finance Committee and the Bond Bill Committee; these estimates will include costs to develop infrastructure, and the number of positions needed to maintain the land and the associated personnel costs.

(73 Del. Laws, c. 310, § 20.)

§ 8028. Division of boiler safety [Repealed].

(74 Del. Laws, c. 110, § 123; 70 Del. Laws, c. 186, § 1; repealed by 78 Del. Laws, c. 127, § 6, eff. July 13, 2011.)

§ 8029. Council on boiler safety [Repealed].

(74 Del. Laws, c. 110, § 124; repealed by 78 Del. Laws, c. 127, § 6, eff. July 13, 2011.)

§ 8030. Energy Efficiency Investment Fund.

(a) The Division of Climate, Coastal and Energy shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the Delaware Energy Office, also referred to as the “Energy Office,” “State Energy Office,” “DEO” and “State Energy Coordinator,” pursuant to: Chapter 76 of Title 16; Chapters 1, 10 and 15 of Title 26; this chapter; and Chapter 64 of this title.

(b) The Department of Natural Resources and Environmental Control shall manage the Energy Efficiency Investment Fund. The Fund shall be used to incentivize investments in energy efficiency by consumers or users of gas or electricity whose purchase of those commodities from a distributor is subject to the public utility tax on gas or electricity imposed by Chapter 55 of Title 30. The Department shall support implementation of projects that reduce the use of gas, electricity, or other sources through the issuance of competitive grants, low-interest loans, or other financing support from the Fund. The Department shall establish the contents and deadline for applications for financing from the Fund and shall give preference to those applications proposing projects that are anticipated to produce the greatest reduction in energy consumption per Fund dollar invested, improve environmental performance, spur capital construction and facility modernization, encourage job retention and creation, and are likely to be substantially complete no later than 1 year following the issuance of financing from the Fund. In no event shall the Fund provide grant funding for more than 60% of the costs of any proposed project or support projects already receiving support from the Green Energy Fund under this chapter or the Strategic Fund under subchapter II of Chapter 87A of this title. The Fund shall be administered in consultation with the Sustainable Energy Utility and the Department. The Department shall make an annual report on the use of the Energy Efficiency Investment Fund and the value of energy savings resulting therefrom to the Governor’s Energy Advisory Council and the General Assembly not later than August 30 of each year after 2011. The

Department shall retain no more than 4 percent of the Fund for expenses to administer this section. All terms used herein that are defined in Chapter 55 of Title 30 shall have the same definition used in that chapter.

(78 Del. Laws, c. 75, § 5; 78 Del. Laws, c. 290, § 232; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 22; 84 Del. Laws, c. 107, § 1; 84 Del. Laws, c. 141, § 2.)

§ 8031. Prohibition of collecting natural resource data without the informed written consent of the property owner.

(a) The following words, terms, and phrases, when used in this section, shall have the meaning ascribed in this subsection:

(1) "Department" means the Department of Natural Resources and Environmental Control.

(2) "Natural resource data" means all the information collected from private property within the State, that was collected by physically being present on private property, that relates to or concerns:

a. The presence of rare or endangered species.

b. The presence and conditions of historic or cultural resources.

(b) From July 11, 2018, forward, the Department shall not enter physically onto private property to collect Natural Resource Data without the informed written consent of the property owner. The informed written consent must contain the method of collection, date of collection, and how the information will be shared.

(81 Del. Laws, c. 322, § 1.)

§ 8032. Procedures for public notice of permit applications.

(a) Notwithstanding any law to the contrary, the following minimum requirements must be observed for the issuance of any permit by the Department where public notice is required:

(1) The notice must include instructions for electronic submission of public comments or requests for hearing.

(2) The permit application to which the notice applies must be available electronically. The notice must contain a link or web address where instructions for accessing the full application are available. The Department may provide instructions for nonelectronic review of application attachments that are too voluminous to post electronically.

(3) A copy of the notice shall be posted on the Department's website in addition to whatever other means of delivery is required for the notice.

(4) The Department shall send a copy of the notice by e-mail to members of the General Assembly in whose district the permit would issue.

(b) This section applies to applications for permit renewals.

(c) This section does not apply to applications for permit extensions.

(84 Del. Laws, c. 103, § 1.)

Subchapter II

The Delaware Energy Act

§ 8051. Short title; declaration of policy.

(a) This subchapter shall be known and may be cited as "The Delaware Energy Act."

(b) The General Assembly finds and declares that:

(1) An adequate, reliable, and continuous supply of energy is essential to the health, safety, and welfare of the citizens of this State and to the sustained growth of the State's economy;

(2) Planning for Delaware's energy future is vitally important to Delaware's economy and all Delawareans;

(3) Developments in the energy sector of the economy are proceeding at a fast pace, and devoting state resources to the energy sector will benefit Delaware's economy and all Delawareans;

(4) Transforming the delivery of energy to end users and throughout the energy grid is expected to require new programs, oversight, planning, and workforce training;

(5) Shortages of nonrenewable energy resources could threaten the reliable supply of energy in the State;

(6) Inefficient energy consumption leads to increased air pollution from traditional means of producing energy, which may be significantly mitigated by the development of efficiency programs and alternative energy resources;

(7) Growth and inefficient energy usage must be addressed programmatically to continue the social, economic and environmental vitality of the State;

(8) The State must provide for the development of a comprehensive state energy policy which will ensure an adequate, reliable and continuous supply of energy and which is protective of public health and the environment and which promotes our general welfare and economic well-being;

(9) It is in the public interest of the State to evaluate the impact on the transmission system of the offshore wind procurement goals of other states within the PJM region and the potential for procurement of electricity from offshore wind projects by Delaware;

(10) It is in the public interest of the State to evaluate procurement of electricity from offshore wind projects given the potential economic development opportunities of the emerging offshore wind industry, the potential to reduce greenhouse gas emissions and other air pollutants, and the potential for a long-term, large-scale, stable source of electricity for the State; and

(11) The establishment of the State Energy Office is in the public interest and will promote the general welfare by assuring coordinated and efficient management of state energy policy.

(c) It is the purpose and intent of the General Assembly:

(1) To establish the State Energy Office within the Department of Natural Resources and Environmental Control;

(2) To provide for development and maintenance of a comprehensive State Energy Plan;

(3) To provide for the development and maintenance of a state emergency energy shortage contingency plan;

(4) To provide for the development of a state facilities energy management plan;

(5) To reduce, to the maximum extent possible, the environmental consequences of energy generation and use in the State;

(6) To achieve effective management of energy functions within the state government;

(7) To encourage and ensure full and effective public participation in the formulation and implementation of a State Energy Plan.

(8) To provide for the development and implementation of the State's energy policy and programs in accordance with the State Energy Plan, the Climate Action Plan, and other documents as developed by the Governor's Energy Advisory Council and adopted by the State Energy Office ("Plans"), giving specific consideration to issues of environmental justice for low- and moderate-income Delawareans as set forth in those Plans;

(9) To support the continuous transition to clean energy, clean transportation, reduced emissions, and energy efficiency use in the State as set forth in the Plans; and

(10) To provide for greater collaboration between federal and state agencies on energy policy matters within the scope of this subchapter.

(74 Del. Laws, c. 38, § 1; 84 Del. Laws, c. 146, § 1; 84 Del. Laws, c. 147, § 1.)

§ 8052. Definitions.

For the purposes of this subchapter:

(1) "Cost effective energy efficiency projects" means energy efficiency improvements including, but not limited to, wall, floor and ceiling/attic insulation, lighting and electrical upgrades, window replacements and HVAC tune-ups and replacements with a return on investment (ROI) of less than 3 years based upon materials and labor.

(2) "Customer" means any person that has constructed, purchased or leased Renewable Energy Technology and placed it in service in this State for the purpose of generating or receiving energy in this State, including the owner/operator of any building or facility, but not the occupants thereof, that supplies energy to the occupants of such building or facility.

(3) "Delaware benchmark price" shall have the meaning set forth in § 352 of Title 26.

(4) "Offshore wind contract" shall have the meaning set forth in § 352 of Title 26.

(5) "OSW solicitation requirements" shall mean the requirements for an offshore wind solicitation set forth in § 8056(d)(4) of this title.

(6) "Person" means and includes an individual, a trust, estate, partnership, limited liability company, association, company or corporation.

(7) "Qualified offshore wind project" shall have the meaning set forth in § 352 of Title 26.

(8) "Qualified purchasers" shall have the meaning set forth in § 352 of Title 26.

(9) "Renewable energy credit" ("REC") shall have the meaning set forth in § 352 of Title 26.

(10) "Renewable energy technology" or "alternative energy technology" means and includes any of the following machinery, equipment, or real property:

a. Hydroelectric generators, located at existing dams or in free-flowing waterways, and related devices for water supply and control, and converting, conditioning, and storing the electricity generated;

b. Wind equipment, required to capture and convert wind energy into electricity or mechanical power, and related devices for converting, conditioning and storing the electricity produced;

c. Solar energy equipment, and related devices necessary for collecting, storing, exchanging, conditioning or converting solar energy to other useful forms of energy;

d. Geothermal heat pumps and geothermal heat pump systems;

e. Fuel cells and fuel cell systems; and

f. Biodiesel manufacturing facilities.

(11) “Solar energy equipment” means any equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalinization, detoxification or the production of industrial or commercial process heat, and includes related devices necessary for collecting, storing, exchanging, conditioning or converting solar energy to other useful forms of energy.

(74 Del. Laws, c. 38, § 1; 74 Del. Laws, c. 87, § 1; 75 Del. Laws, c. 160, § 1; 77 Del. Laws, c. 452, § 1; 84 Del. Laws, c. 401, § 1.)

§ 8053. State Energy Office; State Energy Coordinator; establishment; powers and duties.

(a) There is hereby established the State Energy Office within the Department of Natural Resources and Environmental Control, Division of Climate, Coastal and Energy.

(b) The Director of the Division of Climate, Coastal and Energy is the administrator and head of the State Energy Office and is the State Energy Coordinator, who shall:

(1) Be qualified by training or experience to perform the duties of the Office; and

(2) Perform such functions in the administration of the State Energy Office as the Secretary of the Department of Natural Resources and Environmental Control may from time to time require.

(c) The State Energy Office shall:

(1) Act as a central repository and clearinghouse for collection and dissemination of data and information on energy resources and energy matters in the State, including but not limited to:

a. Data on energy supply, demand, costs, projections and forecasts;

b. Inventory data on energy research and development projects, studies, or other programs conducted in the State under public or private supervision or sponsorship, and the results thereof; and

c. The environmental impacts of energy generation and use and the means of reducing those impacts through alternative fuels, innovative energy technologies, conservation or other means.

(2) Coordinate and partner with other state, local, regional, and federal agencies, including the Delaware Public Service Commission, the Division of the Public Advocate, the Office of State Planning and Coordination, the Office of Management and Budget, the Delaware Emergency Management Agency, the Department of Agriculture, the Department of Transportation, and the Delaware Sustainable Energy Utility, and energy-related boards and councils, energy utilities, and other stakeholders in carrying out its duties under this subchapter;

(3) Recommend legislative or other initiatives to the Secretary, and hence to the Governor and General Assembly, that will enable or assist the State, its instrumentalities, its energy utilities, and private citizens, to secure federal funds made available to states, energy utilities, and individuals to support energy conservation, energy efficiency, emerging energy technologies, energy storage, demand response, microgrids, energy workforce development, grid resiliency and development, and renewable energy and decarbonization programs and initiatives, whatever form those funds take;

(4) Provide for a program of energy audits of facilities owned by instrumentalities of the State in cooperation with designated representatives of said facilities;

(5) Provide for the training and certification of energy auditors to conduct energy audits as may be necessary and proper to carry out the purposes and policies of this subchapter, or any other energy-related law applicable to this State;

(6) Assist the Division of Facilities Management in developing the state facilities energy management plan as required in § 8806(c) of Title 29 [repealed]; and

(7) Develop and update, at least every 5 years, a comprehensive State Energy Plan designed to protect the health, safety and welfare of the citizens and economy of the State consistent with the State’s greenhouse gas emissions reduction targets, as specified in § 10003 of Title 7, and the State’s Climate Action Plan issued pursuant to § 10004 of Title 7, support the State’s greenhouse gas emissions reduction targets, and support implementation of the State’s Climate Action Plan. The State Energy Plan shall include:

a. Encouraging and promoting conservation of energy through reducing wasteful, uneconomical or inefficient uses of energy;

b. Encouraging and promoting the use of renewable electric generation facilities and alternate energy technologies by residential and commercial consumers;

c. Encouraging and promoting such other energy efficiencies and conservation goals, methods, standards, training, programs and policies that are consistent with the intent of this subchapter, especially those directed toward improving end-use efficiency among the State’s energy consumers; and

d. Encouraging and promoting equity in energy planning and development in accordance with the Plans.

(8) Provide technical and administrative support to the Governor’s Energy Advisory Council as provided for in § 8055(i) of this title;

(9) Serve as a liaison between the State and federal agencies and energy agencies in other states and regions on the energy program and policy matters set forth in this subchapter;

(10) Monitor and act in a coordinating capacity to promote the planning and buildout of the statewide energy grid to optimize resources, including coordination with any plan acknowledged by the Public Service Commission;

(11) Conduct analysis of generating resource adequacy and conduct integrated resource planning, as necessary;

(12) Develop and conduct the solicitation or solicitations for the procurement of electric energy from offshore wind, as set forth in § 8056 of this title, and participate in offshore wind transmission planning with the regional transmission organization, the Delaware Public Service Commission, the Division of the Public Advocate, energy utilities, other stakeholders, and other states.

(13) Conduct analysis, study policy options, and collaborate with energy utilities and other stakeholders to make recommendations to facilitate the responsible siting of renewable energy facilities in Delaware;

(14) Provide public information and convene stakeholder meetings when necessary to implement the purposes of this subchapter; and

(15) Acting through the Department of Natural Resources and Environment Control, have the authority to intervene as a party in dockets before the Public Service Commission by filing a petition to intervene stating its interest in the docket. Such intervention shall be limited to matters arising directly from the matters enumerated in subchapter II of this chapter. Should the Commission grant the petition, the Department shall be deemed a party in interest and shall have full power to present evidence, subpoena and cross-examine witnesses, submit proof, file briefs, appeal and take any other action appropriate for a party in a Commission docket.

(74 Del. Laws, c. 38, § 1; 74 Del. Laws, c. 87, § 2; 75 Del. Laws, c. 88, § 16(5); 78 Del. Laws, c. 290, § 233; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 23; 84 Del. Laws, c. 141, § 2; 84 Del. Laws, c. 147, § 2; 84 Del. Laws, c. 401, § 2.)

§ 8054. Cabinet Committee on Energy.

(a) A Cabinet Committee on Energy is established and shall serve in an advisory capacity to the Governor. It shall be comprised of the following members:

(1) The Secretary of the Department of Natural Resources and Environmental Control.

(2) The Secretary of the Department of Agriculture.

(3) The Secretary of the Department of Transportation.

(4) The Secretary of the Department of Health and Social Services.

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

(6) The Secretary of the Department of State.

(7) [Repealed.]

(8) The Director of the Office of Management and Budget.

(9) Such others as the Governor may designate.

(b) The Governor shall designate 1 member to serve as Chairperson of the Committee.

(c) The Committee shall consider matters relating to energy issues and use in state government, including, but not limited to:

(1) Developing programs for state agencies to save energy through energy efficiency in facility construction and operation, energy and equipment procurement.

(2) Setting comprehensive goals and prioritizing programs based on the cost effectiveness of energy saving measure.

(3) Developing and implementing the use of transportation energy reduction methods for employees.

(4) Identifying opportunities for the use of fuel cells and solar energy equipment to meet the energy needs of agencies and/or state buildings.

(d) The State Energy Office shall provide staffing assistance to the Cabinet Committee on Energy.

(74 Del. Laws, c. 415; 75 Del. Laws, c. 88, §§ 21(13), 38; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 24.)

§ 8055. Governor’s Energy Advisory Council.

(a) There is hereby established the Governor’s Energy Advisory Council.

(b) The Governor’s Energy Advisory Council shall monitor Delaware’s energy system, identify and propose actions to enhance Delaware’s energy system, including actions to lessen the climate change impacts of Delaware’s energy system, and provide counsel to the Governor on promoting an economic, reliable and competitive energy market for all Delaware consumers.

(c) The Governor’s Energy Advisory Council shall be assigned the following responsibilities:

(1) [Repealed.]

(2) Providing recommendations to the State Energy Office on updates to the Delaware Energy Plan and Climate Action Plan every 5 years from date of enactment. The updating process shall include a process for public input and measures for progress in attaining goals identified in the plans.

(3) Monitoring federal, state and regional energy issues, identifying the impacts on Delaware and recommending actions and policies to the Governor and General Assembly in response to identified issues.

(4) Other duties as referred by the Governor.

(d) The Governor’s Energy Advisory Council shall be composed of 25 members as follows:

(1) A Chair to be appointed by the Governor for a term of 3 years and who shall be eligible for re-appointment for terms of 3 years.

(2) Chair of the Public Service Commission or their designee.

(3) The Public Advocate or their designee.

(4) Chair of the Weatherization Assistance Program Policy Advisory Council or their designee.

(5) The Executive Director of the Delaware Sustainable Energy Utility or their designee.

(6) Fifteen members who shall be appointed by the Governor representing, to the extent possible, the following constituencies: electricity transmission; electricity distribution; electricity generation; economically or environmentally overburdened and underserved communities; Public Service Commission-regulated, municipal, and cooperative public utilities; agriculture and/or agribusiness; utilities; solar energy; wind energy; energy efficiency; innovative energy technology; industrial electricity users; transportation fuels; and environmental, public health, and energy interests. These members shall be appointed by the Governor as follows:

a. Five members shall be appointed for 3-year terms;

b. Five members shall be appointed for initial 2-year terms;

c. Five members shall be appointed for initial 1-year terms;

d. Thereafter, appointees shall serve for 3-year terms.

(7) The Secretaries of Transportation, Natural Resources and Environmental Control, and Agriculture or their designees shall serve as ex-officio members.

(8) One member of the Senate appointed by the President Pro Tempore of the Senate.

(9) One member of the House of Representatives appointed by the Speaker of the House of Representatives.

(e) An appointment, pursuant to this section, to replace a member whose position becomes vacant prior to the expiration of the member's term shall be filled only for the remainder of that term. Members shall continue to serve after the expiration of their terms until they resign, are reappointed or are replaced.

(f) Members of the Advisory Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members in accordance with state law.

(g) The Chair of the Advisory Council may establish such subcommittees of the Advisory Council as the Chair determines would provide assistance to the Advisory Council in meeting its responsibilities. Any subcommittee shall be chaired by an Advisory Council member or their designee.

(h) A quorum of the Advisory Council is a majority of its members. A vacant position is not counted for quorum purposes. Official action by the Advisory Council requires the approval of a majority of the members present at a meeting with a quorum.

(i) The State Energy Office shall provide staff support to the Advisory Council.

(j) *Annual report. —*

On or before January 31, 2023, and on or before every January 31 thereafter, the Council shall submit an annual report to the Governor, President Pro Tempore of the Senate, and the Speaker of the House of Representatives for distribution to the members of the General Assembly, with a copy to the Director and the Librarian of the Division of Legislative Services, and the Delaware Public Archives.

(74 Del. Laws, c. 415; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 25; 83 Del. Laws, c. 356, § 1; 84 Del. Laws, c. 255, § 51.)

§ 8056. Offshore wind transmission and procurement authority.

(a) *Definitions. —*

For the purposes of this section:

(1) "Department" means the Department of Natural Resources and Environmental Control.

(2) "DPA" means the Delaware Division of the Public Advocate.

(3) "Offshore wind project" means a power production facility located in waters off the Atlantic coast, converting ocean winds into electricity.

(4) "PJM Interconnection" means PJM Interconnection, LLC or any successor organization that services the PJM region.

(5) "PSC" means the Delaware Public Service Commission.

(b) *Transmission planning. —* (1) The Department shall cooperate with PJM Interconnection in an analysis of the impacts on transmission of offshore wind procurement goals of other states within the PJM region and the potential for procurement by Delaware of electricity from offshore wind projects including transmission system upgrade and expansion options that take into consideration both onshore and offshore infrastructure. The Department shall consult with the PSC, the DPA, and all electric utilities in Delaware prior to engaging with PJM Interconnection in this analysis and shall provide the results of any such analysis to the PSC, the DPA, and all electric utilities in Delaware.

(2) The Department shall consult with the state energy offices, or equivalent offices, in other states served by PJM Interconnection to evaluate regional transmission cooperation that could help achieve the State's renewable energy goals with greater efficiency. The Department shall report to the PSC, the DPA, and all electric utilities in Delaware on this effort.

(c) *Offshore wind procurement planning. —*

The Department shall study the procurement processes, including those used in other Atlantic states for electricity from offshore wind projects, evaluate the options for conducting and evaluating a request for proposal process to procure offshore wind power, and prepare recommendations for potential offshore wind procurement. Any procurement process should consider at least the following:

(1) The long-term cost impact, if any, on ratepayers in Delaware.

(2) Potential economic costs and benefits for the State and for Delawareans.

(3) The consistency of such a procurement with the Delaware Climate Action Plan, the Delaware Energy Plan, and the ability of the State to meet its Renewable Energy Portfolio Standards.

(4) The avoided costs of greenhouse gas emissions and other air pollutants on the State from power generation sources.

(5) Potential health benefits for the State and for Delawareans.

(6) The availability and scale of suitable offshore wind locations.

(7) The state of the offshore wind industry and associated supply chains.

(8) The impacts on the electricity transmission system.

(d) *Offshore wind procurement authority.* — (1) The State Energy Office is authorized and directed to develop and conduct a solicitation or solicitations, as it may deem necessary and appropriate, through a request for proposals for a single or multiple offshore wind contracts relating to energy, capacity, ancillary services and RECs, or only RECs, generated by a qualified offshore wind project or projects equal to an aggregate nameplate capacity of not more than 1,200 megawatts in accordance with the provisions of this section.

(2) The State Energy Office may, in its discretion, develop such solicitation or solicitations for a project that serves only Delaware (a "Delaware solicitation") or in coordination with solicitations, requests for proposals, or other procurement processes conducted by other states and may consider proposals in connection with such other states' procurement processes (a "coordinated solicitation," and collectively with a Delaware solicitation, a "solicitation"). A Delaware solicitation shall include project labor agreements, and may include requirements for community benefits agreements, supply chain requirements, workforce development, and conservation and mitigation elements.

(3) For both Delaware solicitations and for coordinated solicitations, the State Energy Office is directed to ensure that the ratepayers of 1 utility never bear the costs of any project alone, either by using a coordinated solicitation, or by including at least 1 additional offtaker for any Delaware solicitation. For Delaware solicitations, the State Energy Office is directed to either identify an additional offtaker prior to issuance of a solicitation (as set forth in paragraph (d)(6) of this section) or the bidder must identify an additional offtaker (as is set forth in paragraph (d)(4)d. of this section).

(4) Any Delaware solicitation shall require proposals to meet the following offshore wind solicitation requirements (the "OSW solicitation requirements"), which shall be weighted by the State Energy Office in any solicitation:

a. Have a term of at least 20 years.

b. Have a first-year price expressed in dollars per megawatt-hour that does not exceed 110% of the Delaware benchmark price, as adjusted for inflation to the anticipated starting date of commercial operation, provided that any price escalator for subsequent years shall be limited to a maximum of 2% per year. Furthermore, if the contract is only for the purchase of RECs with no requirement to either:

1. Purchase energy, capacity, or ancillary services; or

2. Transfer revenues from the sales of such electricity products to Delaware electricity ratepayers,

then such contract shall have a first-year price that does not exceed 110% of the weighted average cost per megawatt-hour of compliance, through REC procurement, net energy costs of renewable energy contracts, and alternative compliance payments, with the Renewable Energy Portfolio Standards Act [subchapter III-A of Chapter 3 of Title 26] for Commission-regulated public utilities during the 3 immediately preceding years, as adjusted for inflation to the anticipated starting date of commercial operation, provided that any price escalator for subsequent years shall be limited to a maximum of 2% per year.

c. Sell or transfer energy, capacity, and RECs, or only RECs, from a qualified offshore wind project.

d. Shall identify at least 1 commitment to enter into a long-term contract to purchase offshore wind energy or renewable energy credits with businesses, nonprofit organizations, the State, municipalities or groups of municipalities, or with cooperative associations. The State Energy Office may identify in the solicitation materials that this commitment has been secured prior to the solicitation. However, if no such commitment is identified by the State Energy Office, then such commitment must be included as a part of the bid submitted by a project proponent.

e. Specify the avoided greenhouse gas emissions associated with the proposal and a calculation of the economic benefit to the State and Delawareans of such avoided greenhouse gas emissions calculated in total and on a per megawatt-hour basis.

f. Specify the avoided health impacts to the State and Delawareans associated with the proposal, including through avoided emissions of air pollutants, and a calculation of the economic benefit to the State and Delawareans of such avoided health impacts calculated in total and on a per megawatt-hour basis.

g. Specify the economic costs and benefits for the State and Delawareans associated with the proposal, including the number of in-state jobs created by the project; any increase in wages, taxes, receipts, in-state expenditures, and investments in Delaware offshore wind supply chain; and utilization of instate port and supply chain facilities, and a calculation of such economic costs and benefits to the State and Delawareans calculated in total and on a per megawatt-hour basis.

h. Specify the impacts to the electric transmission system and capacity and energy markets in Delaware and within the PJM region and include a calculation of the economic benefits and costs to the State and Delawareans of such transmission, capacity, and energy impacts calculated in total and on a per megawatt-hour basis.

i. Specify the expected bill impact for each class of service based upon the Delaware benchmark price.

(5) For any coordinated solicitation, any contract applicable to Delaware offtakers shall meet the requirements of paragraph (d)(4)b. of this section (the Delaware benchmark price). Contracts involving offtakers from other coordinating states need not meet the requirements of paragraph (d)(4)b. of this section. Additionally, any proposal resulting from a coordinated solicitation is subject to paragraphs (d)(7) through (d)(9) of this section.

(6) The State Energy Office may, prior to the issuance of Delaware solicitation or a coordinated solicitation, enter agreements with potential offtakers, including but not limited to businesses, nonprofit organizations, the State, municipalities or groups of municipalities, or with cooperative associations, who are willing to enter long term contracts in the event that a project moves forward. Notwithstanding the provisions of Chapter 69 of Title 29, the State has authority to enter such an energy supply contract for any portion of the power supply needs of the State upon approval of the Director of the Office of Management and Budget.

(7) Prior to the issuance of any Delaware or coordinated solicitation, the State Energy Office shall present the proposed solicitation to the Renewable Energy Taskforce for review and recommendations in accordance with § 360(d)(4) of Title 26. The State Energy Office may, in its sole discretion, adopt or reject recommendations from the Renewable Energy Taskforce. Should the Renewable Energy Taskforce fail to provide recommendations within 60 days of being presented with the solicitation, the State Energy Office may, in its sole discretion, move forward with a solicitation without such recommendations.

(8) Following receipt of the recommendations of the Renewable Energy Taskforce, or the expiration of the 60-day period set forth in paragraph (d)(7) of this section, the State Energy Office shall present the solicitation to the Public Service Commission for review and approval in accordance with § 365 of Title 26. The State Energy Office shall not issue any solicitation not approved by the Public Service Commission. If the Public Service Commission issues a "preliminary order," as defined in § 365 of Title 26, the State Energy Office shall issue the solicitation.

(9) After receipt of proposals, from either a Delaware solicitation or a coordinated solicitation, the State Energy Office shall determine whether a Delaware solicitation proposal meets the OSW solicitation requirements, and whether any coordinated solicitation meets the requirements applicable to coordinated solicitations in this section. Any solicitation that does not meet such requirements, shall be excluded from further consideration. For any proposals which includes a price term at or below the requirements set forth in paragraph (d)(4)b. of this section, the State Energy Office may determine, in its sole discretion, whether to proceed to negotiate contract terms with the proposer based on consideration of the following factors:

a. The proposal's likelihood of achieving commercial operation.

b. The proposal's consistency with the Delaware Climate Action Plan and the Delaware Energy Plan.

c. Whether the proposal will result in a net reduction in greenhouse gas emissions from the electricity consumed within Delaware, or states bordering Delaware, or within the PJM region.

d. The proposal's impact on the ability of the State to meet the 2030 target and 2050 target for greenhouse gas emissions reductions set forth in § 10003 of Title 7 and to meet the minimum percentage of electric energy sales with eligible energy resources as required by § 354(a) of Title 26.

e. Whether the proposal is competitive with new renewable or carbon-free energy projects of similar scale and production profile interconnecting to the PJM grid in Delaware, or states bordering Delaware.

f. The potential economic costs and benefits for the State and Delawareans associated with the proposal and the strength of economic benefit guarantees in the proposal.

g. The avoided costs of greenhouse gas emissions and other air pollutants.

h. The potential health benefits for the State and for Delawareans.

i. The availability and scale of suitable offshore wind locations.

j. The state of the offshore wind industry, the project applicant, and the associated supply chains.

k. The impacts, if any, of the proposal on the electric transmission system and capacity and energy markets, including the ability to facilitate future expansion of offshore wind energy delivery capability.

(10) If the State Energy Office moves forward with negotiation of contract terms on any proposal, such contract terms shall include project labor agreements, and may include community benefits agreements, supply chain requirements, workforce development requirements, and conservation and mitigation elements. The State Energy Office may approve the terms and conditions of an offshore wind contract provided it determines that entering into an offshore wind contract with such terms and conditions is in the public interest, which the State Energy Office shall determine after consideration of the OSW solicitation requirements and the criteria set forth in this section. If the State Energy Office issues such approval, the offshore wind contract shall be submitted to the Commission for approval pursuant to § 365 of Title 26.

(84 Del. Laws, c. 146, § 2; 84 Del. Laws, c. 401, § 3.)

§ 8057. Green Energy Fund [Effective until July 16, 2028].

(a) (1) The Department of Natural Resources and Environmental Control (DNREC) shall transfer 30% of all alternative compliance payments and solar alternative compliance payments made into the Green Energy Fund to the Low Income Home Energy Assistance

Program. A transfer under this paragraph is not included in calculations under this section relating to total money deposited or spent from the Green Energy Fund.

(2) The State Energy Office shall administer moneys in the Green Energy Fund, in consultation with other offices within DNREC and the Division of the Public Advocate, through a program of environmental incentive grants and loans for the development, promotion and support of energy efficiency programs and renewable or alternative energy technology in the State.

(b) The State Energy Office shall establish standards, procedures and regulations governing the administration of the Green Energy Fund which are not inconsistent with this subchapter. Up to 7.5% of the moneys deposited in the Green Energy Fund each year may be used for administration of the Fund, and an additional 2.5% of the moneys may be used for outreach activities including marketing, advertising and workshops.

(c) The goals which shall guide use of the Green Energy Fund include:

(1) Fostering use of energy efficient, renewable and environmentally friendly energy technologies throughout the State in the residential, commercial, industrial, public and agricultural sectors;

(2) Promoting research, development and demonstration projects in the fields of energy efficiency and renewable energy technologies;

(3) Advocating green public policy initiatives;

(4) Establishing and supporting education and public awareness programs;

(5) Pursuing community outreach programs;

(6) Supporting the development of green industries and generators in the State;

(7) Encouraging the construction, maintenance and operation of green buildings, schools and residential developments; and

(8) Creating market incentives for the pursuit of renewable energy resources by energy providers in the State.

(d) The Green Energy Fund shall be used for programs in Delaware including, but not limited to:

(1) The Green Energy Endowment Program:

a. The Green Energy Endowment Program shall provide cash grants from the Green Energy Fund to customers that have constructed, purchased, leased or who have executed a power purchase agreement for renewable energy technology and have placed such renewable energy technology in service.

b. Any 1 cash grant for any 1 project shall be no more than is necessary to promote deployment of renewable energy technologies. The level of incentive shall be set by the Secretary, in consultation with the Sustainable Energy Utility Oversight Board, and may be amended from time to time to respond to market conditions.

c. Persons eligible for cash grants under the Green Energy Endowment Program shall include:

1. Persons in Delaware receiving services from Conectiv, or its successor, after the adoption of a restructuring plan pursuant to § 1005(a) of Title 26; and

2. Persons in Delaware receiving services from a nonregulated electric supplier which is contributing to the Green Energy Fund.

d. Grants made under the Green Energy Endowment Program shall not exceed 65% of all expenditures from the Green Energy Fund on an annual basis.

e. Funds available for grants under the Green Energy Endowment Program will be allocated into a residential pool and a nonresidential pool on an annual basis. Sixty percent of the funds available for grants under the Green Energy Incentive Program will be allocated to the residential pool and 40% of the funds available for grants under the Green Energy Endowment Program will be allocated to the nonresidential pool.

f. For all new Green Energy Endowment Program applicants who have not, as of July 28, 2010, received a commitment of funding from DNREC, must first, before applying for a grant under this program, conduct a home performance with Energy Star audit, using a Building Performance Institute or equivalent certification program trained professional, and identify cost-effective energy efficiency projects. Newly constructed homes and commercial buildings must receive Energy Star certification or an equivalent third-party green building certification in order to receive funding under this program.

(2) The Technology Demonstration Program:

a. The Technology Demonstration Program shall provide cash grants equal to 25% of the cost of a project which demonstrates the market potential of Renewable Energy Technology in Delaware, with no 1 grant for any 1 project to exceed $200,000.

b. Grants made under the Technology Demonstration Program shall not exceed 25% of all expenditures from the Green Energy Fund on an annual basis.

(3) The Research and Development Programs:

a. Under the Research and Development Programs moneys will be expended from the Green Energy Fund:

1. To support qualifying research and graduate studies in Delaware in energy efficiency and renewable energy technologies; and

2. To provide grants equal to no greater than 35% of the cost of project for the development of a product in Delaware directly related to Renewable Energy Technology, including but not limited to any product improving the engineering of, adapting or

developing Renewable Energy Technology either as an independent piece of Renewable Energy Technology or as a component thereof, with no 1 grant for any one project to exceed $250,000.

b. Grants made under the Research and Development Programs, in the aggregate, shall not exceed 10% of all expenditures from the Green Energy Fund on an annual basis.

(4) *Solar Energy Curriculum Program.* — The Solar Energy Curriculum Program shall provide cash grants from the Green Energy Fund to high schools in Delaware that are Delmarva Power customers and that create a course, or curriculum, that teaches the science, economics, policy, and hands-on installation of solar photovoltaic technology. Grants made under this program shall provide 100% funding for the installation of a solar photovoltaic system to be used as part of the qualifying school's solar energy curriculum. Total funding may not exceed $10,000 per school for solar equipment only, and shall not prevent the school from participating in the Green Energy Endowment Program. Green Energy Fund dollars committed to such installations shall not exceed $100,000 per year total. The Energy Office shall establish appropriate curriculum eligibility criteria before awarding any such grants.

(5) *Unexpended Funds.* — Any amount allocated to the Green Energy Endowment Program, the Technology Demonstration Program and the Research and Development Programs and not expended during a particular year shall be considered as part of the Green Energy Fund and available for allocation and expenditure in subsequent years. Provided the Controller General approves, annual funds collected and unused during 1 fiscal year that have been apportioned to the commercial sector in the Green Energy Endowment Program may be moved for use in the residential sector in following years to allow the Energy Office to satisfy application queues should they develop.

(6) The Secretary may, in the event the Endowment program described in paragraph (d)(1) of this section above is unable to keep pace with demand, indefinitely suspend the Technology Demonstration and Research and Development programs defined in paragraphs (d)(2) and (3) of this section and direct all available funds to the Green Energy Endowment Program until such time as any queue is eliminated and all applicants have received their authorized payment.

(e) Upon a finding by the Secretary, in consultation with the Sustainable Energy Utility Oversight Board, that the incentives provided for renewable energy technologies through the operation of the Delaware Renewable Energy Portfolio Standard as authorized under subchapter III-A, of Chapter 1, of Title 26, are substantially equivalent to or exceed those allowed under this chapter, the Secretary may, providing that all approved applicants receive payments offered under the Green Energy Endowment Program, suspend in part or in full, the Green Energy Endowment Program, the Technology and Demonstration Program and/or the Research and Development Program under paragraphs (d)(1)-(3) of this section and reallocate revenues authorized under § 1014(a) of Title 26 to alternative incentive programs to promote energy efficiency and green building programs, renewable energy loan programs and incentive programs for nonprofit organizations. In the event the Secretary makes such a finding in consultation with the Sustainable Energy Utility Oversight Board, the Secretary shall provide to the Chairs of the House and Senate Energy Committees the Secretary's rationale for such a finding and a full description of the new program to be implemented.

(f) Incentives provided through the Green Energy Fund shall be exempt from taxation by the State and by the counties and municipalities of the State.

(74 Del. Laws, c. 38, § 1; 74 Del. Laws, c. 87, § 3; 74 Del. Laws, c. 415; 75 Del. Laws, c. 160, §§ 2, 3; 76 Del. Laws, c. 166, §§ 2-6; 77 Del. Laws, c. 452, §§ 2-7; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 26; 85 Del. Laws, c. 81, § 2.)

§ 8057. Green Energy Fund [Effective July 16, 2028].

(a) The State Energy Office shall administer moneys in the Green Energy Fund, in consultation with other offices within Department of Natural Resources and Environmental Control (DNREC) and the Division of the Public Advocate, through a program of environmental incentive grants and loans for the development, promotion and support of energy efficiency programs and renewable or alternative energy technology in the State.

(b) The State Energy Office shall establish standards, procedures and regulations governing the administration of the Green Energy Fund which are not inconsistent with this subchapter. Up to 7.5% of the moneys deposited in the Green Energy Fund each year may be used for administration of the Fund, and an additional 2.5% of the moneys may be used for outreach activities including marketing, advertising and workshops.

(c) The goals which shall guide use of the Green Energy Fund include:

(1) Fostering use of energy efficient, renewable and environmentally friendly energy technologies throughout the State in the residential, commercial, industrial, public and agricultural sectors;

(2) Promoting research, development and demonstration projects in the fields of energy efficiency and renewable energy technologies;

(3) Advocating green public policy initiatives;

(4) Establishing and supporting education and public awareness programs;

(5) Pursuing community outreach programs;

(6) Supporting the development of green industries and generators in the State;

(7) Encouraging the construction, maintenance and operation of green buildings, schools and residential developments; and

(8) Creating market incentives for the pursuit of renewable energy resources by energy providers in the State.

(d) The Green Energy Fund shall be used for programs in Delaware including, but not limited to:

(1) The Green Energy Endowment Program:

a. The Green Energy Endowment Program shall provide cash grants from the Green Energy Fund to customers that have constructed, purchased, leased or who have executed a power purchase agreement for renewable energy technology and have placed such renewable energy technology in service.

b. Any 1 cash grant for any 1 project shall be no more than is necessary to promote deployment of renewable energy technologies. The level of incentive shall be set by the Secretary, in consultation with the Sustainable Energy Utility Oversight Board, and may be amended from time to time to respond to market conditions.

c. Persons eligible for cash grants under the Green Energy Endowment Program shall include:

1. Persons in Delaware receiving services from Conectiv, or its successor, after the adoption of a restructuring plan pursuant to § 1005(a) of Title 26; and

2. Persons in Delaware receiving services from a nonregulated electric supplier which is contributing to the Green Energy Fund.

d. Grants made under the Green Energy Endowment Program shall not exceed 65% of all expenditures from the Green Energy Fund on an annual basis.

e. Funds available for grants under the Green Energy Endowment Program will be allocated into a residential pool and a nonresidential pool on an annual basis. Sixty percent of the funds available for grants under the Green Energy Incentive Program will be allocated to the residential pool and 40% of the funds available for grants under the Green Energy Endowment Program will be allocated to the nonresidential pool.

f. For all new Green Energy Endowment Program applicants who have not, as of July 28, 2010, received a commitment of funding from DNREC, must first, before applying for a grant under this program, conduct a home performance with Energy Star audit, using a Building Performance Institute or equivalent certification program trained professional, and identify cost-effective energy efficiency projects. Newly constructed homes and commercial buildings must receive Energy Star certification or an equivalent third-party green building certification in order to receive funding under this program.

(2) The Technology Demonstration Program:

a. The Technology Demonstration Program shall provide cash grants equal to 25% of the cost of a project which demonstrates the market potential of Renewable Energy Technology in Delaware, with no 1 grant for any 1 project to exceed $200,000.

b. Grants made under the Technology Demonstration Program shall not exceed 25% of all expenditures from the Green Energy Fund on an annual basis.

(3) The Research and Development Programs:

a. Under the Research and Development Programs moneys will be expended from the Green Energy Fund:

1. To support qualifying research and graduate studies in Delaware in energy efficiency and renewable energy technologies; and

2. To provide grants equal to no greater than 35% of the cost of project for the development of a product in Delaware directly related to Renewable Energy Technology, including but not limited to any product improving the engineering of, adapting or developing Renewable Energy Technology either as an independent piece of Renewable Energy Technology or as a component thereof, with no 1 grant for any one project to exceed $250,000.

b. Grants made under the Research and Development Programs, in the aggregate, shall not exceed 10% of all expenditures from the Green Energy Fund on an annual basis.

(4) *Solar Energy Curriculum Program.* — The Solar Energy Curriculum Program shall provide cash grants from the Green Energy Fund to high schools in Delaware that are Delmarva Power customers and that create a course, or curriculum, that teaches the science, economics, policy, and hands-on installation of solar photovoltaic technology. Grants made under this program shall provide 100% funding for the installation of a solar photovoltaic system to be used as part of the qualifying school's solar energy curriculum. Total funding may not exceed $10,000 per school for solar equipment only, and shall not prevent the school from participating in the Green Energy Endowment Program. Green Energy Fund dollars committed to such installations shall not exceed $100,000 per year total. The Energy Office shall establish appropriate curriculum eligibility criteria before awarding any such grants.

(5) *Unexpended Funds.* — Any amount allocated to the Green Energy Endowment Program, the Technology Demonstration Program and the Research and Development Programs and not expended during a particular year shall be considered as part of the Green Energy Fund and available for allocation and expenditure in subsequent years. Provided the Controller General approves, annual funds collected and unused during 1 fiscal year that have been apportioned to the commercial sector in the Green Energy Endowment Program may be moved for use in the residential sector in following years to allow the Energy Office to satisfy application queues should they develop.

(6) The Secretary may, in the event the Endowment program described in paragraph (d)(1) of this section above is unable to keep pace with demand, indefinitely suspend the Technology Demonstration and Research and Development programs defined in paragraphs (d)(2) and (3) of this section and direct all available funds to the Green Energy Endowment Program until such time as any queue is eliminated and all applicants have received their authorized payment.

(e) Upon a finding by the Secretary, in consultation with the Sustainable Energy Utility Oversight Board, that the incentives provided for renewable energy technologies through the operation of the Delaware Renewable Energy Portfolio Standard as authorized under

subchapter III-A, of Chapter 1, of Title 26, are substantially equivalent to or exceed those allowed under this chapter, the Secretary may, providing that all approved applicants receive payments offered under the Green Energy Endowment Program, suspend in part or in full, the Green Energy Endowment Program, the Technology and Demonstration Program and/or the Research and Development Program under paragraphs (d)(1)-(3) of this section and reallocate revenues authorized under § 1014(a) of Title 26 to alternative incentive programs to promote energy efficiency and green building programs, renewable energy loan programs and incentive programs for nonprofit organizations. In the event the Secretary makes such a finding in consultation with the Sustainable Energy Utility Oversight Board, the Secretary shall provide to the Chairs of the House and Senate Energy Committees the Secretary's rationale for such a finding and a full description of the new program to be implemented.

(f) Incentives provided through the Green Energy Fund shall be exempt from taxation by the State and by the counties and municipalities of the State.

(74 Del. Laws, c. 38, § 1; 74 Del. Laws, c. 87, § 3; 74 Del. Laws, c. 415; 75 Del. Laws, c. 160, §§ 2, 3; 76 Del. Laws, c. 166, §§ 2-6; 77 Del. Laws, c. 452, §§ 2-7; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 26; 85 Del. Laws, c. 81, § 2; 85 Del. Laws, c. 81, § 5.)

§ 8058. Rules and regulations.

The Secretary shall promulgate rules and regulations governing the administration of the State Energy Office or that are necessary to carry out the provisions of this subchapter.

(74 Del. Laws, c. 38, § 1; 74 Del. Laws, c. 415.)

§ 8059. Sustainable Energy Utility.

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

(1) "Affected electric energy provider" means an electric distribution company, rural electric cooperative, or municipal electric company serving energy customers in Delaware.

(2) "Affected energy provider" means an affected electric energy provider or affected natural gas distribution company.

(3) "Affected natural gas distribution company" means a natural gas distribution company serving energy customers in Delaware.

(4) "Agency" means any state agency, authority, or any political subdivision of the State or local government, including, but not limited to, county, city, township, village or municipal government, local school districts, and institutions of higher education, any state-supported institution, or a joint action agency composed of political subdivisions.

(5) "Commission" means the Delaware Public Service Commission.

(6) "Energy efficiency" means a decrease in consumption of electric energy or natural gas on a per unit of production basis which does not cause a reduction in the quality or level of service provided to the energy customer, achieved through measures or programs that target consumer behavior, or replace or improve the performance of equipment, processes, or devices. Energy efficiency can also mean the reduction in transmission and distribution losses associated with the design and operation of the electrical system.

(7) "Energy savings" means reductions in electricity consumption, reductions in natural gas consumption, electricity peak demand response programs resulting in reduced electricity consumption, or measurable efficiency gains from the transition to lower-emission fuels, as determined by the Secretary through regulations pursuant to paragraph (h)(3) of this section.

(8) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

(9) "SEU Oversight Board" ("the Board") means the board created pursuant to this section.

(10) "Sustainable Energy Utility" ("SEU") is the nonprofit entity created pursuant to the provisions of this section to develop and coordinate programs for energy end-users in Delaware for the purpose of promoting the sustainable use of energy in Delaware.

(b) *Intent of legislation.* — The General Assembly finds that there remain in Delaware significant, cost-effective opportunities to acquire end-user energy efficiency savings that can lower customers' bills and reduce the environmental impacts of energy production, delivery, and use. Delaware has an opportunity to create new markets for customer-sited renewable energy generation that will help build jobs in Delaware, improve our national security, keep value within the local economy, improve energy reliability, and protect Delawareans from the damaging effects of recurrent energy price spikes.

(c) *Sustainable Energy Utility administrative organization.* — (1) This section creates the "Sustainable Energy Utility" ("SEU"). The SEU shall design and deliver comprehensive end-user energy efficiency and customer-sited renewable energy services to Delaware's households and businesses. The SEU shall be unaffiliated with any of the State's electric or gas utilities, public or private.

(2) Routine administration of the SEU shall be managed by an executive director selected by the Board through an open and competitive selection process.

(d) *SEU Oversight Board.* — (1) a. The business and affairs of the SEU shall be managed by or under the direction of the SEU Oversight Board. The SEU Oversight Board shall consist of 11 members and shall include the Secretary of the Department of Natural Resources and Environmental Control ("DNREC") or the Secretary's designee, and the Public Advocate or the Public Advocate's designee. The Board shall include representation from each county. Seven members of the SEU Oversight Board shall be appointed by and serve at the pleasure of the Governor, and may include, but not be limited to, representatives from the nonprofit environmental community, the nonprofit energy community, the nonprofit community servicing the low and moderate income community, the financing/accounting

community, business, labor, and education. One member of the SEU Oversight Board shall be appointed by and serve at the pleasure of the President Pro Tempore, and 1 member shall be appointed by and serve at the pleasure of the Speaker of the House. The Board shall elect 1 of its members to serve as a chairperson by a majority vote. The Director of the Division of Climate, Coastal and Energy of DNREC, or the Director's designee, shall serve on the Board in an ex officio nonvoting capacity. The terms of the board members shall typically be 4 years, and shall be staggered. The Governor may appoint members for terms of less than 4 years to ensure that the terms are staggered. The Governor may, at any time, remove any gubernatorial appointee to the SEU Oversight Board for gross inefficiency, malfeasance, misfeasance or nonfeasance, in office. A gubernatorial appointee may be deemed to have resigned their position if they are absent from 3 consecutive board meetings without good cause.

b. The SEU Oversight Board shall be governed by and subject to the Delaware Freedom of Information Act (Chapter 100 of this title).

c. The SEU Oversight Board shall include a provision in its bylaws pertaining to conflicts of interest and Board members shall be required to sign conflict of interest statements.

(2) The SEU Oversight Board may, from time to time, appoint 1 or more advisory committees. An advisory committee may include representatives of organizations which represent low and moderate income energy consumers, low and moderate income housing consumers, civic organizations, environmental organizations, the energy industry, the energy efficiency and energy conservation community, the renewable energy community, marketing and public relations, small business, agriculture, accounting, business management, banking, finance, nonprofit communities, the general public, and the academic community. The Board shall decide the number of advisory committee members (including ex officio members).

a. Among other things, the advisory committee may provide advice to the Board on issues of public policy and public education which may enhance the performance and quality of service of the SEU.

b. A candidate for an advisory committee shall require a $^{2}/_{3}$ vote of Board members in order to serve. Criteria for the advisory committee members shall include professional experience, community service, reputation, significance to Delaware, a diversified representation of the Delaware community and geographical representation of the State.

c. Nominations for the advisory committee may be submitted by Board members and public solicitation.

(3) Board members shall serve without compensation.

(4) No board member shall receive financial gain from service on the Board.

(5) Board members shall not be employed by any organization directly or indirectly affiliated with the SEU or its contractors for a period of not less than 2 years after the end of their service on the Board.

(6) The Board shall adopt by-laws, by September 28, 2007, to govern itself.

(7) The Board shall have the following responsibilities, among others permitted by law:

a. Review and approve the contract-term and performance targets recommended by the executive director.

b. Review and approve any proposed modifications to SEU performance targets or program designs.

(e) *SEU executive director responsibilities.* — The SEU executive director is responsible for the day-to-day functions and responsibilities of the SEU. The executive director's chief responsibilities include oversight of program management, and setting and compliance with appropriate performance and budgetary targets.

(1) *Program research and design.* — a. The executive director shall develop a comprehensive suite of program designs. Each program design must specify, at minimum, program goals, performance targets, an estimated budget, an implementation strategy, and an evaluation strategy. The executive director is not required to design or initiate all programs at once, but the executive director must demonstrate how each program fits within the SEU's overall strategy to meet the SEU's long-term performance targets.

b. The executive director is expected to fulfill the following responsibilities through program designs, RFPs, and program implementation:

1. To be responsive to customers and market forces in implementing and redesigning the programs;

2. To design a portfolio of programs to allow all energy end-users, regardless of electricity or gas retail providers, and regardless of market segment or end-use fuel, to participate in the SEU programs;

3. To promote program initiatives and market strategies that address the needs of persons or businesses facing the most significant barriers to participation;

4. To promote coordinated program delivery, including coordination with low income programs, other efficiency programs, and utility programs;

5. To coordinate with relevant regional and national energy efforts and markets, including markets for pollution emissions offsets and credits, and renewable energy credits;

6. To consider innovative approaches to delivering sustainable energy services, including strategies to encourage third-party financing and leveraged customer contributions to the cost of program measures, as consistent with principles of sound program design;

7. To offer "one-stop shopping" and be the point-of-contact for sustainable energy services in Delaware;

8. To create a comprehensive website that provides easy access to SEU programs and information for all Delawareans, allowing them to participate in SEU programs electronically;

9. To emphasize "lost opportunity" markets, which are sustainable energy measures that can only be cost-effectively captured at particular times, such as during new construction or extensive remodeling; and

10. To emphasize market strategies to deliver services.

(2) *Administration of contracts.* — The SEU shall propose and adopt rules to guide the bidding process and criteria to guide bid selection. The RFPs shall specify a contract term not to exceed the limitation set forth in The Energy Performance Contracting Act set forth in subchapter V of Chapter 69 of this title.

(3) *Oversight and reporting.* — a. The SEU Oversight Board shall develop a 3- to 5-year strategic plan, with input provided by board members, stakeholder groups across the State, and the public at large. The strategic plan shall be made available to the public on the SEU's website. The SEU's strategic plan shall include an educational component for the general public with a continued focus on residential energy efficiency projects.

b. The SEU shall publish a comprehensive annual report which shall be submitted to the Governor and the General Assembly and made available to the public on the SEU's website.

c. The SEU shall have certified financial statements prepared at the end of each fiscal year and make them available to the public on the SEU's website.

d. The SEU's financial statements shall be audited every other year by an independent certified public accounting firm qualified to perform such an audit, and the audit results shall be made available to the public on the SEU's website.

(f) *Funding for the SEU.* — (1) DNREC may partner with the SEU to assist in the administration of some or all of the Green Energy Fund in accordance with § 8057 of this title.

(2) *Bonds of the SEU.* — a. The SEU may from time to time issue bonds for any corporate purpose and all such bonds, notes, bond anticipation notes or other obligations of the SEU issued pursuant to this section shall be and are hereby declared to be negotiable for all purposes notwithstanding their payment from a limited source and without regard to any other law or laws. In anticipation of the sale of such bonds, the SEU may issue negotiable bond anticipation notes and may renew the same from time to time, but the maximum maturity of any such note, including renewals thereof, shall not exceed 5 years from the date of issue of the original note. Such notes shall be paid from any revenues of the SEU available therefor and not otherwise pledged, or from the proceeds of sale of the bonds of the SEU in anticipation of which they were issued. The notes shall be issued in the same manner as the bonds. Such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions or limitations which a bond resolution of the SEU may contain.

b. The bonds and notes of every issue shall be payable solely out of the revenues of the SEU, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues and subject to any agreements with any participating facility. Notwithstanding that bonds and notes may be payable from a special fund, they shall be and be deemed to be, for all purposes, negotiable instruments subject only to the provisions of the bonds and notes for registration.

c. The bonds may be issued as serial bonds or as term bonds, or the SEU, in its discretion may issue bonds of both types. The bonds shall be authorized by resolution of the members of the SEU Oversight Board and shall bear such date or dates, mature at such time or times, not exceeding 50 years from their respective dates, bear interest at such rate or rates, payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide. Such resolution or resolutions may delegate to any combination of 3 of the members of the SEU Oversight Board, the power to determine any of the matters set forth in this paragraph (f)(2) and the power to award the bonds to a purchaser or purchasers at public sale or to negotiate a sale to a purchaser or purchasers. The bonds or notes may be sold at public or private sale for such price or prices as the SEU shall determine. Pending preparation of the definitive bonds, the SEU may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

d. Neither the members of the SEU Oversight Board nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

e. The SEU shall have power, out of any funds available therefor, to purchase its bonds or notes. The SEU may hold, pledge, cancel or resell such bonds or notes subject to and in accordance with agreements with bondholders or participating facilities. The SEU may elect to have bonds issued by a conduit issuer and borrow the proceeds thereof.

f. Bonds or notes issued under this section shall not be deemed to constitute a debt or liability of the State or of any political subdivisions thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds herein provided therefor. All such bonds or notes shall contain on the face thereof a statement to the effect that neither the State nor any political subdivision thereof shall be obligated to pay the same or the interest thereon and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of bonds under this section shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor, or to make any appropriation for their

payment. Nothing contained in this section shall prevent or be construed to prevent the SEU from pledging its full faith and credit or the full faith and credit of a participating facility to the payment of bonds or issue of bonds authorized pursuant to this section.

g. Interest on bonds or notes issued under this section shall be exempt from income taxation by this State or any political subdivision thereof.

(3) Revenue sources contributing to the SEU for the purpose of paying bond debt may include but not be limited to funds from shared savings agreements with SEU participants and partial proceeds from the sale of Renewable Energy Credits or Solar Renewable Energy Credits in local and regional markets. The Green Energy Fund shall provide equity leverage for the SEU.

(4) Incentives provided through the SEU or proceeds from the Regional Greenhouse Gas Initiative shall be exempt from taxation by the State and by the counties and municipalities of the State.

(g) *Contracts with the State or agencies.* — The State or any agency may enter into contracts with the SEU or a qualified provider (as defined in § 6972(5) of this title) for the purpose of acquiring, constructing, operating, or providing a project, including arrangements for paying the costs of such project, which costs may include debt service requirements of the SEU relating to that project. If the SEU procures a contract in accordance with subsection (e) of this section, a contract between the SEU and the State or an agency that provides the benefit of the contract to the State or agency may be entered into by the State or agency without additional competitive procurement.

No obligation of the State or an agency under an installment payment agreement, a guaranteed energy performance contract or any other agreement entered into in connection with a project under this Chapter 80 or Chapter 69 of this title shall constitute or create a debt of the State or agency. No such obligation of the State or an agency shall constitute a tax supported obligation or a bond or a note of the State as provided in Chapter 74 of this title.

(h) *Expansion of cost-effective energy efficiency programs.* — Notwithstanding progress towards the achievement of the energy savings targets in § 1502(a) of Title 26, each affected energy provider shall implement energy efficiency, energy conservation, and peak demand reduction programs that are cost-effective, reliable, and feasible as determined through regulations promulgated pursuant to paragraph (h)(3) of this section and delivered in collaboration with the Sustainable Energy Utility as described herein.

(1) *Development and delivery of programs.* — a. An advisory council consisting of 13 members shall be established by the Secretary and shall include 2 representatives of the Sustainable Energy Utility, and 1 representative of each of the following sectors:

1. Affected energy providers;
2. Manufacturing;
3. Agriculture;
4. Environmental;
5. Commercial;
6. Residential; and
7. Low-income sectors.

The advisory council will assist affected energy providers in the development of energy efficiency, peak demand reduction, and emission-reducing fuel switching programs to meet the requirements of this section and in evaluation, measurement and verification of energy savings. Programs shall be designed to maximize the cost-savings benefits for ratepayers by utilizing private financing and allowance proceeds from the Regional Greenhouse Gas Initiative to the maximum extent practicable and consistent with this section, as the preferred sources of program financing prior to expenditures that would otherwise be eligible for rate recovery. The advisory council shall also recommend adoption of financing mechanisms, including, but not limited to, on-bill financing, property assessed clean energy ("PACE") models, and other innovative financing tools.

b. The advisory council, in collaboration with the Public Service Commission staff, and the Public Advocate, shall recommend candidate energy efficiency, and reduction, and emission-reducing fuel-switching program elements that are cost-effective, reliable, and feasible, including financing mechanisms. Such programs shall prioritize the use of energy audits to identify comprehensive energy efficiency measures that maximize cost-effective savings. The advisory council shall recommend 3-year program portfolios and define associated savings targets for the consideration of each affected energy provider.

c. Unless otherwise provided, affected energy providers shall prepare and submit to the advisory council 3-year program plans, schedules, and budgets designed to reflect the recommended program portfolios, including the defined energy savings targets. On a 3-year cycle, the advisory council shall review energy efficiency, peak demand reduction, and fuel switching program plans for each affected energy provider and recommend them for approval by the appropriate regulatory authority, if it finds them to be cost-effective through a net-cost-benefit analysis that quantifies expected cost savings when considered in their entirety pursuant to regulations required by paragraph (h)(3) of this section. Such programs must reduce overall utility bills.

d. Evaluation, measurement, and verification costs incurred by the advisory council and affected energy providers shall be included as costs in the cost-effectiveness test for the program portfolios. Costs shall be reimbursed first by any direct revenues from the programs, including but not limited to revenues from wholesale capacity markets. If such revenues are greater than program costs, the additional revenues shall be applied towards reducing the costs of future energy efficiency programs. If such revenues are less than program costs, the remaining costs shall be allocated to affected energy providers on the basis of total annual sales of energy and reimbursed by affected energy providers as part of energy efficiency and peak demand response program operation costs.

e. The Commission shall review the programs and portfolios recommended by the advisory council, including evaluating the projected net-cost savings, in determining whether to approve such programs for implementation by Commission-regulated affected energy providers. Notwithstanding any provision in Title 26, the Commission shall approve the recovery of appropriate costs incurred by Commission-regulated affected energy providers for approved programs and portfolios on an annual basis, in the same manner as other supply resources, including allocated costs pursuant to this paragraph (h)(1). The Commission shall approve cost recovery for cost-effective energy savings resulting from cost-effective programs and portfolios of commission-regulated affected energy providers that are verified through procedures established in regulations promulgated pursuant to paragraph (h)(3) of this section and determined not to increase overall utility bills. Recovery of appropriate costs shall be through a rate-recovery mechanism that is consistent with the goals and objectives of this section and recommended by the advisory council, filed by the affected energy providers, and approved by the Commission.

1. For the portion of efficiency programs not financed through SEU-secured private financing or Regional Greenhouse Gas Initiative allowance proceeds, or other SEU resources, the Commission shall utilize a process that achieves the efficient and timely recovery on an annual basis by commission-regulated affected energy providers of appropriate costs and associated rates of return related to implementing activities and programs recommended by the advisory council.

2. For commission-regulated affected energy providers, appropriate costs incurred arising out of activities and programs recommended by the advisory council that are not subject to contemporaneous recovery shall be subject to deferred accounting treatment to ensure that program costs are less than expected savings. Program costs may not be placed in the permanent rate base, nor exceed the amortization schedule of the deferred accounting treatment.

3. Peak demand reduction programs of commission-regulated affected energy providers that are currently under review or already have been approved by the Commission, including dynamic pricing and direct load control, shall not be subject to review and approval by the advisory council.

f. Affected energy providers that are not regulated by the Commission may elect to develop, implement and fund programs for energy efficiency and peak demand reduction recommended for approval by the boards of directors for rural electric cooperatives or the pertinent local regulatory authorities for municipal electric companies. For purposes of any comparable plan implemented pursuant to the requirements of § 363 of Title 26, energy efficiency resulting in a reduction in overall energy consumption that exceeds 10% of the electricity provider's 2007 electric consumption shall constitute an "eligible energy resource" under § 352 of Title 26, provided such energy provider has first achieved the 15% energy savings goal as required by § 1502(a)(1) of Title 26 and determined pursuant to paragraph (h)(3) of this section. Such energy efficiency shall be measured and verified as provided in paragraph (h)(3) of this section.

g. The affected energy providers and the Sustainable Energy Utility shall collaborate to promote available energy efficiency and peak demand reduction programs through a common marketing platform provided by the SEU, which shall serve as an easily accessible resource for all residents of Delaware seeking to save money through energy efficiency.

h. The advisory council and the Sustainable Energy Utility may collaborate to design programs to promote and support the development and construction of energy-efficient housing, including programs to alleviate the potential increased upfront costs caused by the adoption of local stretch codes.

i. Nothing in this section shall reduce the authority of the Sustainable Energy Utility as defined in this title. The Sustainable Energy Utility, at its discretion, may provide private financing, allowance proceeds from the Regional Greenhouse Gas Initiative, or other financial resources to reduce implementation costs of energy efficiency programs in coordination with the affected energy providers and may collaborate with affected energy providers to provide efficiency programs.

(2) *Annual reporting.* — DNREC shall annually publish a report on statewide electricity and natural gas consumption and electricity peak energy demand and make the report available to the general public by December 31 of each calendar year. All affected energy providers shall provide actual and projected electric and natural gas consumption and peak usage data to DNREC on an annual basis as specified in regulations promulgated pursuant to paragraph (h)(3) of this section. The report shall identify progress toward the energy and peak savings targets of § 1502(a) of Title 26. In determining compliance with the applicable energy savings requirements, the Secretary shall exclude reported electricity savings or natural gas savings that are not adequately demonstrated and documented, in accordance with the regulations promulgated under paragraph (h)(3) of this section.

(3) *Evaluation, measurement, and verification of energy efficiency.* — a. Not later than June 30, 2015, the Secretary of the Department of Natural Resources and Environmental Control, with the cooperation of affected energy providers, shall, by regulation, establish the requirements of this subsection, including, but not limited to:

1. Evaluation, measurement and verification procedures and standards, including impact evaluation, environmental outcomes, process evaluation, market effects, and cost-effectiveness evaluation;

2. Requirements under which affected energy providers shall demonstrate, document, and report compliance with the energy savings targets established under § 1502(a) of Title 26; and

3. Procedures and standards for defining and measuring electricity savings and natural gas savings that can be counted towards the energy savings targets established under § 1502(a) and (b) of Title 26.

b. All regulations promulgated under this chapter shall be adopted under the Administrative Procedures Act, Chapter 101 of Title 29. Regulations promulgated by the Secretary shall not differ significantly among affected natural gas distribution companies or among affected electric energy providers. Regulations promulgated pursuant to this chapter and case decisions issued under the auspices of this chapter by the Secretary shall be subject to direct appeal to the Superior Court pursuant to the provisions of the Administrative Procedures Act, Chapter 101 of Title 29. The Environmental Appeals Board shall not have jurisdiction over any such appeal.

(76 Del. Laws, c. 54, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 235, §§ 1, 2; 76 Del. Laws, c. 296, § 1; 77 Del. Laws, c. 131, §§ 1-5; 77 Del. Laws, c. 222, §§ 3, 4; 77 Del. Laws, c. 452, § 8; 78 Del. Laws, c. 85, § 1; 79 Del. Laws, c. 395, § 1; 81 Del. Laws, c. 79, § 44; 83 Del. Laws, c. 178, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 141, § 2; 84 Del. Laws, c. 456, § 2.)

§ 8059A. Delaware Energy Fund [Expires effective July 16, 2028, pursuant to 85 Del. Laws, c. 81, § 5].

(a) The Delaware Energy Fund is established and shall be administered by the Sustainable Energy Utility (SEU).

(b) The Delaware Energy Fund will provide financial assistance for energy costs to residents of the State whose household income is below 350% of the federal poverty level, provided, however, that any resident qualifying for the Low Income Home Energy Assistance Program (LIHEAP) will be directed to participate in LIHEAP if funding is available. In that case, administrators of the Delaware Energy Fund shall redirect the application of any individual or family who would qualify for assistance from LIHEAP to the Department of Health and Social Services.

(c) Recipients of assistance from the Delaware Energy Fund must be required to participate in energy savings and efficiency programs offered by the SEU.

(d) A grant of assistance under this section to a qualified applicant may be made only once per application. A second or subsequent grant may be made to the same applicant where funds are available, but the applicant must submit a second or subsequent application showing continued eligibility.

(e) The SEU shall annually provide a report on the receipt and distribution of moneys in the Delaware Energy Fund to all of the following:

(1) The Chief Clerk of the House of Representatives for distribution to all members.

(2) The Secretary of the Senate for distribution to all members.

(3) The Governor.

(4) The Director and Librarian of the Office of Legislative Services.

(f) The SEU may promulgate rules and regulations necessary for the operation of the Delaware Energy Fund.

(g) A corporation or other person may contribute to the Delaware Energy Fund or contribute to the SEU directly in furtherance of the purposes of this section. A contribution from a corporation or other nongovernmental source may be restricted under an agreement with the contributor. In the case of a utility that makes a contribution to the Delaware Energy Fund, the use of those funds will be limited for the benefit of customers of the contributing utility who are eligible for assistance under this section.

(85 Del. Laws, c. 81, § 3.)

§ 8060. Restrictions.

(a) No county or municipal government, homeowner association, or association formed for the management of commonly-owned elements and facilities or for regulating use of private property shall adopt any covenant, restriction, deed restriction, zoning restriction, or subdivision restriction which prohibits or restricts the owner of a property from using a system for obtaining wind energy for a residential single family dwelling unit. Any such restriction adopted after August 8, 2009, shall be void and unenforceable. Notwithstanding the provisions of any existing county or municipal zoning ordinance or regulation, no prohibition against or restriction on wind energy systems for residential single-family homes that is inconsistent with this section and adopted prior to August 8, 2009, shall be effective and no conditional use or other zoning review process shall be required.

(b) A county or municipal government, homeowner association, or an association formed for the management of commonly-owned elements and facilities or for regulating use of private property may place restrictions on wind energy system installations subject to subsection (a) of this section, provided such restrictions shall not be more restrictive than the following:

(1) Wind turbines shall be setback 1.0 times the turbine height from adjoining property line. Turbine height means the height of the tower plus the length of 1 blade.

(2) The aggregate noise or audible sound of a wind system shall not exceed 5 decibels above the existing average noise level of the surrounding area and shall be restricted to a maximum of 60 decibels measured at any location along the property line to the parcel where the wind system is located.

(3) Wind systems shall be free from signage, advertising, flags, streamers, any decorative items or any item not related to the operation of the wind turbine. Electric wiring for the turbines shall be placed underground for nonbuilding integrated systems.

(4) This section shall not be applicable in any county or municipal designated historic district or historic zoning district.

(5) Any wind energy system shall be buffered from any properties or structures included on the Historic Register.

(c) The provisions of this section shall apply to wind energy systems and wind facilities that qualify for support from the Green Energy Fund, as authorized under § 8057 of this title, or other such similar programs administered by the State Energy Office.

(77 Del. Laws, c. 147, § 1; 77 Del. Laws, c. 329, § 88.)

§ 8061. Delaware Voluntary Clean Energy Financing Program based on property assessments (D-PACE) or other local assessments.

(a) The General Assembly finds and declares that:

(1) The production and efficient use of energy will continue to play a central role in the economic future and environmental sustainability of Delaware and the nation as a whole; and

(2) The development, production, and efficient use of clean energy will strengthen the economy, improve the public and environmental health of this State, and contribute to the energy security of our nation; and

(3) The financing of clean energy systems and energy efficient technologies, and the powers conferred and expenditures made pursuant to this statute, will serve a valid public purpose and that the enactment of this section is expressly declared to be in the public interest.

(b) It is the purpose and intent of the General Assembly:

(1) To establish a voluntary commercial property assessed clean energy program in the State to provide access to financing for clean energy systems and energy efficient technologies with free and willing commercial property owners of both existing properties and new construction within the State.

(2) To utilize the Sustainable Energy Utility and the unique capabilities and qualities inherent within its structure and finances to launch a commercial voluntary assessed clean energy program that ensures the private capital markets can participate in this program.

(c) *Definitions.* — (1) "Benefit assessment" means a voluntary property assessment or other government service fee assessment, as authorized by this section, which is the mechanism through which a commercial property owner repays the financing for the qualifying energy improvements;

(2) "Benefited property owner" means an owner of qualifying commercial real property who desires to install qualifying energy improvements and provides free and willing consent to the benefit assessment against the qualifying commercial real property;

(3) "Clean energy systems" means renewable energy power generation including solar photovoltaic and thermal, wind, biomass, or geothermal and including waste heat recovery and other zero or net-zero emission energy sources available with advancing technology;

(4) "Commercial property" means any real property other than a residential dwelling containing less than 5 dwelling units;

(5) "County" means any county as defined in Title 9, and as authorized by this legislation or the SEU to issue benefit assessments;

(6) "Delaware Voluntary Property Assessed Clean Energy Program" or "D-PACE Program" means a program that facilitates reductions in energy production and consumption and utilizes the benefit assessments authorized by this section as security for the financing of these qualifying energy improvements;

(7) "Energy efficient technologies" means any device or piece of equipment, used in conjunction with existing infrastructure and appliances or as a replacement, that reduces energy consumption, but does not itself generate energy;

(8) "Energy utilities" means Delmarva Power and Light, Chesapeake Utilities, Delaware Electric Co-operative, Delaware Municipal Electric Corporation, or their successors as defined in Chapter 10 of Title 26;

(9) "Participating county" means a county that has entered into a written agreement, as approved by its legislative body, with the D-PACE Program pursuant to which the county has agreed to levy benefit assessments for qualifying energy improvements for benefited commercial property owners within such county and costs reasonably incurred in performing such duties;

(10) "Qualifying commercial real property" means any commercial property located in the State, regardless of ownership, that meets the qualifications established for the D-PACE Program;

(11) "Qualifying energy improvements" means any construction, renovation or retrofitting of energy efficient technology, clean energy systems, or qualifying waste heat recovery technologies that are permanently fixed to qualifying commercial real property;

(12) "Qualifying waste heat recovery technologies" means equipment and processes that capture the waste thermal energy from electric generation and other waste heat sources for use in nonpower generating commercial/industrial processes, including but not limited to space and water heating, in qualifying commercial real estate where fossil fuel power generation is not the principal business;

(13) "SEU" means the Sustainable Energy Utility as defined in this chapter; and

(14) "Third-party capital provider" means 1 or more entities, other than the SEU, that provides financing to benefited property owners for energy improvements.

(d) The SEU shall establish a D-PACE Program in the State to fund qualifying energy improvements to commercial real property, such that the improvements, property, and owner or owners fulfill the requirements enumerated herein, and those established by the SEU as part of the administration of the program.

(1) If a benefited property owner requests D-PACE financing from the SEU or a third-party capital provider for qualifying energy improvements under this section, the SEU shall:

a. Require performance of an SEU approved energy audit or feasibility analysis of such qualifying energy improvements on the qualifying commercial real property that assesses the expected energy cost savings over the useful life of such improvements unless a qualifying energy improvement is deemed automatically qualified by the SEU;

b. Require an evaluation of the property owner's credit, history, and other financial obligations, before approving such financing;

c. If financing is approved, either by the SEU or the third-party capital provider, require the participating county to levy a benefit assessment on the qualifying commercial real property with the property owner in a principal amount sufficient to pay the costs of the improvements and any associated costs covered by the D-PACE Program that will benefit the qualifying commercial real property;

d. Impose requirements and criteria to ensure that the proposed improvements are consistent with the purpose of the D-PACE Program;

e. Impose requirements and conditions on the financing to ensure timely repayment, including, but not limited to, procedures for placing a lien on a property as security for the repayment of the benefit assessment;

f. Require that written consent for a superior lien from all existing properly recorded lien holders be obtained before any improvements are financed or made; and

g. Allow the property owner to rescind any D-PACE financing agreement entered into, with either the SEU or a third-party capital provider, not later than 3 business days after such an agreement.

(2) SEU shall collect fees to offset costs associated with executing the program, including but not limited to, administrative costs, conducting feasibility studies, and monitoring and verifying project results.

(3) The SEU may serve as an aggregating entity for the purpose of securing public, foundation, or private third-party financing for qualifying energy improvements pursuant to this section.

(4) The SEU may use the services of 1 or more private, public or quasi-public third-party administrators to administer, provide support, or obtain financing for the D-PACE Program.

(5) The benefit assessment:

a. May cover up to 100% of project costs, including but not limited to, application fees, audits, equipment, maintenance, labor, and other costs directly related to the project over the project's life;

b. May also cover a portion of the D-PACE Program costs;

c. May be neither extinguished nor accelerated in the event of default or bankruptcy; and

d. Shall be levied and collected as to assessment payments currently and past due in the same manner as the property assessments of the participating county government on real property.

(6) The benefit assessment shall constitute a lien against the qualifying commercial real property on which the qualifying energy improvements are made. This lien shall:

a. Be superior to any other liens except the lien for other property taxes and other governmental service assessments of the participating county and other municipalities and share the same senior lien as other property taxes and governmental service assessments to the extent only of the amount of the DPACE assessments, penalties and fees currently due and/or in arrears;

b. Remain with the real property upon sale, including sale or transfer by operation of a tax monition sale or mortgage foreclosure, regardless of method; and

c. In the event of default or delinquency, be pursued in the same manner as with other property assessments, with respect to any penalties, fees and remedies and lien priorities; provided that notwithstanding any other provision of law including without limitation the provisions regarding the discharge of liens contained in §§ 8761 and 8773 of Title 9, a tax sale or other foreclosure sale brought by the SEU or a third-party capital provider with respect to D-PACE assessments shall not have the effect of extinguishing any subordinate mortgage liens against the qualifying commercial real property. Notwithstanding the foregoing or any other provision of law:

1. The SEU and third-party capital providers shall not have the authority to pursue a foreclosure of benefit assessment liens by the monition method established pursuant to § 8721 et seq. of Title 9 but shall have the authority to pursue a foreclosure of benefit assessment liens by attachment methods pursuant to § 8771 et seq. of Title 9 and § 8741 et seq. of Title 9.

2. The tax collecting authority in a monition sale may collect in such sale, in addition to taxes, D-PACE assessments but to the extent only of the D-PACE assessments, penalties, and fees currently due or in arrears.

3. The provisions above with respect to not extinguishing subordinate mortgage liens shall not apply in the case of a sale by monition method brought by a tax collecting authority, regardless of whether D-PACE assessments are collected at such sale.

4. The SEU and third-party capital providers shall not be required to, nor shall they have the authority to, unless so directed by the applicable tax collecting authority, foreclose liens for property taxes and other governmental service assessments or collect such taxes and assessments in a sale with respect to D-PACE assessments.

5. The SEU and third-party capital providers shall not be required to pay proceeds upon a tax or other sale to collect D-PACE assessments to holders of subordinate mortgage liens.

d. Notwithstanding any other provision of law:

1. At the time of a transfer of property ownership including foreclosure, the past due balances of any special assessment under this subchapter shall be due for payment, but future payments shall continue as a lien on the property.

2. In the event of a foreclosure action, the past due balances described in paragraph (d)(6)d.1. of this section immediately above shall include all payments on an assessment under this subchapter that are due and unpaid as of the date the action is filed, and all payments on the assessment that become due after that date and that accrue up to and including the date title to the property is transferred to the mortgage holder, the lien holder, or a third party in the foreclosure action. The person or entity acquiring title to the property in the foreclosure action shall be responsible for payments on the assessment that become due after the date of such acquisition.

(7) The liens created by benefit assessments may be assigned as follows:

a. Any participating county may assign to the SEU any and all liens filed by the tax collector, as provided in the written D-PACE agreement between participating county and the SEU;

b. The SEU may sell or assign, for consideration, any and all liens received from the participating county;

c. The assignee or assignees of such liens shall have and possess the same powers and rights at law or in equity as the participating county and its tax collector with regard to the precedence and priority of such lien, the accrual of interest, the fees and expenses of collection, and lien enforcement including, but not limited to, foreclosure and a suit on the debt; and

d. Costs and reasonable attorneys' fees incurred by the assignee as a result of any foreclosure action or other legal proceeding brought pursuant to this section and directly related to the proceeding shall be assessed in any such proceeding against each person having title to any property subject to the proceedings. Such costs and fees may be collected by the assignee at any time after demand for payment has been made by the assignee.

(8) The SEU shall allow third-party capital providers to provide loans directly to benefited property owners in lieu of, or in addition to, the SEU providing such loans.

(9) Pursuant to the purpose and objectives outlined herein, and with respect to the responsibilities of administering the D-PACE Program, the SEU shall develop program guidelines governing the terms and conditions under which financing may be made available to the D-PACE Program, in consultation with the Department of Natural Resources and Environmental Control, Division of Climate, Coastal and Energy, energy utilities, the banking industry, local governments, and commercial property owners;

The program guidelines document shall include:

a. Underwriting criteria, which at a minimum must include verification of ownership, an assessment of property debt and value, an ability to pay evaluation, and for all financing arrangements by the SEU and third-party capital providers a savings to investment ratio evaluation;

b. A requirement that the life of the improvements is greater than the term of the financing;

c. Qualifications for improvements, including but not limited to: minimum project life for cost-effective, permanent application; minimum project value, consistent with ensuring the recapture of applicable administrative costs; maximum project value and project value relative to property value, consistent with local and national renewable and energy efficiency credit/funding programs and ensuring mortgage lender support; and maximum renewable energy project size consistent with local and national credit/funding programs, and with local energy service company (utility) regulations;

d. Recommended energy efficiency improvements to qualified commercial property owners seeking financing for clean energy generation systems;

e. Criteria for approving energy audits and auditors, selecting engineering reports for feasibility analyses, and determining the appropriate method of analyzing expected energy performance for D-PACE projects;

f. Standards for the processes of approval, financing, construction, repayment, including optional repayment at the time of sale of the property and SEU, third-party capital provider, and/or participating county actions of recourse in the event of default;

g. Standards for monitoring and verifying the energy and cost savings and other relevant outcomes of D-PACE funded projects, consistent with the project scale and scope, as well as the goals of the D-PACE Program;

h. A requirement to educate the property owner about the costs and risks associated with participating in the D-PACE Program established by this section, including but not limited to, the effective interest rate of the benefit assessment, fees charged by the SEU to administer the program, and the risks related to the failure of the property owner to pay the benefit assessment; and

i. Greater detail on all program specifications, processes, and party duties as assigned to the SEU in this section, as well as all necessary program guidelines and other specifications consistent with the administration of a statewide D-PACE Program not listed herein.

(e) The SEU shall have the authority to:

(1) Use principal and interest payments from existing benefit assessments to fund other projects;

(2) Use other legally available funds for project financing, including but not limited to, existing revenues, federal, state, local, or philanthropic grants, or private financing, notes, or other obligations;

(3) Impose fees to offset costs associated with executing the financing, including but not limited to, administrative costs, attorneys' fees, conducting feasibility studies, and monitoring and verifying project results;

(4) Specify whether these fees are to be collected at certain steps or intervals, or added into the project financing;

(5) Set a fixed or variable rate of interest for the repayment of the financing amount at the time the financing is arranged, or allow a third-party capital provider to set the interest rate, provided that party is financing the improvements;

(6) Enter into a financing agreement with the owner of qualifying commercial real property, to include billing and receiving payments from the participants (in the same manner property and government service assessments are collected); with approval of the participating county, transfer the rights and authorities of the financing agreement, including but not limited to billing and receiving payments, to a third-party capital provider, such that the party is directly financing the qualified energy improvement.

(7) Establish a D-PACE loss reserve.

(f) The D-PACE Program shall not be operational and available for commercial property owner participation/financing until a comprehensive program guideline document is adopted by the SEU Board of Directors. Prior to submission to the Board of Directors for adoption, the SEU shall:

(1) Organize a public hearing regarding the program guidelines document;

(2) Publish a notice to include the time, date, place of the public hearing, and a summary of the nature of the guidelines in at least 2 Delaware newspapers of general circulation, and by electronic posting on the SEU website, a minimum of 20 days prior to such hearing; and

(3) Provide the SEU Board of Directors minutes of the public hearing with the submission of the program guidelines.

(81 Del. Laws, c. 402, § 1; 83 Del. Laws, c. 91, § 1; 83 Del. Laws, c. 283, § 46; 84 Del. Laws, c. 141, § 2.)

§ 8062. State electric vehicle charging infrastructure.

(a) As used in this section:

(1) “Agency” means as defined in § 6301 of Title 29.

(2) “All-electric vehicle” means an electric vehicle that operates solely from an internal electric battery.

(3) “Costs” means the costs associated with electricity used by the agency’s EVSEs, installation of the agency’s EVSEs, and maintenance of the infrastructure and equipment of the agency’s EVSEs.

(4) “Electric vehicle supply equipment” or “EVSE” means equipment that connects an electric vehicle to an external source of electricity to recharge the electric vehicle’s internal battery.

(5) “Electric Vehicle” or “EV” includes plug-in hybrid vehicles and all-electric vehicles, and means a motor vehicle, as defined in § 101 of Title 21, that satisfies both of the following:

a. Uses 1 or more electric motors for propulsion.

b. Is powered through an internal battery that is charged using an external electricity source.

(6) “Plug-in hybrid vehicle” means an electric vehicle that operates with an internal combustion engine and an electric motor that can be plugged into an external electric power source to charge the internal battery.

(b) An agency that has installed EVSE may make the EVSE available for use, at the agency’s discretion, by the public or employees, or both.

(c) If an agency provides access to its EVSE for charging to an electric vehicle not owned by the State, it may charge a fee for the use of its EVSE that does not exceed the agency’s costs. The agency shall use the fees collected for the payment of the electricity used by the EVSE and for the maintenance of the EVSE infrastructure and equipment.

(d) Agency EVSE must be located on state-owned or state-leased real property used for state offices, service centers, maintenance facilities, correctional facilities, visitor centers, research centers, health-care facilities, recreational facilities, or other state-owned or state-leased real property where state employees work or receive visitors conducting business with state agencies.

(83 Del. Laws, c. 179, § 1.)

§ 8063. Electric School Bus Program.

(a) To improve the health and safety of Delaware children and safeguard the environment, it is the goal of Delaware that 30% of school buses purchased by the State shall be electric vehicles in FY 2030. To this end, the Department of Education’s annual bus purchases must include at least the following percentage of electric-powered school buses in the corresponding year:

Fy 2025	5%
Fy 2026	10%
Fy 2027	15%
Fy 2028	20%
Fy 2029	25%
Fy 2030	30%

(b) The Department of Education shall submit an implementation report regarding the goals set forth in subsection (a) of this section annually on January 31, from 2025 through 2029.

(c) By January 31, 2030, the Department of Education shall submit a report detailing recommendations for future changes in the percentage targets for electric school bus purchases, and other recommendations for reduction of the carbon and environmental impact of the State's school transportation fleet.

(d) The reports in subsections (b) and (c) of this section shall be delivered to the Chief Clerk of the House of Representatives, the Secretary of the Senate, the Director and the Librarian of the Division of Legislative Services, and the Public Archives.

(e) Implementation of this section is contingent upon the appropriation of sufficient funding.

(84 Del. Laws, c. 142, § 1; 84 Del. Laws, c. 255, § 52.)

§ 8064. Electric vehicle rebate programs [For contingent repeal of this section, see 84 Del. Laws, c. 144, § 3].

(a) As used in this section:

(1) "All-electric vehicle" means as defined in § 8062 of this chapter.

(2) "Department" means the Delaware Department of Natural Resources and Environmental Control.

(3) "Electric vehicle" means as defined in § 8062 of this chapter.

(4) "MSRP" means the manufacturer's suggested retail price for an electric vehicle as set by the electric vehicle's manufacturer.

(5) "Plug-in hybrid vehicle" means as defined in § 8062 of this chapter.

(b) The Department shall administer a rebate program to incentivize the purchase and lease of new and used electric vehicles by Delaware residents. Qualifying electric vehicles shall be eligible for a rebate in an amount determined by the Department based on availability of funds and the Department's assessment of the maturation of the market, provided, however, that the rebate for all-electric vehicles shall not exceed $2,500 per vehicle and the rebate for plug-in hybrid vehicles shall not exceed $1,000 per vehicle.

(c) All of the following are eligible to participate in the rebate programs upon purchase of a qualifying vehicle:

(1) Delaware residents.

(2) Active-duty military members stationed in Delaware.

(d) No more than 2 electric vehicle rebates may be permitted per recipient over the life of the program.

(e) The Department shall establish standards and procedures for administration of electric vehicle incentive programs. Such standards may include criteria for establishing qualifying electric vehicles including price caps, mileage range, battery size, and other relevant factors.

(f) Eligible vehicles shall not exceed $50,000 in MSRP.

(g) Applications for the rebate and incentive programs must be made using forms and procedures developed by the Department.

(h) The Department may utilize third-party providers to administer rebate and incentive programs.

(i) The Department may utilize funds allocated to the Department under § 6046 of Title 7 for the programs established in subsection (b) of this section. Funds shall be issued on a first-come, first-serve basis as funds are available.

(84 Del. Laws, c. 144, § 1.)

§ 8065. Residential electric vehicle supply equipment program.

(a) As used in this section:

(1) "Director" means the executive director of the Sustainable Energy Utility.

(2) "Electric vehicle" means as defined in § 8062 of this title.

(3) "Electric vehicle supply equipment" or "EVSE" means as defined in § 8062 of this title.

(4) "Federal poverty level" means a measure of income issued every year by the United States Department of Health and Human Services that determines eligibility for certain government programs and benefits.

(5) "Low-income applicants" mean applicants whose incomes are no more than 300% of the federal poverty level.

(6) "SEU" means the Sustainable Energy Utility created under § 8059 of this title.

(b) The Director shall administer a program that provides financial assistance for the purchase and installation of EVSE. The EVSE must be for an applicant's private use at or near the applicant's place of residence.

(c) Applicants for the program must be Delaware state residents and must submit an application through the SEU. Only 1 EVSE may be purchased per household under this program. The program shall be administered on a first-come, first-served basis as funds are available.

(d) A low-income applicant may receive assistance under this program for up to 90% of the cost of purchase and installation of EVSE. All other applicants may receive assistance under this program for up to 50% of the cost of purchase and installation of EVSE.

(e) The Director shall use funds allocated to the SEU under § 6046 of Title 7 to develop and administer this program.

(f) Eligible costs that may be covered by the program include those costs directly attributable to the site design, charger, equipment, installation, labor, permitting, site preparation, upgrade for utility connections, signage, and equipment necessary to implement and operate the EVSE. Site maintenance costs, repair costs, and electricity to stock the electric vehicle charger are not eligible costs.

(84 Del. Laws, c. 399, § 1.)

Subchapter III
Delaware Native Species Commission

§ 8071. Purpose.

The Delaware Native Species Commission is created to do all of the following:

(1) Reverse the trend of decline and extinction of our local plant and animal native species.

(2) Diligently pursue and perform those things necessary and proper in order that the recommendations in the final report of the Statewide Ecological Extinction Task Force be fully implemented.

(3) Provide state and local lawmakers, policymakers, educators, and other stakeholders with expertise and assistance in projects meeting the goals and purposes of this subchapter.

(4) Report back to the General Assembly on a yearly basis regarding the implementation of the task force recommendations.

(81 Del. Laws, c. 256, § 1; 84 Del. Laws, c. 451, § 2.)

§ 8072. Definition.

For purposes of this subchapter:

(1) “Appointed member” means an individual appointed by the Governor under § 8073(a)(2) of this title.

(2) “Commission” means the Delaware Native Species Commission.

(3) “DNREC” means the Department of Natural Resources and Environmental Control.

(4) “Task force recommendations” means the recommendations in the final report of the Statewide Ecological Extinction Task Force established by Senate Concurrent Resolution No. 20 of the 149th General Assembly.

(81 Del. Laws, c. 256, § 1; 84 Del. Laws, c. 451, § 2.)

§ 8073. Commission membership; qualifications; term of office.

(a) The Commission is composed of 19 members, as follows:

(1) Six members serving by virtue of position, or a designee appointed by the member, as follows:

a. The Secretary of the DNREC.

b. The Secretary of the Department of Agriculture.

c. The County Executive of New Castle County.

d. The County Administrator for Kent County.

e. The County Administrator for Sussex County.

f. The Secretary of the Department of Transportation.

(2) Thirteen members, appointed by the Governor, as follows:

a. Six individuals who represent environmental organizations or Delaware institutions of higher education, with expertise regarding Delaware plant or animal species.

b. Six individuals who represent stakeholder commercial interests in Delaware, such as land development, farming, and business, with no more than 2 members representing the same commercial interest.

c. One member who is a current or retired botanist or similar professional with expertise in Delaware plant species.

(b) An appointed member serves for a term of up to 3 years and is eligible for reappointment. The Governor shall appoint members for staggered terms so that no more than 5 members’ terms expire in any 1 calendar year.

(c) If an appointed member fails to attend 3 successive meetings of the Commission without just cause, that member’s position may be deemed vacant and the Governor may appoint a replacement.

(d) Members of the Commission serve without compensation, except that the Commission may reimburse members for reasonable and necessary mileage and tolls incident to duties as members of the Commission.

(81 Del. Laws, c. 256, § 1; 82 Del. Laws, c. 124, § 1; 83 Del. Laws, c. 473, § 1; 84 Del. Laws, c. 451, § 2.)

§ 8074. Authority; staffing.

(a) The Commission shall be placed within DNREC and shall have such powers, duties, and functions as described in this subchapter and such other duties and functions as may be referred to it by the Governor, the Secretary of DNREC, or the General Assembly.

(b) The Secretary of DNREC shall provide staff support to the Commission.

(81 Del. Laws, c. 256, § 1; 84 Del. Laws, c. 451, § 2.)

§ 8075. Chair and Vice Chair; selection and duties.

(a) The Commission shall elect a Chair and Vice Chair at its first meeting and the Chair and Vice Chair shall serve until a replacement is elected. If the Chair becomes vacant, the Vice Chair shall fulfill the duties of the Chair contained in subsection (b) of this section until a replacement is elected at its next meeting.

(b) The Chair of the Commission shall do all of the following:

(1) Set a date, time, and place for the meetings of the Commission.

(2) Supervise the preparation and distribution of meeting notices, agendas, minutes, and other documents prepared by or on behalf of the Commission.

(81 Del. Laws, c. 256, § 1; 84 Del. Laws, c. 451, § 2.)

§ 8076. Quorum and conduct of business.

(a) A majority of the membership of the Commission constitutes a quorum to conduct official business. Official action by the Commission, including making findings and recommendations, requires the approval of a majority of the members of the Commission present at a meeting with quorum.

(b) The Commission may adopt rules necessary for its operation.

(c) The Commission may undertake the following functions to implement the Task Force recommendations and to further the goals and purposes of the Commission:

(1) Establish subcommittees.

(2) Engage with other organizations to exchange ideas and information and to provide those other organizations with the opportunity to engage with the Commission.

(3) Study, research, plan, and make advisory recommendations to the Governor, the Secretary of State, the Secretary of DNREC, the Department of Agriculture, or the General Assembly.

(d) In carrying out the Commission's duties under this subchapter, the Commission shall consider any related plans and programs developed by other organizations with expertise in native species conservation or protection, or in the eradication of invasive species, and may designate representatives to serve on special committees, organizations, or other entities to plan, develop, and coordinate specific activities.

(81 Del. Laws, c. 256, § 1; 84 Del. Laws, c. 451, § 2.)

§ 8077. Annual report.

On or before December 31, 2018, and on or before every December 31 thereafter, the Commission shall submit to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives for distribution to the members of the General Assembly, an annual report of the Commission's activities for the previous year and goals for the upcoming year. The report may also include proposals for legislation, administrative action, or other policy changes the Commission considers necessary to carry out its implementation of the task force recommendations or further the goals and purposes of this subchapter.

(81 Del. Laws, c. 256, § 1; 84 Del. Laws, c. 451, § 2.)

Subchapter IV

Clean Water for Delaware Act

(83 Del. Laws, c. 84, § 1.)

§ 8080. Short title.

This act shall be known and may be cited as the "Clean Water for Delaware Act."

(83 Del. Laws, c. 84, § 1.)

§ 8081. Legislative findings.

(a) The General Assembly finds all of the following:

(1) The waters of this State are among Delaware's most basic and valuable resources and should be conserved and protected in a manner to realize their full benefits.

(2) Delaware's continued economic vitality is dependent upon: maintaining and improving the State's water and wastewater systems; and protecting and enhancing the State's water resources and natural infrastructure as the foundation for a healthy population and environment to sustain a high quality of life for residents, healthy habitats, as well as an attraction for tourism, employers and workers.

(3) Many Delaware homes, farms, agricultural lands, and businesses are at risk from flooding and drainage hazards, which have environmental, public safety, health, and economic impacts, and some Delawareans lack access to potable drinking water or basic wastewater disposal in their homes.

(4) Delaware's list of impaired waters includes 377 bodies of water that suffer from excess nutrients, low dissolved oxygen, toxins and bacteria that negatively impact human and aquatic life.

(5) It is important that priorities for clean water projects in this State be given to projects that utilize green infrastructure and enhancement of natural systems to provide ecological benefits that include all of the following:

a. Improvement of water quality.

b. Demonstration of a high ratio of nutrient or pollution reduction to the amount of funding.

c. Improvement of community resilience to extreme weather, sea level rise, and other climate impacts.

(6) Existing federal and state funding resources alone are inadequate to meeting the State's current and future demand for clean water projects.

(7) It is fitting and proper for the State to encourage local governments, private entities and farmers to undertake clean water projects that effectively and efficiently reduce pollution in the waters of the State by establishing mechanisms to assist planning and financing of such projects at the lowest reasonable costs.

(b) Based on its findings in subsection (a) of this section, the General Assembly determines that it is in the public interest to designate a Delaware Clean Water Trust account to ensure the greatest environmental return on investment through the management and coordination of financial resources available to the State for drinking water, wastewater, drainage, stormwater, and other eligible clean water projects to be funded from the following sources:

(1) Appropriations, including supplemental funds in the bond bill, intended to satisfy all of the following purposes:

a. Section 7903(14) of this title related to the Delaware Safe Drinking Water Revolving Fund.

b. Section 8003(12) of this title related to the Delaware Water Pollution Control Revolving Fund.

c. Section 3923 of Title 7 related to resource conservation and development projects undertaken by the County Conservation Districts in Kent, New Castle and Sussex Counties.

(2) Moneys received as repayments of principal and interest on loans, interest received on invested funds, and other funding made available for the programs and purposes in paragraph (b)(1) of this section.

(83 Del. Laws, c. 84, § 1; 84 Del. Laws, c. 233, § 61.)

§ 8082. Clean Water Trust oversight.

(a) To ensure coordination of the management of resources available for Clean Water Trust projects and other programs that impact the quality of the State's water resources, the Clean Water Trust Oversight Committee ("Committee") is established and shall serve in an advisory capacity to the Governor and the General Assembly.

(b) The Committee shall be comprised of 7 members to include all of the following:

(1) The Secretary of the Department of Natural Resources who shall serve as its Chair.

(2) The Secretary of the Department of Health and Social Services.

(3) The Secretary of the Department of Finance.

(4) The Secretary of the Department of Agriculture.

(5) The Secretary of the Department of Transportation.

(6) The Chair and Co-Chair of the Joint Capital Improvement Committee of the Delaware General Assembly.

(c) Members who serve by virtue of their position may designate a designee to serve on the Committee.

(d) The Committee shall be responsible for oversight of the Clean Water Trust account and shall produce and publish an annual report and strategic plan for clean water that shall include all of the following:

(1) An annual report, titled "The Mulrooney Report," accounting for the sources, benefits, and uses of the Clean Water Trust account and other water quality programs funded with state or federal resources including wastewater, stormwater and drinking water infrastructure and programs for drainage, beach preservation, waterway management, cover crop, the conservation reserve enhancement program, tax ditches and conservation cost-sharing that shall include a list of all funded projects.

(2) An annually updated strategic plan that shall include all of the following:

a. Multi-year water quality goals and progress toward meeting those goals.

b. Challenges facing the achievement of such water quality goals.

c. A prioritized list of proposed projects to attain such goals, including increased accessibility to low-income and traditionally underserved communities.

d. Drinking water testing priorities of the State.

e. Recommendations on minimum funding levels for wastewater and drinking water projects benefitting low-income and traditionally underserved communities through low interest loans and affordability grants.

f. Recommendations on strategies that support low-income consumer affordability.

g. An annual work plan report on the implementation of the strategic plan for the previous fiscal year addressing success indicators, deliverables and milestones.

(e) Prior to the publication of the initial annual report and strategic plan, the Committee shall hold at least 3 publicly noticed meetings in Dover to seek input and allow public comment. Thereafter, the Committee shall hold at least 1 publicly noticed meeting prior to publication of the annual report and annually updated strategic plan. All meetings under this subsection shall comply with § 10004 of this title.

(f) The Committee must submit the annual report and the updated strategic plan identified in subsection (d) of this section to the General Assembly, the Governor, and the Director and the Librarian of the Division of Legislative Services no later than February 1 of each year.

(g) The Water Infrastructure Advisory Council and the conservation districts shall provide outside, technical assistance and advice to the Committee.

(83 Del. Laws, c. 84, § 1; 84 Del. Laws, c. 139, § 1; 84 Del. Laws, c. 255, § 53.)

Subchapter V

Drinking Water Protection Act

(83 Del. Laws, c. 253, § 1.)

§ 8090. Short title.

This subchapter shall be known and may be cited as the "Drinking Water Protection Act."

(83 Del. Laws, c. 253, § 1.)

§ 8091. Purpose.

This subchapter directs the Division of Public Health, in collaboration with the Department of Natural Resources and Environmental Control to establish state-level maximum contaminant levels ("MCL") for certain contaminants found in public drinking water systems in this State.

(83 Del. Laws, c. 253, § 1.)

§ 8092. Definitions.

As used in this subchapter:

(1) "Department" means the Department of Natural Resources and Environmental Control.

(2) "Division" means the Division of Public Health.

(3) "Maximum contaminant level" means the legal threshold limit on the amount of a substance that is allowed in public water systems.

(4) "PFAS" means non-polymeric perfluoroalkyl and polyfluoroalkyl substances that are a group of man-made chemicals that contain at least 2 fully fluorinated carbon atoms, excluding gases and volatile liquids. "PFAS" includes PFOA and PFOS.

(5) "PFOA" means perfluorooctanoic acid and its salts.

(6) "PFOS" means perfluorooctanesulfonic acid or perfluorooctane sulfonate and its salts.

(83 Del. Laws, c. 253, § 1.)

§ 8093. Maximum contaminant level.

(a) The Division shall work in collaboration with the Department to establish a maximum contaminant level for PFOA and PFOS in public drinking water systems in accordance with evidence-based standards and assessments conducted by the United States Environmental Protective Agency.

(b) By December 20, 2021, the Department and Division shall initiate the regulatory development process.

(c) By July 21, 2022, the Division shall conduct public hearings on proposed regulations.

(d) The Division in collaboration with the Department shall review all of the following to develop and revise on a periodic basis the maximum contaminant level established pursuant to this section:

(1) Assessments conducted by the United States Environmental Protection Agency.

(2) Information published in peer-reviewed journals.

(3) Delaware statewide survey data.

(83 Del. Laws, c. 253, § 1.)

§ 8094. Statewide survey.

(a) The Department in collaboration with the Division shall conduct a statewide survey on PFAS in drinking water using standard laboratory methods for PFAS developed by the United States Environmental Protection Agency and supplemental methods that the Department or Division determine meet project specific data quality objectives.

(b) On or before January 1, 2022, the Department shall provide all of the following to the Governor and the General Assembly:

(1) The results of the statewide survey mandated by this section.

(2) A specific plan for addressing any PFAS contamination identified in the statewide survey mandated by this section.

(83 Del. Laws, c. 253, § 1.)

Part VIII
Departments of Government

Chapter 81
Department of Agriculture

§ 8101. Establishment of Department of Agriculture.

A Department of Agriculture is established having the following powers, duties and functions:

(1) The Department of Agriculture may perform and shall be responsible for the performance of all of the powers, duties and functions heretofore vested in:

a. The State Board of Agriculture pursuant to Chapters 1, 3, 5, 11, 13, 15, 16, 17, 19, 21, 25, 31, 33 [repealed], 35, 37 [repealed], 39 [repealed], 51 [repealed], 53 [repealed], 55 [repealed], 63, 65 [repealed], 67, 71, 73, 75, 87 and 90 of Title 3 and Chapter 41 of Title 16;

b. The State Board of Agriculture and the State Division of Weights and Measures pursuant to Chapter 51 of Title 6;

c. The State Forestry Department and the State Forestry Commission pursuant to Chapters 29, 31 [repealed], 33 [repealed] and 35 [repealed] of Title 7 and State Tree Nursery.

(2) The administrative, ministerial, fiscal and clerical functions of the State Farmland Evaluation Advisory Committee set forth in § 8337 of Title 9.

(29 Del. C. 1953, § 8101; 57 Del. Laws, c. 368, § 1; 59 Del. Laws, c. 372, § 10.)

§ 8102. Secretary; Deputy Secretary; Acting Secretary; appointment.

(a) The administrator and head of the Department is the Secretary of the Department of Agriculture ("Secretary"), who must be a person qualified by training and experience to perform the duties of the office.

(1) The Secretary is appointed, confirmed, and holds office as provided in § 10 of Article III of the Delaware Constitution.

(2) The Secretary is to be paid an annual salary as determined by the General Assembly in the annual appropriations act.

(3) The Secretary must obtain and retain residency in this State as provided in § 10 of Article III of the Delaware Constitution.

(b) In the event the position of Secretary is vacant, the Governor, by appointment, shall have the power to fill the position of Deputy Secretary if vacant. The Deputy Secretary so appointed shall serve at the pleasure of the Governor and, upon the position of Secretary being filled, such Deputy Secretary may be removed by the Secretary with the written approval of the Governor.

(c) In the event of death, resignation, temporary incapacity or removal of the Secretary and prior to the appointment of a successor, the Governor may appoint the Deputy Secretary to serve as Acting Secretary. The Secretary may, during an absence from the State, appoint the Deputy Secretary to serve as Acting Secretary during such absence. In either case, the Acting Secretary shall have all the powers and shall perform all the duties and functions of the Secretary during such absence or incapacity or until the Secretary's successor is duly qualified and appointed.

(29 Del. C. 1953, § 8102; 57 Del. Laws, c. 368, § 1; 67 Del. Laws, c. 52, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 140, § 3; 84 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 455, § 7; 85 Del. Laws, c. 43, § 1.)

§ 8103. Powers, duties and functions of the Secretary.

The Secretary may:

(1) Supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions the Harness Racing and Thoroughbred Racing Commissions and positions authorized in the Annual Appropriations Act assigned to the Commissions and employees;

(2) Appoint and fix the salary of, with the written approval of the Governor, the Deputy Secretary, who may be removed from office by the Secretary with the written approval of the Governor and who shall have such powers, duties and functions the Harness Racing and Thoroughbred Racing Commissions and positions authorized in the Annual Appropriations Act assigned to the Commissions in the administration and operation of the Department as may be assigned by the Secretary;

(3) Establish an agricultural lands preservation section within the Office of the Secretary and appoint such personnel as may be necessary for the administration of the duties set forth in Chapter 9 of Title 3. Chapter 59 of this title shall be applicable to the employees of the agricultural lands preservation section;

(4) Appoint such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law;

(5) Establish, consolidate or abolish such divisions, subdivisions and offices within the Department or transfer or combine the powers, duties and functions the Harness Racing and Thoroughbred Racing Commissions and positions authorized in the Annual Appropriations Act assigned to the Commissions of the divisions and offices within the Department as the Secretary, with the written approval of the Governor, may deem necessary, provided that all powers, duties and functions the Harness Racing and Thoroughbred

Racing Commissions and positions authorized in the Annual Appropriations Act assigned to the Commissions required by law shall be provided for and maintained;

(6) Make and enter into any and all contracts, agreements or stipulations, and to retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract, consulting, research, technical and other services and facilities, whenever the same shall be deemed by the Secretary necessary or desirable in the performance of the functions the Harness Racing and Thoroughbred Racing Commissions and positions authorized in the Annual Appropriations Act assigned to the Commissions of the Department and whenever funds shall be available for such purpose. All necessary legal services shall be provided pursuant to Chapter 25 of this title;

(7) Delegate any of the Secretary's powers, duties or functions the Harness Racing and Thoroughbred Racing Commissions and positions authorized in the Annual Appropriations Act assigned to the Commissions to a director of a division except the power to remove employees of the Department or to fix their compensation;

(8) Establish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State;

(9) Maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department;

(10) Adopt an official seal or seals for the Department.

(29 Del. C. 1953, § 8103; 57 Del. Laws, c. 368, § 1; 63 Del. Laws, c. 118, § 2; 67 Del. Laws, c. 52, §§ 3-5; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 89, § 305.)

§ 8104. Division of Consumer Protection.

The Division of Consumer Protection is established having such powers, duties and functions as may be assigned to it by the Secretary consistent with this chapter.

(29 Del. C. 1953, § 8104; 57 Del. Laws, c. 368, § 1; 67 Del. Laws, c. 52, § 6.)

§ 8105. Division of Promotion and Production Support.

The Division of Promotion and Production Support is established having such powers and duties and functions as may be assigned to it by the Secretary consistent with this chapter.

(29 Del. C. 1953, § 8105; 57 Del. Laws, c. 368, § 1; 67 Del. Laws, c. 52, § 7.)

§ 8105A. The Division of Resource Management.

The Division of Resource Management is established having such powers, duties and functions as may be assigned to it by the Secretary consistent with this chapter.

(67 Del. Laws, c. 52, § 8.)

§ 8106. Council on Apple Promotion [Repealed].

Repealed by 65 Del. Laws, c. 174, § 2, effective July 12, 1985.

§ 8107. Council on Poultry Promotion [Repealed].

Repealed by 64 Del. Laws, c. 294, § 1, effective June 30, 1984.

§ 8107A. Council on Forestry.

(a) There is established the Council on Forestry.

(b) The Council on Forestry shall serve in an advisory capacity to the Director of the Division of Production and Promotion and shall consider matters relating to the protection of state forest lands from fire, disease and insect damage including the application of control measures, the establishment of forest growth on denuded or nonforested lands and such other matters as may be referred to it by the Governor, Secretary of the Department or Director of the Division of Production and Promotion. The Council may also study, research, plan and advise the Director, the Secretary and the Governor on matters it deems appropriate to enable the Division to function in the best possible manner.

(c) The Council on Forestry shall be composed of 7 members who shall be appointed for 3-year terms by the Governor.

(d) At least 3, but no more than 4 of the members of the Council shall be affiliated with 1 of the major political parties and at least 2, but no more than 3, of the members of the Council shall be affiliated with the other major political party; provided, however, there shall be no more than a bare majority representation of 1 major political party over the other major political party. Any person who declines to announce a political affiliation shall also be eligible for appointment as a member of the Council.

(e) Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

(f) A Chairperson of the Council shall be chosen by the members of the Council from among its members, and shall serve in that capacity for a term of 1 year and shall be eligible for reelection.

(g) Any replacement appointment to the Council to fill a vacancy prior to the expiration of a term shall be filled for the remainder of the term.

(59 Del. Laws, c. 372, § 11; 70 Del. Laws, c. 186, § 1.)

§ 8108. Governor's Council on Agriculture.

(a) (1) There is established the Governor's Council on Agriculture.

(2) For the purposes of this section:

a. "Council" means the Governor's Council on Agriculture.

b. "Department" means the Department of Agriculture.

c. "Secretary" means the Secretary of the Department of Agriculture.

(b) The Council is composed of 7 members who are appointed by the Governor for 3-year terms. The Governor shall appoint the chair, who serves as the chair at the pleasure of the Governor, from among the members.

(c) (1) The Council shall advise, recommend, and refer to the Secretary matters which, in its opinion, are of departmental concern and shall consider other matters that the Secretary or the Governor refer to it.

(2) The Council may study, research, plan, and advise the Secretary and the Governor on matters it deems appropriate to enable the Department to function in the best possible manner.

(d) The Governor shall consider geographical and other diversities when appointing a member to the Council.

(e) Members receive no compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

(f) The Governor may appoint a member for a term less than 3 years to ensure that no more than 3 members' terms expire in a year.

(g) A majority of members must be present at a Council meeting in order to have a quorum and conduct official business is the majority of members. A vacant position is not counted for purposes of quorum.

(29 Del. C. 1953, § 8108; 57 Del. Laws, c. 368, § 1; 57 Del. Laws, c. 764, §§ 32A, 35; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 205, § 1.)

§ 8109. Books; records; access; annual report.

(a) The Governor's Council on Agriculture shall have access to all books, records, reports and other documents relating to the Department of Agriculture unless otherwise prohibited by law.

(b) The various councils of the divisions of the Department of Agriculture shall have access to all books, records, reports and other documents relating to their respective divisions unless otherwise prohibited by law.

(c) The Chairperson of the Governor's Council on Agriculture and the chairpersons of the councils of the divisions of the Department shall make an annual report of the activities of each of said councils to the Secretary of the Department, the Governor and the General Assembly, and render such other reports as the Secretary, the Governor or the General Assembly may from time to time request or as may be required by law.

(29 Del. C. 1953, § 8109; 57 Del. Laws, c. 368, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8110. Exemptions.

The following positions set forth in this section shall be exempt from Chapter 59 of this title:

(1) Secretary of Agriculture;

(2) Deputy Secretary.

(29 Del. C. 1953, § 8110; 57 Del. Laws, c. 368, § 1; 67 Del. Laws, c. 52, §§ 9, 10.)

§ 8111. Assumption of powers.

The Department, through appropriate divisions, subdivisions and offices, shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions vested by law in the State Board of Agriculture, the State Division of Weights and Measures, the State Forestry Department, the State Forestry Commission, the State Apple Commission, the State Poultry Commission and all matters pertaining to privately owned forest and woodlands within the State immediately prior to April 15, 1970, and which are not otherwise hereinabove specifically transferred to the Department by this chapter.

(29 Del. C. 1953, § 8111; 57 Del. Laws, c. 368, § 1; 59 Del. Laws, c. 372, § 12.)

§ 8112. Appeals.

Any and all rights of appeal now existing by law with respect to any act or acts constituting the exercise of any function or functions hereby transferred to the Department or to any division or subdivision thereof shall continue to exist with respect to such act or acts as hereafter performed by the Department or by the division, subdivision or office to which such function is hereby transferred, and each such appeal shall be perfected in the manner heretofore provided by law.

(29 Del. C. 1953, § 8112; 57 Del. Laws, c. 368, § 1.)

§ 8113. Transfers and continuity.

(a) All definitions and references to any commission, board, department, council or agency which appear in any other act or law shall, to the extent that the same are consistent with this chapter and in connection with a function hereby transferred to the Department, be construed as referring and relating to the Department of Agriculture as created and established by this chapter.

(b) All definitions and references to any director, commissioner, executive secretary, commission, board or council member or other similar person which appear in any other act or law shall, to the extent that same are consistent with this chapter and in connection with a function hereby transferred to the Department, be construed as referring or relating to such person or persons and their powers, duties and functions as established and created by this chapter.

(29 Del. C. 1953, § 8113; 57 Del. Laws, c. 368, § 1.)

§ 8114. Annual report.

The Secretary of the Department shall make an annual report to the Governor and the General Assembly of the Department's operations and render such other reports as the Governor or General Assembly may from time to time request or as may be required by law.

(29 Del. C. 1953, § 8114; 57 Del. Laws, c. 368, § 1.)

§ 8115. Misnomer of Department in donation.

Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Department if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey thereby to the Department or to any commission, board, department, authority, council or agency to which, by this chapter, the powers, duties and functions have been transferred to the Department, the estate or interest therein expressed or described.

(29 Del. C. 1953, § 8115; 57 Del. Laws, c. 368, § 1.)

§ 8116. Budgeting and financing.

(a) The Secretary, in cooperation with the Deputy Secretary, shall prepare a proposed budget for the operation of the Department to be submitted for the consideration of the Governor and the General Assembly. The Department shall be operated within the limitation of the annual appropriation and any other funds appropriated by the General Assembly.

(b) Special funds may be used in accordance with approved programs, grants and appropriations.

(29 Del. C. 1953, § 8116; 57 Del. Laws, c. 368, § 1; 67 Del. Laws, c. 52, § 11.)

§ 8117. Supremacy.

All other laws or parts of laws now in effect inconsistent with this chapter are hereby repealed, superseded, modified or amended so far as necessary to conform to and give full force and effect to this chapter.

(29 Del. C. 1953, § 8118; 57 Del. Laws, c. 764, § 32B.)

Part VIII
Departments of Government

Chapter 82
Department of Safety and Homeland Security

§ 8201. Establishment of Department of Safety and Homeland Security.

A Department of Safety and Homeland Security is established.

(29 Del. C. 1953, § 8201; 57 Del. Laws, c. 382, § 1; 74 Del. Laws, c. 110, § 138.)

§ 8202. Secretary; division directors; Acting Secretary; appointment.

(a) The administrator and head of the Department is the Secretary of the Department of Safety and Homeland Security ("Secretary"), who must be a person qualified by training and experience to perform the duties of the office.

(1) The Secretary is appointed, confirmed, and holds office as provided in § 10 of Article III of the Delaware Constitution.

(2) The Secretary is to receive an annual salary as determined by the General Assembly in the annual appropriations act.

(3) The Secretary must obtain and retain residency in this State as provided in § 10 of Article III of the Delaware Constitution.

(4) The Secretary may appoint directors of divisions within the Department on the written approval of the Governor. The division directors have the powers, duties, and functions in the administration of their respective divisions as authorized by the Secretary.

(b) In the event the position of Secretary is vacant, the Governor, by appointment, shall have the power to fill the position or positions of division director as are vacant. Directors so appointed shall serve at the pleasure of the Governor and, upon the position of Secretary being filled, such directors may be removed by the Secretary with the written approval of the Governor.

(c) In the event of death, resignation, temporary incapacity or permanent removal of the Secretary and prior to the appointment of a successor, the Governor may appoint any qualified individual to serve as Acting Secretary, including but not limited to, the Deputy Secretary of the Department or a director of any division within the Department. The Secretary may, during any temporary absence from the State, appoint the Deputy Secretary or the director of any division within the Department to serve as Acting Secretary during such absence. In either case, the Acting Secretary shall have all the powers and shall perform all the duties and functions of the Secretary during the Secretary's absence or incapacity, or until a successor duly qualified is appointed.

(29 Del. C. 1953, § 8202; 57 Del. Laws, c. 382, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 140, § 4; 74 Del. Laws, c. 110, § 138; 76 Del. Laws, c. 391, §§ 3-6; 84 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 455, § 8; 85 Del. Laws, c. 43, § 1.)

§ 8203. Powers, duties and functions of the Secretary.

The Secretary may:

(1) Supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees;

(2) Appoint, and fix the salary of, with the written approval of the Governor, the following division directors who may be removed from office by the Secretary with the written approval of the Governor and who have such powers, duties, and functions in the administration and operation of the Department as may be assigned by the Secretary:

a. A Secretary of the Division of State Police who shall be known as the Superintendent of State Police and shall hold the rank of Colonel. The Superintendent of State Police shall be qualified by training and experience to perform the duties of the office. The Superintendent of State Police shall be chosen from among the ranks of the State Police and shall have been promoted through the normal promotional policies of the State Police;

b. A director of the Delaware Emergency Management Agency who shall be known as the "Director of the Delaware Emergency Management Agency", and who shall be qualified by training and experience to perform the duties of the office;

c. A Director of the Division of Alcohol and Tobacco Enforcement who shall be known as the Director of Alcohol and Tobacco Enforcement, and who shall be qualified by training and experience to perform the duties of the office;

d. A director of the Division of Capitol Police who shall be known as the Chief of Capitol Police. The Chief of Capitol Police shall be qualified by training and experience to perform the duties of the office. The Chief of Capitol Police shall be chosen from among the ranks of the Capitol Police and through the normal promotional policies of the Capitol Police;

e. A director of the Division of Communications who shall be known as the "Director of the Division of Communications," and who shall be qualified by training and experience to perform the duties of the office;

f. A director of the Office of Highway Safety who is known as the "Director of the Office of Highway Safety," and who is qualified by training and experience to perform the duties of the office;

g. A director of the State Council for Persons with Disabilities, who shall be known as the "Director of the State Council for Persons with Disabilities," which position shall remain a merit position, and who shall be qualified by training and experience to perform the duties of the office;

h. A director of the Division of Gaming Enforcement who shall be known as the "Director of the Division of Gaming Enforcement" and who shall be qualified by training and experience to perform the duties of the office; and

i. A director of the Division of Forensic Science who shall be known as the "Director of the Division of Forensic Science" and who shall be qualified by training, experience, education, or ability in the areas of administration and forensic science to perform the duties of Director.

(3) Appoint such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law, including, but not limited to members of the Secretary's executive staff:

a. A Deputy Secretary;

b. A Chief of Administration;

c. A Chief Information Officer;

d. A Homeland Security Advisor;

e. A Policy Advisor;

f. A Public Relations Officer.

(4) Establish, consolidate or abolish such divisions, subdivisions and offices within the Department or transfer or combine the powers, duties and functions of the divisions, subdivisions and offices within the Department as the Secretary, with the written approval of the Governor, may deem necessary, provided that all powers, duties and functions required by law shall be provided for and maintained;

(5) Make and enter into any and all contracts, agreements or stipulations, and to retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract, consulting, research, technical and other services and facilities, whenever the same shall be deemed by the Secretary necessary or desirable in the performance of the functions of the Department, and whenever funds shall be available for such purpose. All necessary legal services shall be provided pursuant to Chapter 25 of this title;

(6) Delegate any of the Secretary's powers, duties or functions to a person appointed as that Secretary's Deputy Secretary or a director of a division except the power to remove employees of the Department or to fix their compensation;

(7) Establish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State;

(8) Maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department;

(9) Adopt an official seal or seals for the Department;

(10) [Repealed.]

(29 Del. C. 1953, § 8203; 57 Del. Laws, c. 382, § 1; 58 Del. Laws, c. 461, § 5; 66 Del. Laws, c. 108, § 1; 69 Del. Laws, c. 46, § 1; 69 Del. Laws, c. 314, § 4; 69 Del. Laws, c. 437, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 486, § 26; 74 Del. Laws, c. 110, §§ 125, 126; 74 Del. Laws, c. 250, § 1; 75 Del. Laws, c. 88, § 16(5); 75 Del. Laws, c. 322, §§ 1, 2; 76 Del. Laws, c. 391, §§ 7-10; 77 Del. Laws, c. 219, § 24; 79 Del. Laws, c. 265, § 6; 79 Del. Laws, c. 290, § 255; 82 Del. Laws, c. 25, § 1.)

§ 8204. Division of Alcohol and Tobacco Enforcement.

The Division of Alcohol and Tobacco Enforcement is established having powers, duties and functions as set forth in Chapter 4 of Title 4 and the youth access to tobacco laws in §§ 1115 through 1127 of Title 11.

(63 Del. Laws, c. 195, § 2C; 69 Del. Laws, c. 314, § 5; 72 Del. Laws, c. 486, § 22; 74 Del. Laws, c. 250, § 1.)

§ 8205. Police Officer Standards and Training Commission.

(a) There is established the Police Officer Standards and Training Commission.

(b) The Police Officer Standards and Training Commission shall consider matters relating to police training, accreditation of police departments, possible suspension or decertification of police officer certifications, and such other matters as may be referred to it by the Governor or the Secretary of the Department.

(c) The Police Officer Standards and Training Commission shall be appointed as is provided in Chapter 84 of Title 11.

(29 Del. C. 1953, § 8205; 57 Del. Laws, c. 382, § 1; 66 Del. Laws, c. 108, § 4; 84 Del. Laws, c. 149, § 3.)

§ 8206. Division of State Police.

(a) The Division of State Police is established and shall be responsible for the performance of all the powers, duties and functions heretofore vested in:

(1) The State Highway Department, the State Highway Commission, the State Police and the Superintendent of the State Police, pursuant to subchapter I of Chapter 83 of Title 11;

(2) The State Highway Department, the State Highway Commission, the State Police, the Superintendent of the State Police and the State Bureau of Identification, pursuant to Chapter 85 of Title 11.

(b) Notwithstanding any law to the contrary, the Office of Narcotics and Dangerous Drugs shall be transferred to the Delaware State Police as part of the division's criminal investigations unit and shall be renamed the "Delaware State Police Drug Diversion Unit."

(29 Del. C. 1953, § 8206; 57 Del. Laws, c. 382, § 1; 78 Del. Laws, c. 155, §§ 1, 2.)

§ 8207. Division of Motor Vehicles [Repealed].

Repealed by 74 Del. Laws, c. 110, § 127, effective July 1, 2003.

§ 8208. Delaware Emergency Management Agency.

(a) The Delaware Emergency Management Agency is hereby established and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the Division of Civil Defense, and its predecessor, the Department of Civil Defense pursuant to Chapters 31 and 33 of Title 20.

(b) Notwithstanding any other provisions of Chapter 69 of this title to the contrary, the Delaware Emergency Management Agency is authorized to utilize the United States Department of Defense, Defense Logistics Agency, Defense Supply Center Philadelphia, First/ Emergency Responder Equipment Purchase Program or such other similar program for the procurement of material from the Authorized Equipment List of the U.S. Department of Homeland Security's State Homeland Security Grant Program or such other similar program with funds that may be provided by the U.S Department of Homeland Security, Office for Domestic Preparedness, to the extent that such purchase is authorized by federal laws and/or regulations.

(29 Del. C. 1953, § 8208; 57 Del. Laws, c. 382, § 1; 58 Del. Laws, c. 558, § 1; 69 Del. Laws, c. 78, § 5; 76 Del. Laws, c. 280, § 284.)

§ 8209. Council on Emergency Planning and Operations [Repealed].

Repealed by 77 Del. Laws, c. 106, § 10, effective July 6, 2009.

§ 8210. State Council for Persons with Disabilities.

(a) There is hereby established a State Council for Persons with Disabilities.

(b) This Council shall have the following duties and responsibilities:

(1) Promote coordination among all state programs, services and plans established for or related to persons with disabilities.

(2) Review, on a continuing basis, all state policies, plans, programs and activities concerning persons with disabilities which are conducted or assisted, in whole or part, by state departments, agencies or funds in order to determine whether such policies, programs, plans and activities effectively meet the needs of persons with disabilities.

(3) Make recommendations to the Governor, the General Assembly and all state departments and agencies respecting ways to improve the administration of services for persons with disabilities and for facilitating the implementation of new or expanded programs.

(4) Provide the Governor, the General Assembly, all interested agencies and the general public with review and comment on all state legislative proposals affecting people with disabilities.

(5) Provide policymakers and the general public with analyses and recommendations on federal and local governmental legislation, regulations and policies affecting state programs and persons with disabilities.

(6) Propose and promote legislation, regulations and policies to improve the well-being of persons with disabilities.

(7) Obtain, evaluate, and disseminate, as appropriate, information and data regarding:

a. The current numbers of persons with disabilities and their needs;

b. The location, provision and availability of services and programs for persons with disabilities;

c. Any other relevant information and data about persons with disabilities which the council deems appropriate.

(8) Prepare and submit to the Governor and the General Assembly an annual report of the activities of the Council and the status of services and programs for persons with disabilities.

(9) Serve as advisory council for the Community-Based Attendant Services program established by Chapter 94 of Title 16.

(10) Serve as the primary brain injury council for the State. In furtherance of this role, the Council shall:

a. Fulfill the duties and responsibilities set forth in paragraphs (b)(1) through (8) of this section with respect to persons with brain injuries;

b. Fulfill Council duties and responsibilities identified in the Concussion Protection in Youth Athletic Activities Act, codified at Chapter 30L of Title 16; and

c. Maintain a standing brain injury committee to facilitate prevention and centralized interdisciplinary planning, assessment, and an approved service delivery system for individuals with brain injury composed of the following members, or designees of such members:

1. Director of the Division of Public Health;

2. Director of the Division of Developmental Disabilities Services;

3. Director of the Division of Substance Abuse and Mental Health;

4. Director of the Division of Services for Aging and Adults with Physical Disabilities;

5. Director of the Division of Prevention and Behavioral Health Services;

6. Director of Division of Vocational Rehabilitation;

7. Exceptional Children Director of Department of Education;

8. Chair of Governor's Advisory Council for Exceptional Citizens;

9. Chair of Developmental Disabilities Council;

10. Minimum of 3 survivors of brain injury or family members of such individuals; and

11. Representatives of prevention, planning, veterans and service delivery organizations appointed by the Council, including a representative of the state chapter of the Brain Injury Association of America and a representative of the "protection and advocacy agency" defined in § 1102 of Title 16.

(11) Serve as administrative agency for the Employment First Oversight Commission as established in § 745 of Title 19.

(c) For administrative purposes, this Council is placed within the Department of Safety and Homeland Security.

(d) This Council shall consist of the following members:

(1) The Secretary of Health and Social Services, or a designee of the Secretary;

(2) The Secretary of Labor, or a designee of the Secretary;

(3) The Secretary of Education, or a designee of the Secretary;

(4) The Secretary of Services to Children, Youth and Their Families, or a designee of the Secretary;

(5) The Secretary of Transportation, or a designee of the Secretary.

(6) The following councils, committees, agencies, and organizations shall designate a representative to serve as a member of the Council:

a. Governor's Advisory Council for Exceptional Citizens.

b. Developmental Disabilities Council.

c. Delaware protection and advocacy agency as defined in § 1102 of Title 16.

d. Division of Developmental Disabilities Services.

e. Division of Substance Abuse and Mental Health.

f. Division for the Visually Impaired.

g. Architectural Accessibility Board.

h. Delaware Transit Corporation.

i. Division of Services for Aging and Adults with Physical Disabilities.

j. Division of Public Health.

k. Delaware Office for the Deaf and Hard of Hearing.

l. Delaware Statewide Americans with Disabilities Act Coordinator.

m. State Rehabilitation Advisory Council for the Division of Vocational Rehabilitation.

n. Other councils, committees, agencies and organizations as approved by both the State Council for Persons with Disabilities and the affected council, committee, agency or organization.

(7) Individuals appointed by Council to ensure that at least 50% of the total membership are individuals with disabilities or family members of individuals with disabilities. At least 33% of the total membership shall be composed of individuals with disabilities.

(e) Any vacancy of a representative position under paragraphs (d)(1)-(5) of this section shall be filled by the respective council, committee, agency or organization within 1 month.

(f) Any member who misses either 3 consecutive meetings or 4 out of any 12 consecutive meetings shall be presumed to have resigned from the Council.

(g) Members of the Council shall serve without compensation, except that they may be reimbursed by the Department of Safety and Homeland Security for reasonable and necessary expenses incident to their duties as members of the Council to the extent funds are available therefore and in accordance with state law.

(h) The Council shall elect its own Chairperson.

(i) The Council shall determine its meeting schedule, but there shall not be less than 4 meetings each calendar year, open to the public, held in an accessible place and with reasonable accommodations as requested.

(j) A simple majority of the total membership shall constitute a quorum which shall be necessary to vote on any issue.

(k) As used in this section, "persons with disabilities" means a person who has a physical or mental impairment that substantially limits 1 or more major life activities, a person who has a history or record of such an impairment, or a person who is regarded by others as having such an impairment.

(*l*) [Repealed.]

(76 Del. Laws, c. 391, § 11; 78 Del. Laws, c. 60, § 1; 78 Del. Laws, c. 331, § 2; 80 Del. Laws, c. 409, § 2; 82 Del. Laws, c. 271, § 1; 83 Del. Laws, c. 455, § 4; 83 Del. Laws, c. 513, § 1.)

§ 8211. Division of Boiler Safety; Council on Boiler Safety [Repealed].

Repealed by 74 Del. Laws, c. 110, §§ 128, 129, effective July 1, 2003.

§ 8212. Governor's Council on Public Safety [Repealed].

Repealed by 77 Del. Laws, c. 106, § 11, effective July 6, 2009.

§ 8213. Books, records; access; annual report.

(a) The Governor's Council on Public Safety [repealed] shall have access to all books, records, reports and other documents relating to the Department of Safety and Homeland Security unless otherwise prohibited by law.

(b) The various councils of the divisions of the Department of Safety and Homeland Security shall have access to all books, records, reports and other documents relating to their respective divisions unless otherwise prohibited by law.

(c) The Chairperson of the Governor's Council on Public Safety [repealed] and chairpersons of the councils of the divisions of the Department shall make an annual report of the activities of each of the councils to the Secretary of the Department, the Governor and the General Assembly, and render such reports as the Secretary, the Governor or the General Assembly may from time to time request or as may be required by law.

(29 Del. C. 1953, § 8213; 57 Del. Laws, c. 382, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 138.)

§ 8214. Exemptions.

The following positions set forth in this chapter shall be exempt from Chapter 59 of this title:

(1) Secretary of Public Safety;

(2) Superintendent of State Police;

(3) Director of Civil Defense;

(4) Director of Alcohol and Tobacco Enforcement;

(5) Director of the Division of Forensic Science; and

(6) Chief Medical Examiner.

(29 Del. C. 1953, § 8214; 57 Del. Laws, c. 382, § 1; 57 Del. Laws, c. 670, § 28C; 66 Del. Laws, c. 108, § 3; 69 Del. Laws, c. 314, § 6; 72 Del. Laws, c. 486, § 27; 74 Del. Laws, c. 110, §§ 130, 131; 74 Del. Laws, c. 250, § 1; 79 Del. Laws, c. 265, § 7.)

§ 8215. Assumption of powers.

The Department, through appropriate divisions, subdivisions and offices, shall have the power to perform and shall be responsible for the performance of all of the powers, duties and functions vested by law in the State Police Division of the State Highway Department, the Superintendent of the State Police, the State Communications Division, the State Bureau of Identification, the Motor Vehicle Division of the State Highway Department, the Motor Vehicle Commissioner, the Delaware Police Training Commission, the Department of Civil Defense and the Board of Boiler Rules immediately prior to the effective date of this chapter and which are not otherwise hereinabove specifically transferred to the Department by the chapter.

(29 Del. C. 1953, § 8215; 57 Del. Laws, c. 382, § 1.)

§ 8216. Appeals.

Any and all rights of appeal now existing by law with respect to any act or acts constituting the exercise of any functions hereby transferred to the Department or to any division or subdivision thereof shall continue to exist with respect to such act or acts as hereafter performed by the Department or by the division, subdivision or office to which such function is hereby transferred, and each such appeal shall be perfected in the manner heretofore provided by law.

(29 Del. C. 1953, § 8216; 57 Del. Laws, c. 382, § 1.)

§ 8217. Definitions and references in other laws.

(a) The Department shall succeed to the custody and control of all moneys and personal property held by the State Police Division of the State Highway Department, the Superintendent of the State Police, the Motor Vehicle Division of the State Highway Department and the Motor Vehicle Commissioner belonging to persons under their jurisdiction.

(b) All definitions and references to any commission, board, department, authority or agency which appear in any other act or law shall, to the extent that the same are consistent with this chapter and in connection with a function hereby transferred to the Department, be construed as referring and relating to the Department of Safety and Homeland Security as created and established herein.

(c) All definitions and references to any director, commissioner, executive secretary, commission, board or council member or other similar person which appear in any other act or law shall, to the extent that same are consistent with this chapter and in connection with a function hereby transferred to the Department, be construed as referring or relating to such person or persons and their powers, duties and functions as established and created herein.

(29 Del. C. 1953, § 8217; 57 Del. Laws, c. 382, § 1; 74 Del. Laws, c. 110, § 138.)

§ 8218. Annual report.

The Secretary of the Department shall make an annual report to the Governor and the General Assembly of the Department's operations and render such other reports as the Governor or General Assembly may from time to time request or as may be required by law.

(29 Del. C. 1953, § 8218; 57 Del. Laws, c. 382, § 1.)

§ 8219. Misnomer of Department in donation.

Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Department if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey thereby to the Department or to any commission, board, department, authority, council or agency, to which, by this chapter, the powers, duties and functions have been transferred to the Department, the estate or interest therein expressed or described.

(29 Del. C. 1953, § 8219; 57 Del. Laws, c. 382, § 1.)

§ 8220. Budgeting and financing.

(a) The Secretary, in cooperation with the division directors, shall prepare a proposed budget for the operation of the Department to be submitted for the consideration of the Governor and the General Assembly. The Department shall be operated within the limitation of the annual appropriation and any other funds appropriated by the General Assembly.

(b) Special funds may be used in accordance with approved programs, grants and appropriations.

(29 Del. C. 1953, § 8220; 57 Del. Laws, c. 382, § 1.)

§ 8221. Supremacy.

All other laws or parts of laws now in effect inconsistent with this chapter are hereby repealed, superseded, modified or amended so far as necessary to conform to, and give full force and effect to, this chapter.

(29 Del. C. 1953, § 8222; 57 Del. Laws, c. 670, § 27.)

§ 8222. Short title.

Sections 8223-8230 of this title shall be known and may be cited as the "Hazardous Materials Transportation Act of 1979."

(62 Del. Laws, c. 123, § 1; 68 Del. Laws, c. 290, § 188.)

§ 8223. Declaration of policy; findings of fact.

(a) The purpose of this Act and the primary standard by which it shall be administered, is to so regulate the transportation of hazardous materials, and assure compliance with the Code of Federal Regulations herein adopted, that there is established and maintained a reasonable balance between the interests of the people in the safety of themselves and their property, on the one hand, and the interest of the people in their employment and economic prosperity, on the other.

(b) It is hereby found as a fact that hazardous materials are essential for various industrial, commercial and other purposes, that their transportation is a necessary incident of their use and therefore that such transportation is required for the employment and economic prosperity of the people. It is also found as a fact that the transportation of hazardous materials may involve risk of injury to persons and damage to property, and that the degree of such risk can and should be kept at a minimum consistent with technical feasibility and economic reasonableness.

(62 Del. Laws, c. 123, § 1; 64 Del. Laws, c. 28, § 1; 68 Del. Laws, c. 290, § 188.)

§ 8224. Definitions.

(a) The following words and phrases shall have the following meaning ascribed to them, unless their context implies otherwise:

(1) "Act" means the Hazardous Materials Transportation Act of 1979.

(2) "Commission" means the State Emergency Response Commission as established by § 8226 of this title.

(3) "Hazardous material" means any substance or material designated a hazardous material pursuant to the federal "Hazardous Materials Transportation Act" (P.L. 93-633; 49 U.S.C. § 1801 et seq. [repealed]).

(4) "Operator of vehicle" means any person having control of any means of transportation herein regulated.

(5) "Person" means any natural person or individual, firm, association, partnership, copartnership, joint venture, company, corporation, joint stock company, estate or any other legal entity, or their legal representative, agent or assigns.

(6) "Transportation" means any movement of property by any mode, and any loading, unloading or storage incidental thereto.

(b) [Repealed.]

(62 Del. Laws, c. 123, § 1; 64 Del. Laws, c. 28, § 2; 68 Del. Laws, c. 290, § 188; 71 Del. Laws, c. 208, § 2; 71 Del. Laws, c. 461, § 1; 78 Del. Laws, c. 383, § 1.)

§ 8225. Adoption of federal requirements.

(a) The State hereby adopts the following parts of the Code of Federal Regulations (hereinafter sometimes referred to as C.F.R.), being Title 49, Part 107, Subpart F and G, Subchapter C of Chapter I, Parts 171 through 180 and Parts 393 and 397 of Subchapter B, Chapter III,

unless otherwise stated in this section, being lawfully promulgated pursuant to the federal "Hazardous Materials Transportation Act" (P. L. 93-633; 49 U.S.C. § 1801 et seq. (repealed))

(b) *Exceptions.* — (1) For other than a Class 2 material, the transportation of an agricultural product over roadways as defined in § 101(66) of Title 21 between fields of the same farm is excepted from the requirements of Title 49, Chapter 1, Subchapter C of the Code of Federal Regulations. Transportation of the hazardous material is subject to the following conditions:

a. It is transported by a farmer who is an intrastate private motor carrier; and

b. The movement of the agricultural product conforms to requirements of the State in which it is transported and is specifically authorized by a state statute or regulation in effect before October 1, 1998.

(2) A Class 2 material transported over roadways as defined in § 101(66) of Title 21 between the fields of the same farm is excepted from subparts G and H of part 172, 49 C.F.R., Chapter 1, Subchapter C., subject to the following conditions:

a. It is transported by a farmer who is an intrastate private motor carrier; and

b. The movement of the agricultural product conforms to requirements of the State in which it is transported and is specifically authorized by a state statute or regulation in effect before October 1, 1998.

(3) The transportation of an agricultural product to or from a farm, within 40 miles of a farm, is excepted from the requirements in subparts G and H of part 172, 49 C.F.R. Chapter 1, Subchapter C and from its specific packaging requirements when;

a. It is transported by a farmer who is an intrastate private motor carrier;

b. The total amount of agricultural product being transported on a single motor vehicle does not exceed:

1. 16,094 pounds of ammonium nitrate fertilizer, properly classed as Division 5.1, PG HL, in a bulk packaging (aggregate gross weight) or less; or

2. 502 gallons for liquids or gases, or 5,070 for solids, of any other agricultural product;

c. The movement and packaging of the agricultural product conform to the requirements of the State in which it is transported and are specifically authorized by a state statute or regulations in effect before October 1, 1998; and,

d. Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of Title 49, Chapter 1, Subchapter C of the Code of Federal Regulations.

(4) Formulated liquid agricultural products in specification packaging of 58 gallons capacity, or less, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices may be transported by a private motor carrier between a final distribution point and an ultimate point of application or loading aboard an aircraft for aerial application.

(c) Any person engaged in the transportation or shipment of hazardous materials, either in interstate or intrastate commerce, in the State shall comply with these adopted federal regulations and any federal regulations subsequently adopted by the Commission.

(62 Del. Laws, c. 123, § 1; 64 Del. Laws, c. 28, §§ 3, 4; 68 Del. Laws, c. 45, § 1; 68 Del. Laws, c. 290, § 188; 78 Del. Laws, c. 383, § 1; 80 Del. Laws, c. 136, § 1; 80 Del. Laws, c. 168, § 1; 82 Del. Laws, c. 93, § 1; 83 Del. Laws, c. 505, § 1; 84 Del. Laws, c. 332, § 1.)

§ 8226. State Emergency Response Commission.

(a) A State Emergency Response Commission (SERC) is hereby established in compliance with Title III of the Federal Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Chapter 116, Emergency Planning and Community Right-to-Know) (42 U.S.C. § 11001 et seq.), and all appointed commissioners shall serve at the pleasure of the appointing authority and, shall consist of the following:

(1) The Secretary of the Department of Safety and Homeland Security, who shall serve as Chair;

(2) The Superintendent of the Delaware State Police, or a designee appointed by the Superintendent;

(3) The Secretary of the Department of Transportation, or a designee appointed by the Secretary;

(4) The Director of the Division of Waste and Hazardous Substances, or a designee appointed by the Secretary of the Department of Natural Resources and Environmental Control;

(5) The Delaware State Fire Marshal, or a designee appointed by the State Fire Marshal;

(6) The Director of the Delaware Emergency Management Agency, or a designee appointed by the Secretary of the Department of Safety and Homeland Security;

(7) The Director of the Division of Public Health, or a designee appointed by the Secretary of the Department of Health and Social Services;

(8) The Chairs of the SERC established Local Emergency Planning Committees (LEPC) which shall include the City of Wilmington LEPC, New Castle County LEPC, Kent County LEPC, and Sussex County LEPC, or an LEPC member appointed by the Chair;

(9) The Chair of the State Fire Prevention Commission, or a State Fire Prevention Commission member, appointed by the Chair;

(10) Seven commissioners who shall include representatives of air, water, rail and highway transportation, and 3 representatives with experience or knowledge in the area of hazardous materials to be appointed by the Governor for a term of 2 years;

(11) The Director of the Delaware State Fire School, or a designee appointed by the Director; and,

(12) The President of the Delaware State Firefighter's Association, or a designee appointed by the President, who shall serve a term of 2 years.

(b) The Chair shall have no vote except in the case of a tie. The SERC shall meet no less than once each year and at such other times and places as may be designated by the Chair or a majority of the SERC commissioners. The Chair shall cause reasonable notice to be given to each Commission member as to the time and place of each meeting. Eleven Commission members shall constitute a quorum for the transaction of business at any meeting. Members of the Commission shall receive no compensation for the meeting.

(c) After the enactment of this section, the SERC may adopt any subsequent federal regulations lawfully promulgated under the parts of the Code of Federal Regulations herein adopted.

(d) The SERC shall submit an annual report to the Governor and the Delaware General Assembly.

(e) The SERC shall assign the state departments and divisions represented on the Commission, the duty of coordinating and assisting in the enforcement of this section. Such assignments shall be affirmed by a majority vote of the SERC commissioners. The SERC may also enlist the support of any other person which it deems necessary to assist in carrying out its functions and duties.

(f) The SERC has authority to promulgate rules and regulations to carry out the purposes of this section. The SERC Chair may appoint subcommittees to address specific issues and provide subject matter expertise in the promulgation of its rules and regulations and the development of standards and programs to ensure continued compliance with this section and the Code of Federal Regulations adopted therein by all affected agencies.

(g) The SERC may adopt or amend its bylaws. Bylaws shall only be adopted or amended with a $^{3}/_{4}$ majority vote by SERC Commissioners.

(62 Del. Laws, c. 123, § 1; 62 Del. Laws, c. 304, § 1; 64 Del. Laws, c. 28, §§ 5-8; 64 Del. Laws, c. 126, §§ 1, 2; 65 Del. Laws, c. 431, § 8; 67 Del. Laws, c. 207, § 1; 68 Del. Laws, c. 290, § 188; 69 Del. Laws, c. 78, § 5; 69 Del. Laws, c. 204, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 208, §§ 3, 4; 74 Del. Laws, c. 110, § 138; 77 Del. Laws, c. 430, § 71; 78 Del. Laws, c. 127, § 10; 78 Del. Laws, c. 312, § 1.)

§ 8227. Remedies.

(a) The Attorney General, upon request of the Commission or upon the Attorney General's own motion, may proceed in the name of the State, by injunction, mandamus, quo warrants or other appropriate remedy at law or in equity, to restrain violations of the Commission's regulations or orders or to enforce obedience thereto.

(b) The State Police, the State Fire Marshal and such other persons or agencies as the Commission by duly adopted resolution shall designate shall have the power to seize, retain, confiscate and impound all evidence, including motor vehicles, used in violation of this Act, and to otherwise enforce this Act.

(62 Del. Laws, c. 123, § 1; 64 Del. Laws, c. 28, § 9; 68 Del. Laws, c. 290, § 188; 70 Del. Laws, c. 186, § 1.)

§ 8228. Jurisdiction; penalties.

(a) (1) Any person who, as operator of a vehicle, shall knowingly or wilfully violate any provision of this Act, the Code of Federal Regulations adopted under this Act and/or any regulations of the Commission pertaining to routing, parking or other act in the actual operation of a vehicle, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than $25 nor more than $100, or imprisonment for not more than 30 days, or both. Any such person committing a second or subsequent offense and the conviction thereof shall be sentenced to pay a fine of not less than $100 nor more than $500, or imprisonment for not less than 60 days nor more than 1 year, or both.

(2) A person arrested without a warrant for a violation of this Act or any regulation thereunder shall have the person's case heard and determined by the nearest available justice of the peace, notwithstanding the fact that the court of said justice of the peace is situated in a county other than that in which the violation is alleged to have occurred. It shall be a sufficient defense for such person to show by 1 competent witness that there was at the time of the person's arrest an available justice of the peace whose regular office was nearer to the place where such person was arrested than the justice of the peace before whom the case is being tried.

(b) For the purpose of this section, a justice of the peace is available when the justice of the peace is at the office or court.

(c) Any person who, as shipper, carrier, consignee or user of a hazardous material, shall knowingly or wilfully violate any provision of this Act, the Code of Federal Regulations adopted thereunder or any regulation of the Commission, shall be guilty of a misdemeanor, and, upon conviction thereof in the Court of Common Pleas of the county wherein the offense occurred, shall be sentenced to pay a fine of not less than $100 nor more than $500, or imprisonment for not more than 60 days, or both. Any such person committing a second or subsequent offense and the conviction thereof shall be sentenced to pay a fine of not less than $500 nor more than $5,000 or imprisonment for not less than 60 days nor more than 1 year, or both. If such person be a firm, partnership, joint venture or association, or if such person be a corporation, the officer, agent or employee thereof responsible for the violation shall have the sentence, herein prescribed, imposed upon the officer, agent or employee.

(62 Del. Laws, c. 123, § 1; 64 Del. Laws, c. 28, § 10; 68 Del. Laws, c. 290, § 188; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 176, § 36.)

§ 8229. Exclusive state regulation; general repealer.

It is the intent of this Act that this be the exclusive state method of regulating and controlling the transportation of hazardous materials. To that end all acts and parts of acts, ordinances and regulations elsewhere promulgated or enacted are hereby repealed and declared unenforceable to the extent that they are inconsistent herewith. No city, town, municipality or other subdivision of the State shall adopt or enforce any other regulation of the transportation of hazardous materials. This shall not preclude the State from regulating hazardous wastes and hazardous substances, including the transportation thereof, as may be otherwise provided by law.

(62 Del. Laws, c. 123, § 1; 64 Del. Laws, c. 28, §§ 11, 12; 68 Del. Laws, c. 290, § 188.)

§ 8230. Exemption from liability.

(a) Notwithstanding any provision of law to the contrary, no individual, partnership, emergency response team, corporation, industrial response team, association or other entity shall be liable in civil damages as a result of acts taken or omitted in anticipation of, in preparation for, or in the course of rendering care, assistance or advice at the request of any emergency service agency with respect to an incident creating a danger to person, property or the environment as a result of spillage, seepage, fire, explosion or other discharge or release of oil, gasoline, diesel fuel or hazardous materials, or the possibility thereof.

(b) This section shall not preclude liability for civil damages as the result of gross negligence or intentional misconduct. Reckless, wilful or wanton misconduct shall constitute gross negligence.

(c) For purposes of this section, hazardous materials shall include:

(1) Materials designated as hazardous by any governmental agency; and

(2) Materials where the discharge or release of same, or the possibility of such discharge or release, creates a hazard to person, property, or the environment.

(64 Del. Laws, c. 28, § 13; 68 Del. Laws, c. 290, § 188; 70 Del. Laws, c. 379, § 1.)

§ 8231. Hazardous substance spill cleanup.

(a) The Secretary of the Department of Safety and Homeland Security or the Secretary's designee is permitted to expend any funds appropriated to the Department to contain or clean up a hazardous substance spill as defined by § 101(14) or § 102 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. § 9601(14)) [or 42 U.S.C. § 9602] and § 104 of the Hazardous Materials Transportation Act (49 U.S.C. App. § 1803 [repealed]) and duly adopted by the Commission on the Transportation of Hazardous Material. This shall apply to any or all hazardous material spills within the State to protect the citizens and environment. Costs incurred for such removal shall not be subject to Chapter 60 of this title.

(b) A Hazardous Substance Spill Cleanup Revolving Fund is hereby established for the purpose of providing the funds to undertake the emergency cleanup and necessary remedial measures. The Department of Natural Resources and Environmental Control shall be responsible under Chapter 63 of Title 7 for the assessment of any long-term environmental impact and conducting the necessary remedial action.

(c) All revenues recovered from the responsible party shall be retained by the Department of Safety and Homeland Security and placed in the Hazardous Substance Spill Cleanup Revolving Fund. Expenditures from the Fund shall be controlled by the Appropriated Special Funds portion of the annual Budget Act.

(d) The Governor, the Secretary of the Department of Finance, the Director of the Office of Management and Budget, the Joint Finance Committee of the General Assembly and the Controller General shall be kept informed of all costs incurred and reimbursements received under this section.

(64 Del. Laws, c. 124, § 1; 65 Del. Laws, c. 53, §§ 1, 2; 68 Del. Laws, c. 290, § 188; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 138; 75 Del. Laws, c. 88, § 21(13).)

§ 8232. State Emergency Response Commission; other personnel.

Notwithstanding any inconsistent provisions of any public, private or special law, any person who is a bona fide member of, or who is appointed by the State Emergency Response Commission under the authority of § 301(c) [42 U.S.C. § 11001] of Title III, Superfund Amendment and Reauthorization Act of 1986 (SARA), to serve on a local emergency planning committee who, in good faith, assists in the development or review of local plans to respond to hazardous materials incidents in this State is not liable for civil damages as a result of any act or omission in the development, review or implementation of such plans unless the act or omission constitutes gross negligence or wilful misconduct.

(71 Del. Laws, c. 208, § 5.)

§ 8233. Division of Capitol Police.

The Division of Capitol Police is established and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the Division of Capitol Police, pursuant to Chapter 82 of Title 11.

(75 Del. Laws, c. 322, § 3.)

§ 8234. Division of the Office of Highway Safety.

The Division of the Office of Highway Safety is established and shall be responsible for the performance of all the powers, duties and functions vested in the Division of the Office of Highway Safety pursuant to Chapter 49 of this title.

(76 Del. Laws, c. 391, § 12.)

§ 8235. Division of Communications.

There is hereby established, within the Department of Safety and Homeland Security, a Division of Communications with duties, powers and responsibilities as defined.

(1) The Division of Communications shall:

a. Possess the technical expertise to maintain the state radio communications equipment for the State;

b. Plan, coordinate and monitor the procurement of radio systems and associated equipment for the State;

c. Perform such other duties in connection with the radio communications activities of the state government as may be directed by the Governor, the General Assembly, or the Chief Justice or as may be required by existing or future state or federal statute; and

d. Cooperate with the Office of Management and Budget, Department of Technology and Information in the preparation of the statewide communications budget.

(2) *Charges; Communications Revolving Fund.* — a. Out-of-pocket expenses for parts, materials and other goods, used for installation, repair and maintenance of communications facilities, equipment and services, shall be charged to and paid by the using agency through the use of an intergovernmental voucher as described in the State's Budget and Accounting Policy Manual. Moneys received by the Division of Communications under this chapter shall be deposited in a special fund, to be known as the "Communications Revolving Fund," which shall not revert at the end of any fiscal year. The Communications Revolving Fund shall be for the purpose of buying parts, materials and other goods required for installation, repair and maintenance of communications facilities, equipment and services.

b. The size of the Communications Revolving Fund shall be reviewed annually by the Director of the Office of Management and Budget, and if deemed excessive to the needs of the Division of Communications, the excess shall be reverted to the General Fund of the State.

(3) *Extension of service to others.* — Pursuant to written agreements of terms and conditions and subject to payment of charges as determined in accordance with Chapter 65 of this title, the Division of Communications may, but is not required to, extend the services defined in paragraph (1) of this section, as applicable and reasonable to local municipalities, towns and the counties and any and all agencies thereof, and volunteer fire, rescue and ambulance companies operating and chartered in the State. Any such extension of services shall be subject to availability of resources and secondary to the needs of state government. So long as authorized general funded personnel do not depreciate below the Fiscal Year 2006 level, the Division of Communications may provide volunteer fire, rescue and ambulance companies operating and chartered in the State with the same level of 800 MHz service provided to state agencies. Moneys received as payment for these services shall be deposited in the Communications Revolving Fund.

(4) *Restriction of use.* — a. State communications activities shall not be used for any purposes other than the business of the State, nor in any manner not in accordance with this chapter, except in an emergency.

b. Communications transmitted or received by state communications activities shall be the privileged information of the sender and receiver and interception and use of such communications by an unauthorized third party is in violation of federal law, and shall be in violation of the purpose and intent of this chapter; provided, that this shall not prohibit the sender or receiver from releasing such communications to others or to the public if necessary or desirable; and provided, further that the Governor shall have the power to direct the release of such communications if the Governor deems such action to be in the best interest of the State.

(76 Del. Laws, c. 391, § 12; 78 Del. Laws, c. 78, § 252.)

§ 8236. Division of Gaming Enforcement.

(a) There is hereby established, within the Department of Safety and Homeland Security, a Division of Gaming Enforcement with duties, powers and responsibilities as defined. It shall be the responsibility of all police jurisdictions and video lottery agents to report any and all suspicious or criminal activity involving gaming to the Division of Gaming Enforcement.

(b) The Division of Gaming Enforcement shall be under the immediate supervision of a civilian Director who shall staff and administer the work of the Division under the direction and supervision of the Secretary of the Department of Safety and Homeland Security. The Division of Gaming Enforcement shall contain an Assistant Director, whom at all times must be an officer of the Delaware State Police, and other sworn State Police personnel, as well as other resources to necessary to fulfill the obligations under this chapter.

(c) The Division of Gaming Enforcement shall:

(1) Exercise exclusive jurisdiction for the investigation of criminal offenses related to gaming that may occur at any video lottery facility licensed by the State Lottery Office or which occur elsewhere that relate to the operation of the Lottery;

(2) Investigate the background, qualifications and suitability of each applicant before any license is issued by the Director of the State Lottery Office pursuant to Chapter 48 of this title;

(3) Provide assistance upon request by the State Lottery Office in the consideration, promulgation and application of its rules and regulations;

(4) Exchange fingerprint data with, and receive criminal history information from, the Federal Bureau of Investigation for use in considering applicants for any license or registration issued by the State Lottery Office;

(5) Request and receive information, materials and any other data from any licensee or registrant, or applicant for a license or registration;

(6) Notify the State Lottery Office of any information which may affect the continued qualifications or suitability of any licensee or registrant;

(7) Seek to exclude from all licensed video lottery facilities persons whose presence would be inimical to the interest of the State or of lottery operations therein; and

(8) Perform other duties necessary and consistent with Chapter 48 of this title to maintain public confidence and trust in the credibility and integrity of lottery operations, agents and employees.

(77 Del. Laws, c. 219, § 25.)

§ 8237. Omnibus School Safety Act.

(a) *Purpose.* — The purpose of the Omnibus School Safety Act is to enhance public safety in all of Delaware's public schools (including charter schools) and school districts through the development and maintenance of comprehensive, site-specific, National Incident Management System (NIMS)-compliant safety and emergency preparedness plans for each public school and district. This act is intended to promote a cohesive and coordinated approach between state and local emergency responders, education professionals, and other supporting agencies and disciplines during a critical incident within a school setting, in a manner that minimizes administrative and other burdens upon schools and districts.

(b) *Definitions.* — Unless the context otherwise requires, the following words and phrases shall have the meaning ascribed to them in this section:

(1) "Act" means the Omnibus School Safety Act.

(2) "Charter school" means a charter school established pursuant to Chapter 5 of Title 14.

(3) "Critical incident" means any situation that causes or has the potential to cause injury or loss of life to faculty, staff, students or the public, and shall include but not be limited to any weather-, crime- or terrorism-related event that threatens: the life, health and safety of people; damages or destroys property; or causes major disruptions of regular activities.

(4) "Critical incident or emergency event exercise" means any operational simulation performed in a school or district pursuant to this section for the purposes of training and practicing prevention, protection, mitigation, response and recovery capabilities in a realistic, but risk-free environment.

(5) "CSSP" means a Comprehensive School Safety Plan.

(6) "Department" means the Department of Safety and Homeland Security.

(7) "District" means a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14.

(8) "DOE" means the Department of Education.

(9) "Emergency Preparedness Guidelines" means the templates developed by the Department which outline the steps, processes, procedures, audits and actions that shall be used by a school or district to develop, implement, exercise and update its comprehensive school safety plans to respond to an emergency event or unusual crisis situation.

(10) "First responder" means any federal, state and local law-enforcement officer, fire, and emergency medical services personnel, hazardous materials response team member, 911 dispatcher, emergency manager or any other individual who is responsible for the protection and preservation of life, property, or evidence.

(11) "NIMS" means the National Incident Management System developed by the federal government pursuant to Homeland Security Presidential Directive-5 and representing a core set of doctrines, concepts, principles, terminology, and organizational processes that enables effective, efficient, and collaborative incident management.

(12) "School" means any public school within the State, including any charter school.

(13) "School safety team" means those individuals who have been identified by a school or district as members of a team responsible for the development and implementation of a CSSP for a particular school or district.

(14) "Secretary" means the Secretary of the Department of Safety and Homeland Security or his or her designee.

(15) "Tabletop exercise" means a discussion-based critical incident or emergency event exercise involving key personnel comprised of first responders, emergency management personnel, school officials or other individuals where simulated scenarios are discussed in an informal setting.

(c) *Duties and responsibilities of Department.* — The Department, by and through the Secretary, shall have overall operational responsibility for the implementation of the act. In connection therewith, the Department's duties and responsibilities shall include but not be limited to:

(1) Serving as the lead agency in the development of CSSPs for each school and district;

(2) Assisting schools and districts in conducting critical incident and tabletop exercises;

(3) Adopting, publishing and updating Emergency Preparedness Guidelines;

(4) Reviewing and certifying CSSPs submitted by schools and districts;

(5) In consultation with the Department of Education, adopting such rules and regulations as shall be necessary or desirable to implement the provisions of the act;

(6) Reviewing proposed revisions and updates to CSSPs; and

(7) Ensuring that the act is fully implemented and operational by September 10, 2014.

(d) *Duties and responsibilities of schools and districts.* — Each school and district shall:

(1) Create a school safety team for each school and district;

(2) Collaborate with the Department and any relevant first responders to develop and submit to the Department a school- or district-specific CSSP;

(3) Conduct critical incident and tabletop exercises in accordance with subsection (f) of this section hereunder; and

(4) Collaborate with the Department and any relevant first responders in submitting revisions and updates to CSSPs, at such times and upon such circumstances as shall be warranted.

(e) *Initial review and approval of CSSPs.* — Each school and district, through its school safety team, shall collaborate with the Department and any relevant first responders to develop and submit a school- or district-specific CSSP that is NIMS-compliant and is otherwise approved by the Department in accordance with the regulations adopted in connection with this section. The Department shall provide such assistance as shall be necessary in connection with the development of CSSPs, and shall coordinate schools and districts with first responders and other relevant stakeholders, including but not limited to the Capitol Police, for the development of CSSPs hereunder.

(f) *Critical incident and tabletop exercises; revisions to CSSPs.* — (1) Each school and district, through its school safety team, shall collaborate with the Department and any relevant first responders to conduct at least 1 tabletop exercise every year, and at least 2 lockdown/intruder drills per school year. Such exercises shall assess emergency readiness as well as the effectiveness of the existing CSSP, and shall include such members of the school safety team, first responders and such other stakeholders as shall be appropriate. Exercises may also be utilized to identify gaps in the CSSP, assess and improve performance, test equipment and technology, and develop robust community and first responder resolve to prepare for major incidents.

(2) Following any exercise hereunder, a school or district shall submit to the Department verification of the exercise and proposed revisions or updates to its CSSP. However, nothing herein shall limit the ability of schools or districts to submit to the Department proposed revisions or updates to CSSPs at any other time during the year. Proposed revisions or updates shall be reviewed and approved by the Department in accordance with procedures established by the Department.

(g) *Progress reports.* — The Secretary shall provide a report on the progress on the implementation of the Omnibus School Safety Program to the General Assembly by September 1 of each year until such time that implementation of the program is completed and it is fully operational.

(78 Del. Laws, c. 405, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 426, § 1; 80 Del. Laws, c. 377, § 1.)

§ 8238. Division of Forensic Science.

The Division of Forensic Science is established and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the Office of the Chief Medical Examiner and duties of the medical examiners and Forensic Science Laboratory, as set forth in Chapter 47 of this title.

(79 Del. Laws, c. 265, § 8.)

Part VIII
Departments of Government
Chapter 83
Department of Finance
Subchapter I
General Provisions

§ 8301. Establishment.

A Department of Finance is established.

(29 Del. C. 1953, § 8301; 57 Del. Laws, c. 549, § 1.)

§ 8302. Secretary; division directors; Acting Secretary; appointment.

(a) The administrator and head of the Department is the Secretary of the Department of Finance ("Secretary"), who must be a person qualified by training and experience to perform the duties of the office.

(1) The Secretary is appointed, confirmed, and holds office as provided in § 10 of Article III of the Delaware Constitution.

(2) The Secretary is to be paid an annual salary as determined by the General Assembly in the annual appropriations act.

(3) The Secretary must obtain and retain residency in this State as provided in § 10 of Article III of the Delaware Constitution.

(b) In the event the position of Secretary is vacant, the Governor, by appointment, shall have the power to fill the position or positions of division director as are vacant. Directors so appointed shall serve at the pleasure of the Governor and upon the position of Secretary being filled such directors may be removed by the Secretary with the written approval of the Governor.

(c) In the event of death, resignation, temporary incapacity or removal of the Secretary and prior to the appointment of a successor, the Governor may appoint the Deputy Secretary of Finance or the director of any division of the Department to serve as Acting Secretary. The Secretary may, during an absence from the State, appoint the Deputy Secretary of Finance or the director of any division of the Department to serve as Acting Secretary during such absence. In either case the Acting Secretary shall have all the powers and shall perform all the duties and functions of the Secretary during such absence or incapacity or until a successor is duly qualified and appointed.

(29 Del. C. 1953, § 8302; 57 Del. Laws, c. 549, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 140, § 5; 75 Del. Laws, c. 89, § 156; 84 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 455, § 9; 85 Del. Laws, c. 43, § 1.)

§ 8302A. Bond [Repealed].

(59 Del. Laws, c. 378, § 11; 70 Del. Laws, c. 186, § 1; repealed by 82 Del. Laws, c. 226, § 4, effective Feb. 10, 2020.)

§ 8303. Powers, duties and functions of the Secretary.

The Secretary shall have the following powers, duties and functions:

(1) To supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees;

(2) To appoint, and fix the salary of, with the written approval of the Governor, the following division directors, who may be removed from office by the Secretary with the written approval of the Governor, and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary:

a. A Director of the Division of Accounting, who shall be known as the Director of Accounting, and who shall be qualified by training and experience to perform the duties of the office;

b. A Director of the Division of Revenue, who shall be known as the Director of Revenue, and who is generally known to possess knowledge of the subject of taxation and has recognized ability and wide experience in administrative positions and has had the right to vote for a member of the General Assembly of this State at the last general election preceding the member's appointment;

c. A Director of the State Lottery Office who shall be known as the Lottery Director and who shall meet the qualifications as set forth in § 4804 of this title;

(3) To appoint such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law;

(4) To establish, consolidate or abolish such divisions and offices within the Department or transfer or combine the powers, duties and functions of the divisions and offices within the Department as the Secretary, with the written approval of the Governor, may deem necessary, provided that all powers, duties and functions required by law shall be provided for and maintained;

(5) To make and enter into any and all contracts, agreements or stipulations, and to retain, employ and contract for the services of private and public consultants, research and technical and other services and facilities, whenever the same shall be deemed by the Secretary necessary or desirable in the performance of the functions of the Department and whenever funds shall be available for such purpose. All necessary legal services shall be provided pursuant to Chapter 25 of this title;

(6) To delegate any of the Secretary's powers, duties or functions to a director of a division, except the power to remove employees of the Department or to fix their compensation;

(7) To establish and to promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State;

(8) To maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department;

(9) To adopt an official seal or seals for the Department.

(29 Del. C. 1953, § 8303; 57 Del. Laws, c. 549, § 1; 60 Del. Laws, c. 539, § 8; 70 Del. Laws, c. 186, § 1.)

§ 8304. Division of Accounting.

The Division of Accounting is established which shall:

(1) Audit, inspect and examine the accounts, affairs and records of any agency of this State at such times as it deems expedient for the supervision of fiscal affairs;

(2) Reject all bills, statements, accounts, and demands against the State which do not conform with such controls as are adopted by the State's financial management and prescribed in the accounting manual;

(3) Prepare the form or format to be used in making out accounts or statements of indebtedness. Such forms or formats shall contain a notice that no account or statement of indebtedness thereon shall be valid unless an order or requisition authorizing such account or statement of indebtedness has been prepared in accordance with policies prescribed in the accounting manual;

(4) Report to the General Assembly, the Attorney General and the Director of the Office of Management and Budget in writing any irregular, illegal or improper financial administration or transaction;

(5) In addition to the foregoing, the Division of Accounting shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the Director of the Office of Management and Budget pursuant to §§ 6511 [repealed], 6512(b), (c) and (e), 6515 (except the last sentence of subsection (d)), 6516, 6517, 6518, 6520(b) and (c), 6521, 6522, 6523, 6524, 6525 [repealed], 6526 [repealed] and 6527 of this title.

(29 Del. C. 1953, § 8304; 57 Del. Laws, c. 549, § 1; 57 Del. Laws, c. 741, §§ 45A, 45B; 70 Del. Laws, c. 509, §§ 17, 18; 75 Del. Laws, c. 88, § 21(13).)

§ 8305. Division of Revenue.

The Division of Revenue is established having powers, duties and functions as follows:

(1) The Division of Revenue shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in:

a. The State Tax Department and the State Tax Commissioner pursuant to Chapters 1, 3, 11, 13 [repealed], 15, 17, 19, 20, 21, 23, 25, 27, 29, 43, 53 and 54 of Title 30;

b. The Collector of State Revenue, the State Tax Department and the State Tax Commissioner pursuant to Chapter 5 of Title 30 of the 1953 Code.

(2) In addition to the foregoing, the Division of Revenue shall have the power to perform and shall be responsible for the performance of the following powers:

a. To issue licenses, permits or other documents, to require the payment of fees, taxes or other assessments, and the filing of affidavits or other documents relating thereto, and to enforce the payment and collection of the same heretofore vested in:

1. The State Treasurer pursuant to Chapters 33, 35 [repealed], 37 [repealed], 39 [repealed] and 41 of Title 30;

2. The State Highway Department pursuant to Chapters 51 and 52 of Title 30;

b. To require the payment of fees, taxes and other assessments, and the filing of affidavits or other documents relating thereto, and to enforce the payment and collection of the same heretofore vested in:

1. The Superintendent of the Delaware State Police pursuant to § 1304 of Title 24;

2. The Delaware Alcoholic Beverage Control Commission pursuant to §§ 551, 564, 572 and 581 of Title 4;

3. The Delaware Real Estate Commission pursuant to §§ 2905, 2908, 2911, 2918 [repealed] and 2920 of Title 24;

4. The Industrial Accident Board, the State Treasurer and the Insurance Commissioner of this State pursuant to §§ 2391 and 2392 of Title 19;

5. The Delaware Harness Racing Commission pursuant to §§ 10024, 10030, 10031 [repealed], 10056 and 10059 [repealed] of Title 3;

6. The Delaware Racing Commission pursuant to §§ 10123, 10130 [repealed], 10165 and 10168 [repealed] of Title 3 and §§ 404, 411, 445 and 448 of Title 28.

(3) The Division shall promulgate rules and regulations relating to all taxes and fees to be paid by any boxing arena or other site by any promoter, participant, vendor or patron; or to be paid by any other person, corporation or organization associated with a match.

(4) The Division of Revenue shall have the power to establish and promulgate such rules and regulations to implement its powers set forth in paragraph (2) of this section, as it deems necessary and which are not inconsistent with the laws of this State.

(5) The executive, administrative, ministerial, fiscal and clerical functions of the State Tax Board set forth in subchapter II of Chapter 3 of Title 30 shall be performed by the Division of Revenue.

(6) On or before November 1 of each odd-numbered year, the Division of Revenue, under the supervision of the Secretary of the Department of Finance, shall make a report to the Governor and the General Assembly concerning the effect of certain tax preferences on the revenues collected by the State. For the purposes of this section, "tax preferences" means any law of the United States or the State which exempts, in whole or in part, certain persons, income, goods, services or property from the impact of established taxes, including, but not limited because of failure of enumeration, to those devices known as tax deductions, tax exclusions, tax credits, tax deferrals and tax exemptions. "Tax preference" shall not include variations in the rate of income tax, § 1102 of Title 30; standard deductions, § 1108 of Title 30; or personal exemptions, § 1110 of Title 30.

a. *Declaration of policy.* — State governmental policy objectives are sought to be achieved both by direct expenditure of governmental funds and by the granting of special and selective tax relief or tax preferences. Both direct expenditures of governmental funds and tax preferences have an effect on the ability of the state government to lower tax rates or to increase expenditures. As a result, tax preferences should receive a regular and comprehensive review by the Governor and the General Assembly as to:

(i) Their total cost;

(ii) Their effectiveness in achieving their objectives;

(iii) Their effect on the fairness and equity of the distribution of the tax burden; and

(iv) The public and private cost of administering tax preference financed programs.

The purpose of this section is to facilitate such review by providing for the generation of information concerning tax preferences and their effect upon state revenues.

b. *Components of the report.* — The taxes to be reviewed in the report shall be tax preferences created under provisions of the Delaware Code, rather than tax preferences created by operation of the Internal Revenue Code of the United States, and shall include, but need not be limited to, the personal income tax, corporate income tax, motor fuel taxes and public utility taxes. The report shall include the following:

1. Each tax preference, its statutory basis, and its purpose.

2. An estimate of the revenue loss to the State, or 1 of its subdivisions, caused by each tax preference for the last fiscal year and the estimated revenue loss caused by each tax preference for the current fiscal year.

3. An assessment of whether each tax preference is the most fiscally effective means of achieving its purpose and whether or not each tax preference has been successful in meeting the purpose for which it was enacted, and, in particular, whether each tax preference benefits those originally intended to be benefitted, and if not, those who do benefit.

4. A statement of any unintended or inadvertent effects, benefits or harm caused by each tax preference, including whether each tax preference conflicts with any other state laws or regulations.

(7) Notwithstanding the provisions of paragraph (6) of this section, whenever there shall be enacted:

a. In the case of the personal income tax, a modification, as that term is used in § 1105 of Title 30, to be used in determining taxable income, or adjustments to federal itemized deductions to be used in the computation contained in § 1109(a), of Title 30; or

b. In the case of corporation income tax, adjustments to federal taxable income under § 1903(a), of Title 30, or allocation provisions under § 1903(b), of Title 30; then, on or before November 15 following such enactment, the Division of Revenue, under the supervision of the Secretary of Finance, shall make a report to the Governor and the General Assembly concerning such provision. The report shall include the components described in paragraph (6)b. of this section.

(8) The Division is authorized to require payment of fees for issuance of certificates or other documents reflecting the status of taxes, if any owed, by the tax payer requesting such certificate. In addition, the Division is authorized to specify payment of fees for collection of debts owed to claimant agencies. Payment of these fees shall be deemed to reduce the contractual services expenditures of the Division and shall be recorded as expenditure-reducing items.

(85 Del. Laws, c. 30, § 2; 85 Del. Laws, c. 1, § 3; 29 Del. C. 1953, § 8305; 57 Del. Laws, c. 549, § 1; 57 Del. Laws, c. 741, §§ 44A, 44C-44E; 58 Del. Laws, c. 468; 63 Del. Laws, c. 150, § 3; 65 Del. Laws, c. 271, § 1; 68 Del. Laws, c. 171, §§ 1-3; 68 Del. Laws, c. 241, § 1; 70 Del. Laws, c. 242, § 3; 73 Del. Laws, c. 310, § 13; 82 Del. Laws, c. 8, § 3.)

§ 8306. Tax Appeal Board.

(a) The State Tax Board, created by subchapter II of Chapter 3 of Title 30 hereby renamed the Tax Appeal Board, is continued.

(b) Except as otherwise provided in § 8305(4) of this title, the Tax Appeal Board is vested with the membership, remuneration, organization, meetings, powers, duties and functions heretofore vested in the State Tax Board by law, including the power to hear complaints and appeals from the decisions or rulings of the Director of Revenue as the same heretofore existed in respect to decisions or rulings of the State Tax Commissioner pursuant to subchapter II of Chapter 3 of Title 30. The right of appeal from determinations of the State Tax Board heretofore existing pursuant to subchapter II of Chapter 3 of Title 30 is hereby continued respecting appeals from determinations of the Tax Appeal Board.

(29 Del. C. 1953, § 8306; 57 Del. Laws, c. 549, § 1.)

§ 8307. Division of the Treasury.

(a) The Division of the Treasury is hereby established having powers, duties and functions as follows.

(b) The Division of the Treasury shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the State Treasurer, pursuant to Chapter 31 of Title 19 and Chapter 54 of Title 30.

(29 Del. C. 1953, § 8307; 57 Del. Laws, c. 549, § 1; 59 Del. Laws, c. 216, § 1; 59 Del. Laws, c. 378, §§ 2, 4; 60 Del. Laws, c. 267, § 1; 66 Del. Laws, c. 85, § 94; 67 Del. Laws, c. 47, § 62; 68 Del. Laws, c. 84, § 62.)

§ 8308. Board of Pension Trustees.

(a) There is established a Board of Pension Trustees. The Board is subject to a standard of care in which the Board, its committees, and each of the committees' members shall discharge their duties with respect to each plan listed under subsection (b) of this section solely in the interest of the participants and beneficiaries of such plans and for the exclusive purpose of providing plan benefits to participants and their beneficiaries, including defraying reasonable expenses of administering each plan, with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of such plan.

(b) The Board shall have:

(1) The Board shall establish the Delaware Public Employees' Retirement System, a body corporate and politic, which has control and management of the state pension funds provided for in:

a. The State Employees' Pension Plan pursuant to Chapter 55 of this title;

b. The closed State Police Retirement Fund pursuant to subchapter II of Chapter 83 of Title 11;

c. The new State Police Retirement Fund pursuant to subchapter III of Chapter 83 of Title 11;

d. The State Judiciary Retirement Fund pursuant to Chapter 56 of this title;

e. The County and Municipal Employees' Retirement Fund pursuant to Chapter 55A of this title;

f. The County and Municipal Police/Firefighter Retirement Fund pursuant to Chapter 88 of Title 11;

g. The Volunteer Fireman's Pension Fund pursuant to Chapter 66A of Title 16;

h. The closed Diamond State Port Corporation Pension Plan pursuant to Chapter 87 of this title;

i. The County and Municipal Police/Firefighter Special Fund pursuant to Chapter 7 of Title 18;

j. The Special Pension Fund pursuant to Chapter 191, Volume 61, Laws of Delaware; and

k. The Local Government Retirement Investment Pool pursuant to Chapter 83 of this title.

l. The OPEB Fund created pursuant to Chapter 52B of this title.

(2) The power and duty to appoint an Executive Secretary who shall be responsible for determining the eligibility for retirement pension benefits for all state-administered pension plans including the determination of eligibility for paraplegic veterans' benefits as provided for in § 1001 of Title 20.

(3) The power and duty to hear appeals from the decision of the Executive Secretary regarding pension benefits provided for all state-administered pension plans.

(4) The power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in:

a. The Arbitration Committee and the Disability Commission pursuant to Chapter 55 of this title;

b. The State Board of Education and the Director of the Delaware Psychiatric Center pursuant to Chapter 39 of Title 14;

c. The Board of State Judiciary Pension Trustees pursuant to Chapter 56 of this title;

d. The State Police Pension Board pursuant to subchapter II of Chapter 83 of Title 11.

(5) The authority to comingle assets of the Delaware Public Employees' Retirement System for investment purpose, provided said assets shall be maintained separately for accounting purposes. Fees and expenses authorized by the Board shall be paid from the assets of each separate plan and/or fund as applicable.

(c) In addition to the foregoing, the Board shall have the following powers, duties and functions:

(1) To adopt rules and regulations for the general administration of the state pension plans and benefits set forth in subsection (b) of this section;

(2) To appoint an actuary to perform the actuarial services necessary to effectuate the purposes of this section;

(3) To prepare and publish an annual report to the Governor and General Assembly on its activities, including administration expenses;

(4) To maintain and invest the pension funds qualified under Internal Revenue Code § 401(a) [26 U.S.C. § 401(a)] of the Delaware Public Employees Retirement System. The assets of such funds may be commingled for investment purposes but will be maintained separately for accounting purposes. Fees and expenses authorized by the Board shall be paid from the assets of each separate fund as applicable. The Board shall also have the power and duty to maintain and invest the Volunteer Fireman's Pension Fund under §

457(e)(11) of the Internal Revenue Code [26 U.S.C. § 457(e)(11)]. The assets of such fund will be invested separately and maintained separately for accounting purposes. Fees and expenses authorized by the Board shall be paid from the assets of such fund.

(5) To make and enter into any and all contracts with any agency of the State, any outside agency, or person for the purpose of performing its duties, including, but not limited to, assisting in the administration of this section and the investing or advising as to the investment of the pension plans, funds, or benefits under its control and management. The Board shall enter into a memorandum of understanding with any such agency of the State or outside agency, including the following:

a. The Office of Management and Budget for the administration of the Pension Office.

b. The Department of Technology and Information for technology assistance.

c. The Department of Justice for legal counsel.

d. The Department of Human Resources for consultation regarding insurance and risk management.

(6) To determine the interest rate to be credited to employee contributions and the rate to be charged on repayment of contributions previously withdrawn;

(7) To issue subpoenas and administer oaths in any proceeding and in all other cases where it is necessary in the exercise of the powers and duties of the Board. Such oaths may be administered and such subpoenas issued by any member of the Board. Any subpoena, process or order of the Board or any notice or paper requiring service may be sent by certified mail, return receipt requested, or may be served by any constable or any state employee designated by the Board, with the return to be made to the Board. If service is made by a constable, the constable shall receive the same fees as are provided by law for like service in civil actions; if service is made by a state employee designated by the Board, such state employee shall not receive any fee, but shall be reimbursed such state employee's actual expenses;

(8) To examine persons as witnesses, take evidence, require the production of documents and do all other things pursuant to law which are necessary to enable it effectively to discharge its duties of office. In proceedings before the Board, if any person neglects to produce any pertinent document, neglects or refuses to appear after having been subpoenaed, refuses to testify or be examined by members of the Board, disobeys or resists any lawful order or process or misbehaves during a hearing in a manner intended to obstruct the hearing, the Board shall certify the facts under signature of its Chairperson to any Judge of the Superior Court, which Judge shall thereupon hear the evidence as to the acts complained of. The Judge shall, if the Judge deems the evidence so warrants, issue an order requiring such person to testify, produce documents or otherwise comply with the requirements of the Board, as the case may require. Refusal to comply with the order of the Court shall constitute contempt of Court;

(9) a. In any Pension Office appeal hearing submitted to the Board, the Board shall designate 1 or more of its members to act as hearing officer or officers. The hearing officer or officers shall hear the evidence and arguments presented by the parties. The hearing officer or officers shall have all the powers of the Board in exercise of their responsibilities during the hearing.

b. In every case, the hearing officer or officers shall prepare and transmit a decision containing the findings of fact and conclusions of law to the Board within 60 days of the hearing for consideration at the next regularly scheduled Board meeting.

c. The Board may accept, reject or modify the hearing officer's or officers' decision and shall prepare a final decision ("final decision"). Within 5 days of the Board meeting, the final decision shall be mailed to the parties on record at their designated addresses via first class U.S. mail.

d. The Board's final decision may be appealed to the Superior Court within 30 days after it is mailed to the parties by the Board. The appeal shall be on the record established at the hearing.

(10) To administer any pension plan established by the Diamond State Port Corporation, upon such terms as negotiated with the Diamond State Port Corporation;

(11) To maintain and invest the OPEB Fund provided for in paragraph (b)(5) of this section. Fees and expenses authorized by the Board shall be paid from the assets of the OPEB Fund as applicable;

(12) To make and enter into any and all contracts with any agency of the State, or any outside agency, or company for the purposes of assisting in the general administration and the investing or advising as to the investment of the OPEB Fund under its control and management.

(13) To adopt rules and regulations appropriate or necessary to maintain the qualified status of each state pension plan and benefit set forth in subsection (b) of this section under Internal Revenue Code §§ 401(a) and 414(d) [26 U.S.C. §§ 401(a) and 414(d)] or such other provision of the Internal Revenue Code as applicable;

(14) To adopt by rule and regulation a qualified excess benefit arrangement under Internal Revenue code § 415(m) [26 U.S.C. § 415(m)] with respect to any state pension plan that is qualified under Internal Revenue Code §§ 401(a)and 414(d)[26 U.S.C. §§ 401(a) and 414(d)] in order to pay benefits that cannot be paid from that pension plan because of the limits under Internal Revenue Code § 415 [26 U.S.C. § 415].

(15) To establish committees for the purposes of: overseeing, approving, and terminating investments; consultation on internal and external audit; governance; or any purposes necessary to perform its duties. Committees may include persons who are not members of the Board. Any member of the Board may make nominations of prospective committee members and the Board shall consider the

nominations and make appointments by majority vote of the Board. The Board may adopt policies consistent with any such delegation of its authorities.

(16) To approve the annual budget for each of the plans listed under subsection (b) of this section.

(17) Notwithstanding provisions of § 2906(c) of this title to the contrary, the sole authority to contract with a certified public accounting firm for an annual financial audit of each of the plans listed under subsection (b) of this section, which shall be provided annually to the General Assembly. The Board shall seek the input of the Audit Committee and the Auditor of Accounts in the selection of the certified accounting firm to perform the annual audit. Payment for each audit must be approved by the Board.

(18) To exercise all other powers necessary and proper for the discharge of its duties.

(d) All records maintained by the Board or the Office of Pensions and Investments relating to the pensions or pension eligibility of persons receiving pensions from the State or other post-employment benefits and who are not presently employed by or serving as officers of the State or its political subdivisions shall be confidential. Any record, material or data received, prepared, used or retained by the Board or its employees, investment professionals or agents relating to an investment shall not constitute a public record subject to Chapter 100 of this title.

(e) The Board of Pension Trustees shall be composed of 7 members as follows:

(1) The Secretary of Finance and the Director of the Office of Management and Budget shall serve ex officio as voting members;

(2) Four other members who shall be appointed by the Governor with the consent of a majority of the members elected to the Senate;

(3) At least 2 of the appointed members shall be affiliated with 1 of the major political parties, and at least 2 of the appointed members shall be affiliated with the other major political party. Any person who declines to announce such person's political affiliation shall also be eligible for appointment as a member of the Board.

(4) The seventh member shall be appointed by and serve at the pleasure of the Governor with the consent of a majority of the members elected to the Senate and shall be Chairperson of the Board.

(f) The terms of the appointed members shall be staggered. The first appointee shall serve for a term of 1 year; the second appointee shall serve for a term of 2 years; the third appointee shall serve for a term of 3 years; and the fourth appointee shall serve for a term of 4 years. Thereafter, appointed members shall serve for a term of 4 years. The seventh member shall serve at the pleasure of the Governor and shall be Chairperson of the Board.

(g) Each appointed member of the Board shall be paid $150 for each day devoted to Board business. Members shall be entitled to reimbursement for travel and other expenses made necessary by their official duties.

(h) Any appointment, by the Governor by and with the consent of a majority of the members elected to the Senate, to replace a member whose position becomes vacant prior to the expiration of the member's term shall be filled only for the remainder of that term.

(i) Any applicant for a pension aggrieved by a decision after a hearing by the Board of Pension Trustees may appeal that decision to the Superior Court and such appeal and review shall be conducted according to the provisions governing judicial review of case decisions under the Administrative Procedures Act.

(j) The State shall indemnify Board or committee members who were or are a party, or are threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that the Board or committee member is or was a Board member against expenses, including attorneys' fees if the Attorney General determines that Attorney General may not provide representation, judgments, fines and amounts paid in settlement actually and reasonably incurred by the Board or committee members in connection with such action, suit or proceeding, if the Board or committee members acted in good faith and in a manner the Board or committee members reasonably believed to be in the best interest of the State and with respect to any criminal action or proceeding had no reasonable cause to believe the Board or committee member's conduct was unlawful. Expenses incurred in defending a civil, administrative or investigative action, suit or proceeding shall be paid by the State in advance of final disposition of such action, suit or proceeding if:

(1) Initially authorized by a majority vote of the Board exclusive of the member or members to be indemnified unless more than a majority of the Board shall also be parties to the same action, suit or proceeding, in which instance, such authorization shall be by the Governor of the State; and

(2) Such Board member agrees to repay such amount if it is ultimately determined by the Board or the Governor, as the case may be, pursuant to paragraph (j)(1) of this section that such member is not entitled to indemnification under this section.

(k) No member of the Board of Pension Trustees appointed under subsection (e)(2) of this section shall receive a pension credit for the member's service as a trustee under any state pension system administered by the Board.

(*l*) The Board shall establish a Local Government Retirement Investment Pool with the following powers, duties and functions:

(1) The governing body or investing authority of a local government, meaning any city, town or county in Delaware, may pay public retirement moneys of the local government into the Local Government Retirement Investment Pool which shall be in the custody of the Board of Pension Trustees. The Board of Pension Trustees shall invest the funds in the same manner and in the same types of investments and subject to the same limitations provided for the deposit and investment of state retirement funds. Funds of the local governments may be commingled with funds of the state pension trust for investment purposes only and shall be accounted for separately.

(2) The Board of Pension Trustees shall adopt such rules and regulations as are necessary for the administration of this Investment Pool including specification of minimum amounts which may be paid into the Pool and minimum periods of time for which such payments shall be retained in the Pool. Earnings shall be equitably prorated among the local governments in the Pool based upon the amount and length of time the moneys are on deposit in the Pool. All costs of participation and administration in the Pool shall be equitably prorated among the participating local governments.

(3) The governing body or investing authority of a local government, meaning any city, town or county in Delaware, may pay Other Post Employment Benefit funds of the local government into the Local Government Retirement Investment Pool which shall be in the custody of the Board of Pension Trustees. The Board of Pension Trustees shall invest the funds in the same manner and in the same types of investments and subject to the same limitations provided for the deposit and investment of state Other Post Employment Benefit funds. Funds of the local governments may be commingled with funds of the state Other Post Employment Benefit trust for investment purposes only and shall be accounted for separately.

(m) The Board of Pension Trustees shall have the authority to levy interest penalties on participating employers in the Delaware Public Employees Retirement System, who fail to remit employee and employer pension contributions to the Delaware Public Employees' System when due. In the exercise of this authority the Board of Pension Trustees shall adopt such rules and regulations as are necessary to encourage the timely payment of these funds, to provide a mechanism to collect overdue contributions, and to reimburse the Delaware Public Employees' Retirement System for lost investment revenue. These actions may include, among other actions, the imposition of interest and/or the adoption of an assessment for late payment of contributions by an employer at a rate not to exceed the Board's economic assumption for investment return.

(n) The Board shall meet as often as necessary to properly discharge its duties, but no less than 10 times annually. The Chairperson of the Board is authorized to call special meetings of the Board in addition to the minimum 10 annual meetings and to set the agenda for these meetings.

(o) The use of teleconferencing or videoconferencing is authorized for use in conducting meetings of the Board and its committees, including for the purposes of obtaining quorum and voting.

(p) All records maintained by the Board or the Office of Pensions and Investments relating to the Board's Internal Audit Department shall be confidential. Any record, material or data received, prepared, used or retained by the Board's Internal Audit Department shall not constitute a public record subject to Chapter 100 of this title.

(29 Del. C. 1953, § 8308; 57 Del. Laws, c. 549, § 1; 57 Del. Laws, c. 741, § 45A; 58 Del. Laws, c. 562; 63 Del. Laws, c. 415, § 1; 65 Del. Laws, c. 131, § 1; 65 Del. Laws, c. 151, § 1; 65 Del. Laws, c. 343, §§ 1, 2; 65 Del. Laws, c. 348, § 79; 65 Del. Laws, c. 421, § 1; 65 Del. Laws, c. 443, § 1; 66 Del. Laws, c. 85, § 94; 67 Del. Laws, c. 47, § 63; 68 Del. Laws, c. 8, § 3; 68 Del. Laws, c. 286, §§ 3, 4; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 210, § 26; 70 Del. Laws, c. 550, § 1; 70 Del. Laws, c. 595, § 1; 71 Del. Laws, c. 121, §§ 1, 2; 74 Del. Laws, c. 307, § 12; 75 Del. Laws, c. 88, § 20(6); 76 Del. Laws, c. 70, §§ 2-5; 76 Del. Laws, c. 279, §§ 1-4, 14; 76 Del. Laws, c. 280, § 79; 76 Del. Laws, c. 397, § 1; 81 Del. Laws, c. 68, § 1; 82 Del. Laws, c. 87, § 8; 84 Del. Laws, c. 42, § 1.)

§ 8308A. State Pension Advisory Council.

(a) There is established a State Pension Advisory Council. The purpose of the Advisory Council shall be to advise the State Board of Pension Trustees on administration of pension plans sponsored by the State. This shall include, but not be limited to, the establishment of rules, administrative procedures and hearing procedures. Further, the State Pension Advisory Council members will provide for communications between the State Board of Pension Trustees, the State Pension Office and the state employees represented. The State Pension Advisory Council shall make recommendations to the State Board of Pension Trustees, the General Assembly of Delaware and its committees, the State Pension Office and state employees on all matters the Council deems appropriate.

(b) The State Pension Advisory Council shall develop bylaws to govern the administration of this section.

(c) A chairperson, first vice chairperson and second vice chairperson shall be elected in accordance with the bylaws of the Advisory Council. The elected officers shall act for the Advisory Council as directed by the members of the Council.

(d) The State Pension Advisory Council shall have access to all public meetings of the State Board of Pension Trustees and to all information available to the State Board of Pension Trustees except reports of the Medical Committee and individual personnel files.

(e) The State Pension Advisory Council shall be composed of representatives of the following organizations or their successors:

(1) American Association of University Professors (AAUP) — Independent Chapters.

(2) American Federation of State, County and Municipal Employees, Council 81 (AFSCME).

(3) Judicial branch of government through the administrative office of the courts.

(4) Delaware Association of School Administrators (DASA).

(5) Delaware National Guard (DNG).

(6) Delaware Nurses Association (DNA).

(7) Delaware Retired School Personnel Association (DRSPA).

(8) Delaware State Education Association (DSEA).

(9) Delaware School Food Service Association (DSFSA).

(10) Delaware State Troopers Association (DSTA).

(11) University of Delaware Staff Association (UDSA).

(12) The State Lodge of the Fraternal Order of Police (FOP).

(13) International Association of Firefighters Local 1590 City of Wilmington Firefighters.

(f) Representatives of member organizations shall be selected through due process of the bylaws of that organization or, if the employees of a state agency are not organized, through appointment by the administrative office providing administrative services for those employees.

(g) Each organization represented on the Advisory Council shall notify the Chairperson of the State Board of Pension Trustees and the Chairperson of the State Pension Advisory Council when a new representative is selected.

(h) Reasonable support services for the State Pension Advisory Council shall be provided by the State Pension Office.

(i) Up to 2 at-large, ad hoc members may be added to the Advisory Council in order to provide expertise needed for Council members to understand matters before the State Board of Pension Trustees.

(j) When a member group or organization fails to send a representative to meetings of the State Pension Advisory Council for a period of 1 year, the group or organization shall automatically lose its representation on the Advisory Council.

(68 Del. Laws, c. 395, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 215, § 1.)

§ 8308B. State Employees Pension Benefits Review Committee.

(a) There is established the State Employees Pension Benefits Review Committee. The purpose of the Review Committee shall be to review the pension plan by using appropriate and accepted comparative analysis, including, but not limited to, the benefit structure of the various state pension systems for the purpose of evaluating current pension plan benefits and recommending changes.

(b) The State Employees Pension Benefits Review Committee shall be composed as follows:

(1) Chair and Vice Chair of the Legislative Joint Finance Committee.

(2) One member of the Senate appointed by the President Pro Tem.

(3) One member of the House of Representative appointed by the Speaker.

(4) Three members appointed by the Chair of the Board of Pension Trustees.

(5) One member of the Pension Advisory Council.

(6) Pension Administrator.

(7) Director of Office of Management and Budget.

(8) Controller General.

(c) The Office of Management and Budget, the Controller General's Office, and the Pension Office shall provide the committee with staff support and such other resources as the committee may require.

(76 Del. Laws, c. 80, § 80; 70 Del. Laws, c. 186, § 1.)

§ 8309. Exemptions.

The following positions set forth in this chapter shall be exempt from Chapter 59 of this title:

(1) Secretary of Finance;

(2) Director of Accounting;

(3) Director of Revenue;

(4) State Lottery Director.

(29 Del. C. 1953, § 8309; 57 Del. Laws, c. 549, § 1; 60 Del. Laws, c. 539, § 9.)

§ 8310. Assumption of powers.

The Department, through appropriate divisions, subdivisions and offices, shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions vested by law in the Budget Director, State Tax Department, State Tax Board, Collector of State Revenue, State Treasurer, Arbitration Committee, Disability Commission, Board of State Employees' Pension Trustees, Board of State Judiciary Pension Trustees and State Police Pension Board immediately prior to the effective date of this chapter and which are not otherwise specifically transferred to the Department by this chapter, excepting only those powers, duties and functions hereinabove expressly vested in or retained by any such person, department, board, commission or agency.

(29 Del. C. 1953, § 8310; 57 Del. Laws, c. 549, § 1.)

§ 8311. Appeals.

Any and all rights of appeal now existing by law with respect to any act or acts constituting the exercise of any function or functions transferred by this chapter to the Department or to any division or subdivision thereof shall continue to exist with respect to such act

or acts as hereafter performed by the Department or by the division, subdivision or office to which such function is transferred by this chapter and each such appeal shall be perfected in the manner heretofore provided by law.

(29 Del. C. 1953, § 8311; 57 Del. Laws, c. 549, § 1.)

§ 8312. Employees; definitions and references in other laws.

(a) All employees of any commission, board, department, council or agency, to the extent that the same are consistent with this chapter and in connection with a function transferred by this chapter to the Department, shall continue and be deemed to be the employees of the Department on the effective date of this chapter and, where applicable, with all the benefits accrued as merit employees as of the effective date of this chapter.

(b) All definitions and references to any commission, board, department, council or agency which appear in any other act or law shall, to the extent that the same are consistent with this chapter and in connection with a function transferred by this chapter to the Department, be construed as referring and relating to the Department of Finance as created and established by this chapter.

(c) All definitions and references to any director, commissioner, executive secretary, commission, board or council member or other similar person which appear in any other act or law, shall, to the extent that same are consistent with this chapter and in connection with a function transferred by this chapter to the Department, be construed as referring or relating to such person or persons and their powers, duties and functions as established and created by this chapter.

(29 Del. C. 1953, § 8312; 57 Del. Laws, c. 549, § 1.)

§ 8313. Annual report.

The Secretary of the Department shall make an annual report to the Governor and the General Assembly of the Department's operations and render such other reports as the Governor or General Assembly may from time to time request or as may be required by law.

(29 Del. C. 1953, § 8313; 57 Del. Laws, c. 549, § 1.)

§ 8314. Misnomer of Department in donation.

Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Department if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey thereby to the Department or to any commission, board, department, authority, council or agency, to which, by this chapter the powers, duties and functions have been transferred to the Department, the estate or interest therein expressed or described.

(29 Del. C. 1953, § 8314; 57 Del. Laws, c. 549, § 1.)

§ 8315. Budgeting and financing.

(a) The Secretary, in cooperation with the division directors, shall prepare a proposed budget for the operation of the Department to be submitted for the consideration of the Governor and the General Assembly. The Department shall be operated within the limitation of the annual appropriation and any other funds appropriated by the General Assembly.

(b) Special funds may be used in accordance with approved programs, grants and appropriations.

(29 Del. C. 1953, § 8315; 57 Del. Laws, c. 549, § 1.)

§ 8316. Supremacy.

All other laws or parts of laws now in effect inconsistent with this chapter are repealed, superseded, modified or amended so far as necessary to conform to, and give full force and effect to, this chapter.

(29 Del. C. 1953, § 8317; 57 Del. Laws, c. 741, § 44.)

§ 8317. Notification of proposed bond issuance.

Each political subdivision of the State shall file with the Secretary of Finance a notice of intent to issue its general obligations or revenue-supported debt at least 14 days prior to the anticipated sale date of any such obligations. The notice shall describe briefly the proposed principal amount of obligations to be sold, the proposed sale date and the purpose of the issue, and shall be signed by the chief fiscal officer of the political subdivision submitting the notice. Failure to submit such notice or any change in the details of the issue from those set forth in such notice shall not invalidate the issuance of any such obligations.

(66 Del. Laws, c. 360, § 17.)

§ 8318. Compensatory payments for certain exempt properties owned by the State.

(a) The county seat in each county shall appraise and assess real property taxes on all property owned by the State excluding properties owned by the Delaware Housing Authority, Delaware Solid Waste Authority, Delaware State University, or the University of Delaware, lying within their respective city limits. Each county seat shall annually submit statements of these appraisals and assessments unto the Secretary of the Department of Finance, said assessments and appraisals to be in accordance with their respective procedures for appraising and assessing real property.

(b) The Secretary of Finance shall examine and inspect the aforementioned assessment and appraisals and shall have all rights to question the assessments and appeal any decisions regarding the same. If the Secretary of Finance is satisfied that the assessments and appraisals are accurate, then the Secretary shall direct payment to the County Seat according to the following schedule:

(1) For those county seats with a population between 0–50,000 residents, the Secretary shall direct a payment of 30.8% of the tax assessed to said county seats.

(2) For those county seats with a population above 50,000 residents, the Secretary shall direct a payment of 100.0% of the tax assessed to said county seats.

(c) The total amount of payments made by the Secretary with respect to all county seats shall not exceed $3,900,000 in any state fiscal year.

(d) In any fiscal year, if total compensatory payments, as calculated under subsection (a) of this section, exceeds the amount allocated in subsection (c) of this section, then the payments to be received by each county seat shall be the product of the amount appropriated to the county seats, not to exceed the total payment amount established in subsection (c) of this section, multiplied by a fraction, the numerator of which is the payment that would otherwise be due to a county seat under subsections (a) and (b) of this section and the denominator is the total of all compensatory payments that would otherwise be due to all county seats under subsections (a) and (b) of this section. The Secretary of Finance has the right to withhold payment to any county seat until the assessments and appraisals of all 3 counties have been submitted and verified.

(67 Del. Laws, c. 416, § 1; 68 Del. Laws, c. 290, § 97; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 16(5); 75 Del. Laws, c. 218, § 5(a); 75 Del. Laws, c. 352, § 32; 76 Del. Laws, c. 81, § 27; 76 Del. Laws, c. 281, § 27; 81 Del. Laws, c. 300, § 34; 83 Del. Laws, c. 323, § 2.)

§ 8319. Delaware Motion Picture and Television Development Commission [Transferred].

Transferred to § 8750A of this title by 81 Del. Laws, c. 49, § 2, effective July 1, 2017, by virtue of § 23 of the act.

(80 Del. Laws, c. 369, § 1.)

§ 8320. Criminal background checks.

(a) The following individuals must submit to a criminal background check:

(1) Current Department of Finance (Department) employees.

(2) Individuals conditionally offered employment with the Department.

(b) Any current or prospective contractor or third party that requires or may require access to Department systems, facilities, or data may be required by the Secretary to submit to a criminal background check.

(c) Individuals required to obtain a background check under this section must submit fingerprints and other necessary information to the State Bureau of Identification in order to obtain all the following:

(1) A report of the individual's entire state criminal history record information from the State Bureau of Identification or a statement that the State Bureau of Identification Central Repository contains no such information relating to that individual.

(2) A report of the individual's entire federal criminal history record information from the Federal Bureau of Investigation or a statement that the Federal Bureau of Investigation's records contain no such information relating to that individual.

(d) The State Bureau of Identification must forward all information obtained under paragraphs (c)(1) and (c)(2) of this section to the Department.

(e) If a current employee, contractor, or third party obtains a background check under this section, the State Bureau of Identification must provide all of the following to the Department:

(1) Any subsequent state criminal history record information of the individual.

(2) Any subsequent criminal history record information of the individual available through the "Rap Back System" as defined under § 8502 of Title 11, if the Rap Back System is available.

(f) The Department has the right to review and use criminal background information obtained under this section to the extent permitted by applicable law, including in determining an individual's qualification for employment or continued access to Department systems, facilities, or data.

(g) Current Department employees and contractors must submit the information required by subsection (c) of this section to the State Bureau of Identification no later than 30 days after receipt of the Department's written request to submit to a background check.

(85 Del. Laws, c. 32, § 1.)

Subchapter II

Secretary of Finance

§§ 8321-8331. [Transferred].

Transferred.

Part VIII
Departments of Government
Chapter 84
Department of Transportation

§ 8401. Establishment of Department.

(a) The Department of Transportation is hereby established. The Department, through appropriate divisions, authorities, subdivisions, offices and administrations shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions vested by law in the Department of Highways and Transportation immediately prior to July 1, 1976.

(b) The powers and duties of the Department of Transportation shall also include, but not be limited to, the following activities:

(1) Coordinating and developing, in cooperation with the federal government, other states, Delaware state agencies, counties, cities, councils and agencies comprehensive balanced transportation planning and policy for the movement of people and goods within the State;

(2) To be the lead agency for establishing and maintaining the continuing, comprehensive, cooperative transportation planning process pursuant to the existing and future provisions of Title 23, United States Code and the Urban Mass Transportation Act of 1964 as amended [49 U.S.C. § 5301 et seq.];

(3) To be the supervising and responsible planning staff for all urban and rural transportation studies and programs in the State and enter into any contracts, agreements and stipulations as required;

(4) To provide the necessary staffing, coordination and liaison required by present and future federal and state acts for transportation planning, programs, grant applications and required administration;

(5) Planning, designing, constructing, operating and maintaining those highway and public transportation systems under its jurisdiction;

(6) Preparing a biennial transportation needs program directed at the achievement of a coordinated and balanced transportation system for the State that is consistent with the state's social, economic and environmental needs and goals;

(7) To establish a selection process intended to promote engineering and design quality and ensure maximum competition by professional companies of all sizes providing engineering or architectural design services, pursuant to the authority granted in Section 307 of the National Highway System Designation Act of 1995, P.L. 104-59. In developing this process, the Department shall also comply with the Professional Services Negotiation Act, subchapter II of Chapter 69 of this title, as amended. In addition, the Department shall comply with limits on costs reimbursement, including, but not limited to, overhead limits, established by its Consultant Policy Committee. In setting such limits, the Consultant Policy Committee shall consider the goal of the selection process set forth in the 1st sentence of this subsection, as well as the reasonable cost of architectural or engineering services.

(29 Del. C. 1953, § 8401; 57 Del. Laws, c. 514, § 1; 60 Del. Laws, c. 503, § 2; 61 Del. Laws, c. 520, § 5; 70 Del. Laws, c. 473, § 74; 82 Del. Laws, c. 13, § 1.)

§ 8402. Definitions.

As used in this chapter:

(1) "Authority" or "Transportation Authority" means Delaware Transportation Authority.

(2) "Corridor route" means any existing or proposed road in an urban or rural area which is classified as part of the "principal arterial highway system" as defined in the National Highway Functional Classification Studies on record with the Department and which serves traffic corridor movements of substantial statewide or interstate travel and as to which the concept of service to abutting land is subordinate to the provisions of travel service to major traffic movements.

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

(4) "Deputy Secretary" means the Deputy Secretary of the Department of Transportation.

(5) "Director" means the Director of the Transportation Authority and/or the Director of the Division of Highways and/or the Director of the Office of Administration.

(6) "Division" means the Division of Highways.

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

(29 Del. C. 1953, § 8402; 57 Del. Laws, c. 514, § 1; 60 Del. Laws, c. 503, § 3; 62 Del. Laws, c. 379, § 1; 67 Del. Laws, c. 46, § 57(a).)

§ 8403. Secretary; Deputy Secretary; division directors; Acting Secretary; appointment.

(a) (1) The administrator and head of the Department is the Secretary of the Department of Transportation ("Secretary"), who must be a person qualified by training and experience to perform the duties of the office.

a. The Secretary is appointed, confirmed, and holds office as provided in § 10 of Article III of the Delaware Constitution.

b. The Secretary is to be paid an annual salary as determined by the General Assembly in the annual appropriations act.

c. The Secretary must obtain and retain residency in this State as provided in § 10 of Article III of the Delaware Constitution.

(2) The Secretary may designate a Deputy Secretary who shall be a person qualified by training and experience to perform the duties of the Deputy Secretary's office. The Deputy Secretary shall serve at the pleasure of the Secretary and shall have all the powers, duties, and functions of the Secretary, except the power to remove employees of the Department or to fix their compensation.

(b) In the event the position of Secretary is vacant, the Governor, by appointment, shall have the power to fill the position or positions of division director as are vacant. Directors so appointed shall serve at the pleasure of the Governor, and upon the position of Secretary being filled such directors may be removed by the Secretary with the written approval of the Governor.

(c) In the event of death, resignation, temporary incapacity or removal of the Secretary and prior to the appointment of a successor, the Governor may appoint the Deputy Secretary or director of any division of the Department to serve as Acting Secretary. The Secretary may, during an absence from the State, appoint the Deputy Secretary or director of any division of the Department to serve as Acting Secretary during such absence. In either case, the Acting Secretary shall have all the powers and shall perform all the duties and functions of the Secretary during the Secretary's absence or incapacity or until a successor is duly qualified and appointed.

(29 Del. C. 1953, § 8403; 57 Del. Laws, c. 514, § 1; 60 Del. Laws, c. 503, § 1; 67 Del. Laws, c. 46, § 57(b)-(d); 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 140, § 6; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 455, § 10; 85 Del. Laws, c. 43, § 1.)

§ 8404. Powers, duties and functions of the Secretary.

The Secretary shall have the following powers, duties and functions:

(1) To supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees;

(2) To appoint, and fix the salary of, with the written approval of the Governor, the following division directors and office heads, who may be removed from office by the Secretary with the written approval of the Governor and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary:

a. A Director of the Division of Highway Operations, who shall be known as the Director of Highway Operations and who shall be qualified by training and experience to perform the duties of the office. The Director of Highway Operations shall be, at the time of appointment, a registered professional engineer in this State or qualified for such registration;

b. A Director of the Transportation Authority who shall be qualified by training and experience to perform the duties of the office;

c. An administrator and head of the Office of Administration, who shall be known as the Director of Administration and who shall be qualified by training and experience to perform the duties of the office;

d. A Director of the Division of Motor Vehicles who shall be known as the Director of Motor Vehicles and who shall be qualified by training and experience to perform the duties of the office.

(3) To appoint such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law;

(4) To collect and analyze statistical and planning information on all modes of transportation and make studies required to carry out state transportation programs; to coordinate and develop, in cooperation with federal, state, county and local governmental agencies, comprehensive balanced transportation planning, programming and policy for the movement of people and goods within the State; to prepare a statewide master transportation plan that is consistent with the state's social, economic and environmental needs and goals; and to develop a unified intermodal transportation planning program in cooperation with other planning agencies to fulfill the transportation planning requirements of the federal government;

(5) To establish, consolidate or abolish such divisions, subdivisions and offices within the Department or the Authority or transfer or combine the powers, duties and functions of the divisions and offices within the Department or the Authority as the Secretary, with the written approval of the Governor, may deem necessary, provided that all powers, duties and functions required by law shall be provided for and maintained;

(6) To make and enter into any and all contracts, agreements or stipulations, and to retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract, consulting, research, technical and other services and facilities, whenever the same shall be deemed by the Secretary necessary or desirable in the performance of the functions of the Department and whenever funds shall be available for such purpose. All necessary legal services shall be provided pursuant to Chapter 25 of this title;

(7) To delegate any of the Secretary's powers, duties or functions to a director of a division except the power to remove employees of the Department or to fix their compensation;

(8) To establish and to promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State. No such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof;

(9) To maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department;

(10) To adopt an official seal or seals for the Department;

(11) In addition to the Secretary's other powers, duties and functions, the Secretary shall serve as an ex officio, nonvoting member of the Public Service Commission.

(29 Del. C. 1953, § 8404; 57 Del. Laws, c. 514, § 1; 60 Del. Laws, c. 503, §§ 4, 5; 62 Del. Laws, c. 379, § 2; 63 Del. Laws, c. 191, § 4(e); 67 Del. Laws, c. 344, § 8; 69 Del. Laws, c. 435, §§ 41, 42; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 132; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 27.)

§ 8405. Office of Administration.

The Office of Administration is hereby established having powers, duties and functions as follows:

(1) The Office of Administration shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the Controller of the State Highway Department, as set forth in Chapter 1 of Title 17;

(2) In addition to the foregoing, the Office of Administration shall administer and coordinate the record keeping, transportation, fiscal affairs, data processing, statistics, accounting, personnel and such other general services for the Department as the Secretary may deem necessary for the proper, efficient and economical operation of the Department and shall coordinate such general services and business administration with other departments, agencies and offices of the government of this State.

(29 Del. C. 1953, § 8405; 57 Del. Laws, c. 514, § 1.)

§ 8406. Division of Highways.

The Division of Highways is hereby established having powers, duties and functions as follows:

(1) The Division of Highways shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in:

a. The State Highway Department pursuant to Chapters 1, 3, 4, 5, 6 [repealed], 7, 9, 11, 12, 13 and 15 of Title 17 and Chapter 5 of Title 21; provided, however, that the powers, duties and functions of the Controller of the State Highway Department, as prescribed in Chapter 1 of Title 17, shall be performed by the Office of Administration as set forth in § 8405 of this title;

b. The State Highway Department pursuant to §§ 4504 and 4505 of Title 21.

(2) The powers, duties and functions assigned to and exercised by the State Highway Department in relation to the public lands of this State, as set forth in Chapter 45 of Title 7, are hereby removed and such powers, duties and functions are transferred to and shall be exercised by the Department of Natural Resources and Environmental Control.

(29 Del. C. 1953, § 8406; 57 Del. Laws, c. 514, § 1.)

§§ 8407, 8408. Transportation Authority — Established; powers and duties; status; Director; Acting Director [Repealed].

Repealed by 62 Del. Laws, c. 164, § 4, effective July 12, 1979.

§ 8409. Council on Transportation.

(a) There is hereby established a Council on Transportation.

(b) The Council shall serve in an advisory capacity, except as otherwise provided, to the Secretary, the Deputy Secretary, the Transportation Directors and the Governor, and shall do all of the following:

(1) Consider matters relating to transportation in the State and other matters such as the budget and Capital Transportation Program which may be referred to it by the Governor or the Secretary of the Department.

(2) Study, research, plan and advise on matters it deems appropriate to enable the Department to function in the best possible manner.

(3) Have final approval of and adopt the Department of Transportation Capital Transportation Program which shall be submitted biennially to the Council by the Department.

a. The Council shall review the updated Department Capital Transportation Program prepared by the Department of Transportation, and established under § 8419 of this title, as amended. The updated Capital Transportation Program shall cover a period of not less than 6 years. The draft Capital Transportation Program shall be available to the public and the Council shall publish notices in a newspaper of general circulation in each county. The notices shall specify dates and places at which public meetings will be held, by the Council, 1 in each county, at which time the program will be reviewed and publicly explained and objections or comments may be made by an individual or group. Public meetings shall be held at least 2 weeks after the draft Capital Transportation Program is made available to the public. The notices shall also specify the name and address of the person to whom written comments may be sent. The written comments must be received by the person within 10 days after the last public meeting, which must be scheduled no later than September 30 of the program year. Following the written comment period, the Council may make priority changes to the proposed Capital Transportation Program in an open meeting by documenting the reasons and justifications for changes, using the priority formula-based processes described in § 8419 of this title, and shall adopt the program by March 1 of the program year. The Capital Transportation Program as prepared by the Department and as adopted by vote of the Council shall become the adopted Capital Transportation Program for the upcoming fiscal years. The adopted program shall be submitted to the agency charged with

preparation of the State Capital Improvement Program and members of the General Assembly on or before March 15 of the program year for inclusion in the State Capital Improvement Program for the following fiscal year.

b. The Department Capital Transportation Program, as recommended to the agency charged with preparation of the State Capital Improvement Program, shall set forth estimated expenditures by project or program for engineering, rights-of-way, and construction of any major capital transportation project or program when applicable. The Program shall include detailed information by project as to location, description of improvement, areas of deficiency, and priority rating.

(4) Have final approval of and adopt all corridor route projects in connection with new road alignments, which project shall be submitted to the Council by the Department.

(5) Have final approval on matters relating to highway transportation priority planning under § 8419 of this title.

(6) Review and comment on the issuance, suspension, revocation, or reinstatement of all certificates of public convenience and necessity issued under Chapter 18 of Title 2.

(c) The Council shall adopt all motions and approve all projects only by a majority vote of the entire membership of the Council. All voting shall be done in person and at regular or special meetings of the Council. If the Council, for any reason, shall fail to approve and adopt in writing within a reasonable period of time after receipt of the programs or projects referred to it, the Secretary of the Department may, with the approval of the Governor, upon 15 days prior written notice to the Chairperson of the Council, give final approval to said programs or projects notwithstanding the absence of the Council's written comments or approval.

(d) The Council shall consist of 9 members, with the members of no 1 political party holding a number of seats greater than one in excess of that held by the members of any other political party. This provision shall be applied only as existing Council members complete their present terms and all appointments made after July 18, 1990, shall be made in a manner sufficient to implement the political balance sought by this section, upon completion of the terms of the existing council members, at the earliest possible date.

(e) The Governor shall appoint the members of the Council, all of whom shall reside in the State, with a minimum of 2 members residing in any 1 county. A Chairperson of the Council shall be appointed by the Governor from the membership of the Council to serve at the Governor's pleasure.

(f) No person shall be eligible for appointment to the Council on Transportation who is a director, officer or employee of any public carrier, as defined by Chapter 18 of Title 2, as amended, or who owns or directly or indirectly controls more than 1 percent of the stock of any public carrier.

(g) No member of the Council shall hold any office or position or be engaged in any business, employment or vocation, the duties of which are incompatible with the duties of their membership on the Council.

(h) Members of the Council shall serve for a term of 3 years, provided however, that after the expiration of 3 years such members shall continue to serve until such time as the Governor appoints a replacement. Members of the Council on Transportation existing prior to January 1, 1990, shall be permitted to complete the existing term of their membership, subject to the other provisions of this section as amended. As the terms of their existing members of the Council expire, each of the first 3 appointments of members of the Council shall be for a term of 1 year, and the next 3 such appointments shall be each for a term of 2 years. Thereafter, all appointments shall be made for 3 year terms such that three members of the Council are appointed each year.

(i) Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

(j) (1) Failure to attend 3 consecutive regular meetings of the Council shall be construed as a request by that member to resign from the Council and a replacement may thereafter be appointed in the member's stead.

(2) Members may be removed only for just cause, except as otherwise provided herein. Prior to removal, members shall be entitled to notice of the reason for removal and shall be entitled to a hearing before the Governor or the Governor's designee.

(k) Any replacement appointment to the Council to fill a vacancy prior to the expiration of the term shall be filled for the remainder of the term.

(29 Del. C. 1953, § 8409; 57 Del. Laws, c. 514, § 1; 57 Del. Laws, c. 671, § 16; 60 Del. Laws, c. 503, § 7; 61 Del. Laws, c. 520, § 3; 62 Del. Laws, c. 164, § 3; 67 Del. Laws, c. 394, § 1; 69 Del. Laws, c. 362, §§ 1-3; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 13, § 2; 83 Del. Laws, c. 37, § 28.)

§ 8410. Council on Transportation — Books; records; access; annual report.

(a) The Council on Transportation shall have access to all books, records, reports and other documents relating to the divisions and offices of the Delaware Department of Transportation unless otherwise prohibited by law.

(b) The Chairperson of the Council on Transportation shall make an annual report of the Council's operations to the Secretary, the Governor and the General Assembly, and render such other reports as the Secretary, the Governor or the General Assembly may from time to time request or may be required by law.

(29 Del. C. 1953, § 8410; 57 Del. Laws, c. 514, § 1; 60 Del. Laws, c. 503, § 7.)

§ 8411. Exemptions.

The following positions and administrations set forth in this chapter shall be exempt from Chapter 59 of this title:

(1) Secretary of the Department of Transportation;

(2) Director of the Transportation Authority;

(3) Director of the Division of Highways;

(4) Director of the Office of Administration;

(5) Head of the Office of Financial Management and Budget;

(6) Chiefs of such other divisions or administrations as may be established by the Secretary with the written approval of the Governor; and

(7) Head of the Office of External Affairs.

(8) Director of Division of Pre-Construction.

(9) Director of Motor Vehicles.

(60 Del. Laws, c. 503, § 7; 62 Del. Laws, c. 379, § 3; 67 Del. Laws, c. 46, § 57(e); 69 Del. Laws, c. 64, § 244; 72 Del. Laws, c. 395, § 309; 74 Del. Laws, c. 110, § 133.)

§ 8412. Assumption of powers.

The Department, through appropriate divisions, subdivisions and offices, shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions vested by law in the State Highway Department and the Department of Transportation immediately prior to the effective date of this chapter and which are not otherwise specifically transferred to the Department by this chapter.

(29 Del. C. 1953, § 8411; 57 Del. Laws, c. 514, § 1; 60 Del. Laws, c. 503, § 6.)

§ 8413. Appeals.

Any and all rights of appeal now existing by law with respect to any act or acts constituting the exercise of any function or functions transferred by this chapter to the Department or to any divisions or subdivision thereof shall continue to exist with respect to such act or acts as hereafter performed by the Department or by the division, subdivision or office to which such function is transferred by this chapter and each such appeal shall be perfected in the manner heretofore provided by law.

(29 Del. C. 1953, § 8412; 57 Del. Laws, c. 514, § 1; 60 Del. Laws, c. 503, § 6.)

§ 8414. Employees; definitions and references in other laws.

(a) All employees of any commission, board, department, council or agency, to the extent that the same are consistent with this chapter and in connection with a function transferred by this chapter to the Department, shall continue and be deemed to be the employees of the Department on the effective date of this chapter and, where applicable, with all the benefits accrued as merit employees as of the effective date of this chapter.

(b) All definitions and references to any commission, board, department, council or agency which appear in any other act or law shall, to the extent that the same are consistent with this chapter and in connection with a function transferred by this chapter to the Department, be construed as referring and relating to the Department of Transportation as created and established by this chapter.

(c) All definitions and references to any director, commissioner, executive secretary, commission, board or council member, or other similar person which appear in any other act or law, shall, to the extent that same are consistent with this chapter, and in connection with a function transferred by this chapter to the Department, be construed as referring or relating to such person or persons and their powers, duties and functions as established and created by this chapter.

(29 Del. C. 1953, § 8413; 57 Del. Laws, c. 514, § 1; 60 Del. Laws, c. 503, §§ 1, 6.)

§ 8415. Annual report.

The Secretary of the Department shall make an annual report to the Governor and the General Assembly of the Department's operations and render such other reports as the Governor or General Assembly may from time to time request or as may be required by law.

(29 Del. C. 1953, § 8414; 57 Del. Laws, c. 514, § 1; 60 Del. Laws, c. 503, § 6.)

§ 8416. Misnomer of Department in donation.

Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Department if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey thereby to the Department or to any commission, board, department, authority, council or agency, to which, by this chapter, the powers, duties and functions have been transferred to the Department, the estate or interest therein expressed or described.

(29 Del. C. 1953, § 8415; 57 Del. Laws, c. 514, § 1; 60 Del. Laws, c. 503, § 6.)

§ 8417. Budgeting and financing.

(a) The Secretary, in cooperation with the division directors, shall prepare a proposed budget for the operation of the Department to be submitted for the consideration of the Governor and the General Assembly. The Department shall be operated within the limitation of the annual appropriation and any other funds appropriated by the General Assembly.

(b) Special funds may be used in accordance with approved programs, grants and appropriations.

(29 Del. C. 1953, § 8416; 57 Del. Laws, c. 514, § 1; 60 Del. Laws, c. 503, § 6.)

§ 8418. Supremacy.

All other laws, or parts of laws, now in effect inconsistent with this chapter are hereby repealed, superseded, modified or amended as far as necessary to conform to, and give full force and effect to, this chapter.

(29 Del. C. 1953, § 8418; 57 Del. Laws, c. 671, § 15; 60 Del. Laws, c. 503, § 6.)

§ 8419. Transportation priority planning.

The Department of Transportation, with Council approval, shall:

(1) Establish a method of determining current needs and costs of the entire multi-modal transportation requirements in the State which will be utilized in allocating capital funds for the Capital Transportation Program. The costs will be updated annually.

(2) a. Establish a formula-based process which shall be used for setting priorities on all Department transportation projects and which shall consider, but not be limited to the following: Safety, service and condition factors; social, economic and environmental factors; long range transportation plans and comprehensive land use plans; and continuity of improvement.

b. The formula based process shall not be utilized for setting priorities for dirt roads, suburban street aid projects, municipal street aid projects or system preservation projects. System preservation projects will be prioritized based upon performance measures established in the Department for pavement management, bridge management and safety management projects.

(3) Review and approve the Long Range Transportation Plan, to be used in connection with the Department's internal review process for transportation projects. Department programs or projects utilizing other than state, Transportation Trust Fund or federal funds shall be indicated within the Capital Transportation Program with their priority rating as specified in paragraph (2)a. of this section, but the costs shall not be added to the total estimated cost of the overall program. An annual written report including this data shall accompany the Department recommendations.

(4) Update and prepare biennially a statewide Capital Transportation Program for submission to the Council on Transportation. The current year of the Program shall consist of transportation programs and projects to be advanced in that year based upon the prioritization ranking process specified in paragraph (2) of this section. No program or project will be funded for implementation except those that can with reasonable certainty be advertised for bid that year. Proposed projects or programs for the remaining years of the 6-year Capital Transportation Program shall be pursued in accordance with the prioritization ranking process specified in paragraph (2) of this section. The estimated cost of the Program for each year shall not exceed the estimated federal and state funds available for transportation purposes during that year. The estimated federal and state fund availability will be developed annually by the Department of Transportation based upon the dollar amount of funds available and the ability to use the funds for a specific program or project.

(5) Review any priority changes that would result in the introduction of new projects or programs to a proposed or adopted Department Capital Transportation Program and make recommendations on such priority changes or introduction of new projects or programs based on the criteria and formula-based process which establish the priorities or projects and programs. The Department shall fully document its recommendations in a written report to the Council on Transportation.

(61 Del. Laws, c. 520, § 2; 63 Del. Laws, c. 191, § 5; 67 Del. Laws, c. 394, § 2; 72 Del. Laws, c. 229, §§ 1-8; 82 Del. Laws, c. 13, § 3; 83 Del. Laws, c. 37, § 30.)

§ 8420. Division of Motor Vehicles.

The Division of Motor Vehicles is established and shall be responsible for the performance of all the powers, duties and functions heretofore vested in:

(1) The State Highway Department, the State Highway Commission, the Motor Vehicle Department and the Motor Vehicle Commissioner, pursuant to Chapters 1, 3, 7, 21, 23, 25, 27, 29, 41-44, 61, 63, 65 [repealed], 67, 80 [repealed], and 81 of Title 21;

(2) The Reciprocity Commission pursuant to Chapter 4 of Title 21. The Secretary of Transportation shall have the authority to make any necessary agreements pursuant thereto;

(3) The Motor Vehicle Commissioner pursuant to Chapter 45 of Title 21, except §§ 4504 and 4505 of Title 21; and

(4) The Department of Public Safety, Division of Motor Vehicles.

(74 Del. Laws, c. 110, § 134.)

§ 8421. Community Transportation Fund reporting requirement.

(a) Beginning on January 1, 2021, the Secretary shall publish on the Department's website the transaction history for funds allocated to each member of the General Assembly under the Community Transportation Fund, separated by fiscal year and beginning with transaction history information for fiscal year 2021.

(b) The transaction history for each member of the General Assembly must include all of the following:

(1) The amount of money in the member's Community Transportation Fund account at the start of a given fiscal year.

(2) The amount allocated to the member's Community Transportation Fund account in a given fiscal year.

(3) The amount of any transfer of funds to or from the member's Community Transportation Fund account in a given fiscal year.

(4) The amount, purpose, and location of each expenditure authorized by the member on a project in a given fiscal year.

(c) The Secretary shall update the transaction history for each member of the General Assembly every 3 months.

(82 Del. Laws, c. 135, § 1.)

§ 8422. Transportation Infrastructure Investment Fund; Fund Council.

(a) The Transportation Infrastructure Investment Fund (Fund) is established to provide economic assistance for renovation, construction, or any other type of improvements to roads and related transportation infrastructure in order to attract new businesses to this State, or expand existing businesses in this State, when such an economic development opportunity would create a significant number of direct, permanent, quality, full-time jobs.

(b) Improvements funded through the Fund must occur within the public right-of-way or on public land and directly benefit the traveling public. To be eligible for a grant under this section, improvements must meet all of the following, as defined by regulation:

(1) Have at least 1 public endorser.

(2) Meet certain employment standards.

(3) Be financially stable.

(4) Serve a public purpose.

(c) A business applying to the Transportation Infrastructure Investment Fund must meet all of the following:

(1) Validly exist as a corporation, limited liability company, or other regulated entity.

(2) Be in good standing under the laws of this State, duly-qualified to do business.

(3) Be in good standing in each other jurisdiction in which its conduct of business requires such qualification.

(4) Possess business and professional licenses required under Titles 24 and 30.

(d) The Department of Transportation may promulgate regulations as required to administer this section.

(e) *The Transportation Infrastructure Investment Fund Council. —*

The Transportation Infrastructure Investment Fund Council (the Council) is established to consider applications to the Fund and make recommendations to the Secretary of the Department of Transportation and the Secretary of State.

(1) The Council is composed of 9 members, as follows:

a. One member appointed by the President Pro Tempore of the Delaware State Senate.

b. One member appointed by the Speaker of the House of Representatives.

c. Six members appointed by the Governor. These members must include 2 New Castle County residents, 1 Kent County resident, 1 Sussex County resident, and 2 residents of this State, irrespective of county. These members may include a member of the Bar of the Supreme Court of Delaware, an officer of a bank or trust company of this State, an expert in private equity, or an expert in venture capital.

(2) The Governor shall appoint 1 additional member to serve as Chair at the Governor's pleasure.

(3) Members appointed by the Governor under paragraph (e)(1)c. of this section may be appointed for a term of up to 3 years to ensure that no more than 2 members' terms expire in a year.

(4) The Governor may not appoint more than 4 members from the same political party.

(5) Members of the Council serve without compensation, except that the members may be reimbursed for reasonable and necessary expenses incident to the members' duties.

(6) The Council shall conduct its business only when a quorum is present. A quorum consists of 5 members.

(7) The consent of a majority of the members present at a meeting with a quorum is required to approve a motion, including a motion to make a recommendation.

(8) Upon written request from the Council, the Governor may declare a vacancy for any member who is absent from 3 consecutive Council meetings.

(9) The Council Chair shall attempt to schedule meetings so that the meetings are centrally-located and geographically-balanced in number.

(f) The Secretary of the Department of Transportation and the Secretary of State shall consider a recommendation of the Council made under subsection (e) of this section. The Secretaries may not authorize the expenditure of moneys from the Fund unless the Secretaries determine that the business and the improvements are eligible under this section and the regulations promulgated under this section.

(82 Del. Laws, c. 173, § 1.)

Part VIII
Departments of Government

Chapter 85
Department of Labor

§ 8501. Establishment of Department of Labor.

A Department of Labor is established, and shall have, in addition to the other powers, duties and functions vested in the Department by this chapter, the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in:

(1) The Department of Labor and Industrial Relations pursuant to Chapters 1 and 13 of Title 19, except as provided in § 8513 of this title;

(2) The Delaware State Development Department pursuant to subsection (b) of § 8632 [repealed] of this title, only;

(3) The Employment Security Commission of Delaware pursuant to Chapters 31 and 33 of Title 19, not otherwise specifically assigned to an office, division or board in the Department.

(29 Del. C. 1953, § 8501; 57 Del. Laws, c. 571, § 1.)

§ 8502. Secretary; division directors; Acting Secretary; appointment.

(a) The administrator and head of the Department is the Secretary of the Department of Labor ("Secretary"), who must be a person qualified by training and experience to perform the duties of the office.

(1) The Secretary is appointed, confirmed, and holds office as provided in § 10 of Article III of the Delaware Constitution.

(2) The Secretary is to be paid an annual salary as determined by the General Assembly in the annual appropriations act.

(3) The Secretary must obtain and retain residency in this State as provided in § 10 of Article III of the Delaware Constitution.

(b) In the event the position of Secretary is vacant, the Governor, by appointment, shall have the power to fill the position or positions of division director as are vacant. Directors so appointed shall serve at the pleasure of the Governor, and upon the position of Secretary being filled, such directors may be removed by the Secretary with the written approval of the Governor.

(c) In the event of death, resignation, temporary incapacity or removal of the Secretary and prior to the appointment of a successor, the Governor may appoint the director of any division of the Department to serve as Acting Secretary. The Secretary may, during the absence from the State, appoint the director of any division of the Department to serve as Acting Secretary during such absence. In either case the Acting Secretary shall have all the powers and shall perform all the duties and functions of the Secretary during such absence or incapacity or until a successor is duly qualified and appointed.

(29 Del. C. 1953, § 8502; 57 Del. Laws, c. 571, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 140, § 7; 84 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 455, § 11; 85 Del. Laws, c. 43, § 1.)

§ 8503. Powers, duties and functions of the Secretary.

The Secretary shall have the following powers, duties and functions:

(1) To supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees;

(2) To appoint, and fix the salary of, with the written approval of the Governor, the following division directors and office heads, who may be removed from office by the Secretary with the written approval of the Governor, and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary:

a. An administrator and head of the Office of Administration, who shall be known as the Chief of Administration and who shall be qualified by training and experience to perform the duties of the office;

b. An administrator and head of the Office of Planning, Research and Evaluation, who shall be known as the Chief of Planning, Research and Evaluation, and who shall be qualified by training and experience to perform the duties of the office;

c. A Director of the Division of Employment Services, who shall be known as the Director of Employment Services, and who shall be qualified by training and experience to perform the duties of the office;

d. A Director of the Division of Unemployment Insurance, who shall be known as the Director of Unemployment Insurance, and who shall be qualified by training and experience to perform the duties of the office;

e. A Director of the Division of Industrial Affairs, who shall be known as the Director of Industrial Affairs, and who shall be qualified by training and experience to perform the duties of the office;

f. A Director of the Division of Vocational Rehabilitation, who shall be known as the Director of Vocational Rehabilitation, and who shall be qualified by training and experience to perform the duties of the office;

(3) To appoint such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law;

(4) To establish, consolidate or abolish such divisions, subdivisions and offices within the Department or transfer or combine the powers, duties and functions of the divisions, subdivisions and offices within the Department as the Secretary, with the written approval of the Governor, may deem necessary, provided that all powers, duties and functions required by law shall be provided for and maintained;

(5) To make and enter into any and all contracts, agreements or stipulations, and to retain, employ and contract for the services of private and public consultants, research and technical personnel, and to procure by contract, consulting, research, technical and other services and facilities, whenever the same shall be deemed by the Secretary necessary or desirable in the performance of the functions of the Department and whenever funds shall be available for such purpose. All necessary legal services shall be provided pursuant to Chapter 25 of this title;

(6) To delegate any of the Secretary's powers, duties or functions to a director of a division, except the power to remove employees of the Department or to fix their compensation;

(7) To establish and to promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State;

(8) To maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department;

(9) To adopt an official seal or seals for the Department.

(29 Del. C. 1953, § 8503; 57 Del. Laws, c. 571, § 1; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 249, § 2; 82 Del. Laws, c. 249, § 3; 83 Del. Laws, c. 2, §§ 3, 5; 83 Del. Laws, c. 268, §§ 5, 6.)

§ 8504. Office of Administration.

(a) The Office of Administration is established and shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions respecting administrative services heretofore performed by the Employment Security Commission of Delaware in the exercise of its powers and duties pursuant to Chapters 31 and 33 of Title 19.

(b) In addition to the foregoing, the Office of Administration shall administer and coordinate the record keeping, transportation, fiscal affairs, data processing, accounting, statistics, personnel and such other general services for the Department as the Secretary may deem necessary for the proper, efficient and economical operation of the Department and shall coordinate such general services and business administration with other departments, agencies and offices of the government of this State.

(29 Del. C. 1953, § 8504; 57 Del. Laws, c. 571, § 1.)

§ 8505. Office of Planning, Research and Evaluation.

(a) The Office of Planning, Research and Evaluation is established and shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions respecting statistical research and analysis regarding employment and unemployment heretofore performed by the Employment Security Commission of Delaware in the exercise of its powers and duties pursuant to Chapters 31 and 33 of Title 19.

(b) In addition to the foregoing, the Office of Planning, Research and Evaluation shall provide for and carry out the future comprehensive planning of the programs, policies and operations of the Department and the evaluation, necessary research, data collection and analysis of the programs, policies and operations of the Department.

(29 Del. C. 1953, § 8505; 57 Del. Laws, c. 571, § 1.)

§ 8506. Division of Employment Services.

The Division of Employment Services is established and shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions respecting employment services heretofore performed by the Employment Security Commission of Delaware in the exercise of its powers and duties pursuant to Chapters 31 (except for § 3155 [repealed] of Title 19 which shall be vested in the Department of Finance and the Department of Administrative Services as provided by law) and 33 of Title 19.

(29 Del. C. 1953, § 8506; 57 Del. Laws, c. 571, § 1.)

§ 8507. Delaware Commission for Women [Transferred].

Transferred.

§ 8508. Division of Unemployment Insurance.

(a) The Division of Unemployment Insurance is established and shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions respecting unemployment insurance services heretofore performed by the Employment Security Commission of Delaware in the exercise of its powers and duties pursuant to Chapters 31 and 33 (except as set forth in § 8509 of this title) of Title 19.

(b) The administrative, ministerial, fiscal and clerical functions heretofore performed by the Employment Security Commission of Delaware in the exercise of its powers and duties as a review board, pursuant to Chapters 31 and 33 of Title 19, shall be performed by the Division of Unemployment Insurance.

(29 Del. C. 1953, § 8508; 57 Del. Laws, c. 571, § 1.)

§ 8509. Unemployment Insurance Appeal Board.

(a) The Employment Security Commission of Delaware, created by Chapter 31 of Title 19, is renamed the Unemployment Insurance Appeal Board and continued as a review board.

(b) Except as otherwise provided in § 8508(b) of this title, the Unemployment Insurance Appeal Board is vested with the membership, remuneration, organization, powers, duties and functions heretofore vested in the Employment Security Commission in its capacity as a review board, with the power to hear appeals from the decisions of appeal tribunals as that power heretofore existed respecting decisions of appeal tribunals pursuant to Chapters 31 and 33 of Title 19. The right of appeal from determinations of the Employment Security Commission heretofore existing pursuant to law is continued respecting appeals from determinations of the Unemployment Insurance Appeal Board.

(29 Del. C. 1953, § 8509; 57 Del. Laws, c. 571, § 1; 75 Del. Laws, c. 127, § 1.)

§ 8510. Division of Industrial Affairs.

(a) The Division of Industrial Affairs is established and shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in:

(1) The Department of Labor and Industrial Relations, the Labor Commission, the State Child Labor Inspector, the Labor Inspector and the State Mediation Service pursuant to Chapters 1 (except § 104 of Title 19) and 5 of Title 19;

(2) The Department of Labor and Industrial Relations and the State Apprenticeship and Training Council pursuant to Chapter 2 of Title 19;

(3) The Labor Commission of Delaware and the Division Against Discrimination pursuant to Chapter 7 of Title 19;

(4) The Department of Labor and Industrial Relations pursuant to Chapters 8, 9 and 11 of Title 19.

(b) The administrative, ministerial, fiscal and clerical functions of the Industrial Accident Board, set forth in Chapter 23 of Title 19, shall be performed by the Division of Industrial Affairs.

(29 Del. C. 1953, § 8510; 57 Del. Laws, c. 571, § 1; 71 Del. Laws, c. 84, § 27.)

§ 8511. Industrial Accident Board.

(a) The Industrial Accident Board, created by Title 19, is continued.

(b) Except as otherwise provided in § 8510(b) of this title, the Industrial Accident Board is vested with the membership, remuneration, organization, meetings, powers, duties and functions heretofore vested in the Industrial Accident Board by law, including jurisdiction of all cases arising under Chapter 23 of Title 19. The right of appeal from determinations of the Industrial Accident Board heretofore existing pursuant to law is hereby continued.

(29 Del. C. 1953, § 8511; 57 Del. Laws, c. 571, § 1; 71 Del. Laws, c. 84, §§ 28, 29.)

§ 8512. Council on Apprenticeship and Training.

(a) The Council on Apprenticeship and Training shall serve in an advisory capacity to the Secretary of Labor for matters relating to registered apprenticeships, occupational training, and such other matters as may be referred to it by the Governor, Secretary of the Department, or Director of the Division of Employment and Training. The Council shall do the following:

(1) Advise the Secretary on registered apprenticeship matters, including any of the following:

a. Related and supplemental instruction.

b. Credit for prior learning.

c. Trends relating to apprenticeships and training and the supply and demand for skilled labor or apprentices.

d. Increasing diversity in occupations that use registered apprenticeships.

e. Matters deemed appropriate by either the Council or the Secretary to enable the Department to function in the best possible manner.

(2) Carry out any required role provided for in the Department’s apprenticeship and training regulations.

(3) Advise the Secretary on matters related to the Department’s regulations, policies, or procedures relating to registered apprenticeships.

(4) Recommend research projects as warranted.

(b) The Council shall be composed of 11 members as follows:

(1) The Department of Education, Director of Career and Technical Education or the Director’s designee.

(2) The Secretary of the Department of Human Resources or the Secretary’s designee.

(3) The President of Delaware Technical Community College or the President’s designee.

(4) Eight members shall be appointed by the Governor as follows:

a. Three appointed members shall represent employee organizations.

b. Three appointed members shall represent employers.

c. One appointed member shall represent unemployed or underemployed populations, or a population underrepresented in registered apprenticeship programs.

d. One appointed member shall be a superintendent of a vocational-technical school district or the superintendent's designee.

e. Preferably, 1 of the 6 members appointed to represent employee organizations and employers in paragraphs (b)(3)a. and (b)(3)b. of this section will be an existing member of the Delaware Workforce Development Board.

(c) Council members shall serve for a 2-year term and may serve no more than 2 consecutive terms. An appointed Council member remains eligible to participate in Council proceedings until replaced by the Governor. The Governor may appoint members for terms of less than 2 years to ensure the Council members' terms expire on a staggered basis.

(d) The Regional Director for the United States Department of Labor, Bureau of Apprenticeship and Training shall be invited to serve as a consultant to the Council.

(e) A Chairperson of the Council shall be chosen by the members of the Council from among its members and shall serve in that capacity for a term of up to 2 years and is not eligible for reelection. Ex officio members may not serve as the Chairperson.

(f) Any appointment, pursuant to this section, to replace a member whose position becomes vacant prior to the expiration of the member's term shall be filled only for the remainder of that term.

(g) The Council shall receive administrative support from the Department.

(29 Del. C. 1953, § 8512; 57 Del. Laws, c. 571, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 203, §§ 1, 2; 84 Del. Laws, c. 62, § 1.)

§ 8513. Division of Vocational Rehabilitation.

(a) The Division of Vocational Rehabilitation is established and shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions respecting vocational rehabilitation heretofore vested in the State Board for Vocational Education/Rehabilitation Division pursuant to Chapter 33 of Title 14.

(b) In implementing the transfer of personnel of the Division of Vocational Rehabilitation into the classified service under Chapter 59 of this title, the State Personnel Commission is directed to assign all positions of professional categories so that the salary schedules for the fiscal year ending June 30, 1971, set forth in 57 Delaware Laws, Chapter 333, shall, insofar as practicable, be incorporated into the classifications and pay plans of the Commission. In no event shall the minimum, intermediate or maximum amounts for any position be less than those which would otherwise have been available to such personnel. The State Personnel Commission is further directed to assign all positions of nonprofessional personnel to appropriate positions and pay grades within the classifications and pay plans of the Commission. If, however, the present salary of any such employee is not at an even step of a pay grade, such employee shall be paid at the next higher even step and, in no event shall the salary paid any such employee be lower than that for which such employee would otherwise be eligible as of July 1, 1970.

(c) Notwithstanding any other provision of law, the Division of Vocational Rehabilitation may employ 2 persons suffering from physical or mental disabilities, who are receiving services as clients of the Division at the date of hire, and who are able to perform job functions as defined by the Division, in a program of rehabilitation and training designed to enable them to become permanently employed.

Appointments shall not exceed 1 year per employee, and the positions shall be exempt from the classified service. Employment as rehabilitation aides shall constitute "credited service" for purposes of the state employees' pension plan, under § 5501 of this title. In addition, rehabilitation aides shall be entitled to all previous credited service as a state employee for purposes of pension eligibility.

(29 Del. C. 1953, § 8513; 57 Del. Laws, c. 571, § 1; 64 Del. Laws, c. 393, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8514. Governor's Council on Labor [Repealed].

Repealed by 77 Del. Laws, c. 106, § 12, effective July 6, 2009.

§ 8515. Access to books, records, reports and other documents; annual report.

(a) The Governor's Council on Labor shall have access to all books, records, reports and other documents relating to the Department of Labor unless otherwise prohibited by law.

(b) The various councils of the division of the Department of Labor shall have access to all books, records, reports, and other documents relating to their respective divisions unless otherwise prohibited by law.

(c) The Chairperson of the Governor's Council on Labor and the chairpersons of the councils of the divisions of the Department shall make an annual report of the activities of each of the councils to the Secretary of the Department, the Governor and the General Assembly, and render such other reports as the Secretary, the Governor or the General Assembly may from time to time request or as may be required by law.

(29 Del. C. 1953, § 8515; 57 Del. Laws, c. 571, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8516. Exemptions.

The following positions set forth in this chapter shall be exempt from Chapter 59 of this title:

(1) Secretary of Labor;

(2) Director of Employment and Training;

(3) Director of Industrial Affairs;

(4) Director of Unemployment Insurance;

(5) Director of Vocational Rehabilitation;

(6) Chief of the Office of Occupational and Labor Market Information; and

(7) Executive Director of the Workforce Investment Board.

(29 Del. C. 1953, § 8516; 57 Del. Laws, c. 571, § 1; 68 Del. Laws, c. 290, § 203; 70 Del. Laws, c. 527, § 1; 72 Del. Laws, c. 392, § 4.)

§ 8517. Merit system coverage.

Notwithstanding any other provisions of this chapter, the Secretary of Labor, with the approval of the Governor, is authorized and directed to take such action with respect to merit system coverage of personnel as may be necessary to qualify, or continue the eligibility of, this State for grants-in-aid under any federal law or program.

(29 Del. C. 1953, § 8517; 57 Del. Laws, c. 571, § 1.)

§ 8518. Assumption of powers.

The Department, through appropriate divisions, subdivisions and offices, shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions vested by law in the Department of Labor and Industrial Relations, Employment Security Commission of Delaware, State Mediation Services, State Apprenticeship and Training Council, Industrial Accident Board and State Board for Vocational Education/Rehabilitation Division immediately prior to the effective date of this chapter and which are not otherwise specifically transferred to the Department by this chapter, excepting only those powers, duties and functions expressly vested in or retained by any such person, department, board, commission or agency.

(29 Del. C. 1953, § 8518; 57 Del. Laws, c. 571, § 1.)

§ 8519. Appeals.

Any and all rights of appeal now existing by law, with respect to any act or acts constituting the exercise of any function or functions transferred by this chapter to the Department or to any division or subdivision thereof, shall continue to exist with respect to such act or acts as are hereafter performed by the Department or by the division or office to which such function is transferred and each appeal shall be perfected in the manner heretofore provided by law.

(29 Del. C. 1953, § 8519; 57 Del. Laws, c. 571, § 1.)

§ 8520. Transfers and continuity.

(a) All books, records, papers, maps, charts, plans and other material including, but not limited to, any equipment in the possession of any agency of the State and used in connection with a function transferred by this chapter to the Department shall, on the effective date of this chapter, be delivered into the custody of the Department. All investigations, petitions, hearings and legal proceedings pending before or instituted by any agency from which functions are transferred and not concluded prior to the effective date of this chapter shall continue unabated and remain in full force and effect, notwithstanding the passage of this chapter, and where necessary, may be completed before, by or in the name of the Department. All orders, rules and regulations made by any agency from which functions are transferred and governing such functions and which are in effect upon the effective date of this chapter shall remain in full force and effect until revoked or modified in accordance with law by the Department. All contracts and obligations of any agency made or undertaken in the performance of a function transferred to the Department and being in force on the effective date of this chapter, shall, notwithstanding this chapter, remain in full force and effect and be performed by the Department.

(b) Employees of any commission, board, department, council or agency, whose functions are consistent with and have been transferred to the Department by this chapter, shall continue and be deemed to be the employees of the Department on the effective date of this chapter, and, where applicable, with all the benefits accrued as merit employees as of the effective date of this chapter.

(c) All definitions and references to any commission, board, department, council or agency which appear in any other act or law shall, to the extent that the same are consistent with this chapter and in connection with a function transferred by this chapter to the Department, be construed as referring and relating to the Department of Labor as created and established by this chapter.

(d) All definitions and references to any director, commissioner, executive secretary, commission, board or council member or other similar person which appear in any other act or law, shall, to the extent that same are consistent with this chapter, and in connection with functions transferred to the Department by this chapter, be construed as referring or relating to such person or persons and their powers, duties and functions as established and created by this chapter.

(29 Del. C. 1953, § 8520; 57 Del. Laws, c. 571, § 1.)

§ 8521. Annual report.

The Secretary of the Department shall make an annual report to the Governor and the General Assembly of the Department’s operations and render such other reports as the Governor or General Assembly may from time to time request or as may be required by law.

(29 Del. C. 1953, § 8521; 57 Del. Laws, c. 571, § 1.)

§ 8522. Misnomer of Department in donation.

Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Department if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey to the Department or to any commission, board, department, authority, council or agency, to which, by this chapter, the powers, duties and functions have been transferred to the Department, the estate or interest therein expressed or described.

(29 Del. C. 1953, § 8522; 57 Del. Laws, c. 571, § 1.)

§ 8523. Budgeting and financing.

The Secretary, in cooperation with the division directors, shall prepare a proposed budget for the operation of the Department to be submitted for the consideration of the Governor and the General Assembly. The Department shall be operated within the limitation of the annual appropriation and any other funds appropriated by the General Assembly. Special funds may be used in accordance with approved programs, grants and appropriations.

(29 Del. C. 1953, § 8523; 57 Del. Laws, c. 571, § 1.)

§ 8524. Supremacy.

All other laws or parts of laws now in effect inconsistent with this chapter are hereby repealed, superseded, modified or amended so far as necessary to conform to, and give full force and effect to, this chapter.

(29 Del. C. 1953, § 8525; 57 Del. Laws, c. 669, § 15.)

§ 8525. Development of employment opportunities.

The Department of Labor and the Division of Small Business shall be jointly responsible for developing new and improved employment opportunities and coordinating with all other state and local agencies and private organizations in this field. The Governor and the General Assembly shall be kept fully apprised by the Department of Labor and the Division of Small Business of all state, local and private activities in the employment development field.

(63 Del. Laws, c. 189, § 6; 69 Del. Laws, c. 458, § 1; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 28.)

Part VIII
Departments of Government

Chapter 86
The Delaware State Housing Authority

§ 8601. Delaware State Housing Authority.

There is hereby established in the Executive Department the Delaware State Housing Authority, hereinafter referred to as "DSHA," with the powers and duties specified in this chapter and Chapter 40 of Title 31.

(71 Del. Laws, c. 357, § 5.)

§ 8602. Powers, duties and functions.

The Delaware State Housing Authority is established having the powers, duties and functions as follows:

(1) DSHA shall serve as the Governor's staff agency in all general housing and community development matters.

(2) DSHA shall harmonize its activities with similar activities of other departments, boards, commissions, agencies or instrumentalities of federal, state, county or municipal government, and shall coordinate its activities, to the extent feasible, with nonprofit and limited profit housing sponsors.

(3) DSHA shall be responsible for the fulfillment of all duties and functions, and shall be vested with all powers, specified in Chapter 40 of Title 31.

(71 Del. Laws, c. 357, § 5.)

§ 8603. Housing Director.

(a) The administrator and head of DSHA is the Housing Director, who must be a person qualified by training and experience to perform the duties of the office.

(1) The Housing Director is appointed, confirmed, and holds office as provided in § 10 of Article III of the Delaware Constitution.

(2) The Housing Director is to be paid an annual salary as determined by the General Assembly in the annual appropriations act.

(3) The Housing Director must obtain and retain residency in this State as provided in § 10 of Article III of the Delaware Constitution.

(b) In the event of the death, resignation, temporary incapacity or removal of the Housing Director, and prior to the appointment of a successor, the Governor may appoint any qualified employee of DSHA to serve as Acting Housing Director. The Housing Director may, during an absence from the State, appoint any qualified employee of DSHA or any of its subdivisions to serve as Acting Housing Director during such absence. In either case, the Acting Housing Director shall have all the powers and shall perform all the duties and functions of the Housing Director during absence or incapacity or until a successor is duly appointed.

(c) The Housing Director shall be the Chairperson and issuing officer of DSHA. The powers of DSHA, as specified in Chapter 40 of Title 31, shall be vested in the Housing Director.

(d) The Housing Director shall not be subject to Chapter 59 of this title.

(71 Del. Laws, c. 357, § 5; 84 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 455, § 12; 85 Del. Laws, c. 43, § 1.)

Part VIII
Departments of Government

Chapter 87
Department of State

Subchapter I
General Provisions

§ 8701. Establishment of Department of State.

A Department of State is established having, in addition to the other powers, duties and functions vested in the Department by this chapter, the power to perform and the responsibility for the performance of all the powers, duties and functions heretofore vested in the Secretary of State pursuant to Chapter 23 of this title.

(29 Del. C. 1953, § 8701; 57 Del. Laws, c. 570, § 1.)

§ 8702. Secretary; division directors; Acting Secretary; appointment.

(a) The administrator and head of the Department is the Secretary of State ("Secretary").

(1) The Secretary is appointed, confirmed, and holds office as provided in § 10 of Article III of the Delaware Constitution.

(2) The Secretary is to be paid an annual salary as determined by the General Assembly in the annual appropriations act.

(3) The Secretary must obtain and retain residency in this State as provided in § 10 of Article III of the Delaware Constitution.

(b) In the event the position of Secretary is vacant, the Governor, by appointment, shall have the power to fill the position or positions of assistant to the Secretary of State and division director as are vacant. Persons so appointed shall serve at the pleasure of the Governor and upon the position of Secretary being filled such persons may be removed by the Secretary with the written approval of the Governor.

(c) In the event of death, resignation, temporary incapacity or removal of the Secretary and prior to the appointment of a successor, the Governor may appoint the assistant to the Secretary of State or the director of any division of the Department to serve as Acting Secretary. The Secretary may, during an absence from the State, appoint the assistant to the Secretary of State or the director of any division of the Department to serve as Acting Secretary during such absence. In either case the Acting Secretary shall have all the powers and shall perform all the duties and functions of the Secretary during such absence or incapacity or until the successor is duly qualified and appointed.

(29 Del. C. 1953, § 8702; 57 Del. Laws, c. 570, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 455, § 13; 85 Del. Laws, c. 43, § 1.)

§ 8703. Powers, duties and functions of the Secretary.

The Secretary of State shall have, in addition to the other powers, duties and functions as provided by law, the following powers, duties and functions:

(1) To supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees;

(2) To appoint and fix the salary of, with the written approval of the Governor, the following division directors, who may be removed from office by the Secretary with the written approval of the Governor, and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary:

a. A Director of the Division of Corporations, who shall be known as the Director of Corporations and who shall be qualified by training and experience to perform the duties of the office;

b. A Director of the Division of Historical and Cultural Affairs, who shall be known as the Director of Historical and Cultural Affairs and who shall be qualified by training and experience to perform the duties of the office;

c. A Director of the Division of Public Utility Control who shall be qualified by training and experience to perform the duties of the office;

d. A Director of the Division of Professional Regulation who shall be qualified by training and experience to perform the duties of the office.

(3) To appoint such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law;

(4) To establish, consolidate or abolish such divisions, subdivisions and offices within the Department or transfer or combine the powers, duties and functions of the divisions and offices within the Department as the Secretary, with the written approval of the Governor, may deem necessary, provided that all powers, duties and functions required by law shall be provided for and maintained;

(5) To make and enter into any and all contracts, agreements or stipulations, and to retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract, consulting, research, technical and other

services and facilities, whenever the same shall be deemed by the Secretary necessary or desirable in the performance of the functions of the Department and whenever funds shall be available for such purpose. All necessary legal services shall be provided pursuant to Chapter 25 of this title;

(6) To delegate any of the Secretary's powers, duties or functions to a director of a division except the power to remove employees of the Department or to fix their compensation;

(7) To establish and to promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State;

(8) To maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department;

(9) To adopt an official seal or seals for the Department.

(29 Del. C. 1953, § 8703; 57 Del. Laws, c. 570, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 10.)

§ 8704. Division of Corporations.

The Division of Corporations is established and shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the Secretary of State pursuant to Subtitle I of Title 6 and Title 8.

(29 Del. C. 1953, § 8704; 57 Del. Laws, c. 570, § 1.)

§ 8705. Division of Historical and Cultural Affairs.

(a) The Division of Historical and Cultural Affairs is established and shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in:

(1) The Department of State pursuant to subchapter II of Chapter 5 of this title relating to Historical Buildings, Sites, Objects and Archaeological Resources, and the State Museum pursuant to subchapter III of Chapter 5 of this title; and pursuant to Chapter 53 of Title 7, relating to archaeological resources and activities in the State;

(2) The Lewes Memorial Commission;

(3) The Delaware Day Commission;

(4) The Portrait Commission;

(5) The Delaware Archaeological Board; and

(6) The Governor pursuant to Chapter 53 of Title 7 relating to granting permits to survey and excavate archaeological resources in the State.

(b) The Division of Historical and Cultural Affairs is hereby authorized to retain revenue received from land and building rentals, including but not limited to Buena Vista, Belmont Hall, Dayett Mills, The Lindens, McCrone House, John Dickenson Plantation and the Meeting House Galleries, to support these operations. The Division is further authorized to use revenues derived from future property and building acquisitions for operational support of those facilities and properties as they are acquired. Spending authority shall be subject to the requirements of the annual appropriation act.

(29 Del. C. 1953, § 8705; 57 Del. Laws, c. 570, § 1; 72 Del. Laws, c. 91, § 74; 73 Del. Laws, c. 310, § 12; 75 Del. Laws, c. 153, § 16.)

§ 8706. Public Archives.

The Delaware Public Archives is established as a Division and shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the Delaware Public Records Law as described in subchapter 1 of Chapter 5 of this title.

(72 Del. Laws, c. 91, § 75.)

§ 8707. Delaware Government Information Center.

(a) The Government Information Center shall have the following functions and duties:

(1) To publish, maintain and continuously update content on the State's Internet portal to facilitate convenient and comprehensive access to government information;

(2) To provide convenient access to a complete collection of on-line information and resources published by state government and a comprehensive and current collection of online information and resources published by local, state and federal agencies of interest to the public;

(3) To provide information and resource materials related to Internet content management and online publishing services to state agencies, state and local governmental units and their subdivisions and, at the Department's discretion, to not-for-profit and other organizations to ensure every Delaware citizen easy access to online government information;

(4) To promote increased usage of Delaware's diverse collection of online resources and encourage community input in identifying and assessing areas for improvement;

(5) To recommend statewide web publishing standards and projects consistent with information technology standards articulated by the Department of Technology and Information;

(6) To promote adherence to statewide standards that improve citizen access to information and to institute and maintain a training and information program on Internet publishing and content management to bring approved and current practices, methods, procedures and devices for the efficient and economical management of Internet content to the attention of all agencies and political subdivisions;

(7) To coordinate efforts to ensure that content on state websites is readily accessible to individuals with disabilities;

(8) To receive, accept, administer and expend any money, materials or other aid granted, appropriated or otherwise provided by local, state or federal governments, or by any source, public or private, in accordance with the terms thereof, and for the purposes provided hereinafter;

(9) To recommend legislation in concert with affected state agencies to ensure that citizens achieve convenient and meaningful access to statewide Internet content;

(10) To enter into contracts or agreements to provide or to obtain services and materials; provided that such contracts or agreements relating to information technology will follow the business policies and procedures established by the Department of Technology and Information;

(11) To perform all other activities pertinent to the organizational function of the Government Information Center; and

(12) To set reasonable fees for and make available for all political subdivisions in this State either the "electronic procurement advertising system," required by § 6902 of this title if practicable or in lieu thereof another website allowing for the public posting of local government bid opportunities, and the website designed pursuant to §§ 10004(e)(5), 10115(b) and 10124(1) of this title. The fees establish pursuant to this paragraph shall approximately and reasonably reflect all costs necessary to defray the expenses of the Government Information Center's activities required in providing such websites for political subdivisions in this State.

(b) In lieu of the requirements of § 8731(b) of this title, state agencies that publish on-line copies of publications, reports, forms and other materials may provide the Department with electronic addresses to access such materials for the purpose of making accessible to Delaware and other citizens resource materials published electronically at the expense of the State. The Administrator of the Government Information Center shall disseminate policies and procedures for providing such access and shall publish a comprehensive online directory of all government forms, publications and other such information available to the public through the State's websites.

(75 Del. Laws, c. 89, § 131; 78 Del. Laws, c. 288, § 8; 82 Del. Laws, c. 36, § 1; 83 Del. Laws, c. 65, § 2; 84 Del. Laws, c. 124, § 1; 84 Del. Laws, c. 513, § 1.)

§ 8708. Exemptions.

The following positions set forth in this chapter shall be exempt from Chapter 59 of this title:

(1) Secretary of State;

(2) Assistant to the Secretary of State;

(3) Director of Corporations;

(4) State Bank Commissioner;

(5) Director of Division of the Arts;

(6) Director of Libraries;

(7) Director of the Division of Human and Civil Rights.

(8) Director of Historical and Cultural Affairs;

(9) State Archivist and Records Administrator;

(10) Executive Director of the Public Employment Relations Board;

(11) Director of Professional Regulation;

(12) Director of the Public Service Commission; and

(13) Public Advocate.

(29 Del. C. 1953, § 8708; 57 Del. Laws, c. 570, § 1; 63 Del. Laws, c. 195, § 1C; 67 Del. Laws, c. 128, § 1; 68 Del. Laws, c. 149, § 27; 68 Del. Laws, c. 224, § 3; 69 Del. Laws, c. 257, § 1; 72 Del. Laws, c. 91, § 76; 75 Del. Laws, c. 88, § 18; 83 Del. Laws, c. 305, § 8.)

§ 8709. Assumption of powers.

The Department, through appropriate divisions, subdivisions and offices, shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions vested by law in the Secretary of State, the Public Archives Commission and the State Archivist, the Lewes Memorial Commission, the Delaware Day Commission, the Portrait Commission and the Delaware Archaeological Board immediately prior to the effective date of this chapter and which are not otherwise specifically transferred to the Department by this chapter.

(29 Del. C. 1953, § 8709; 57 Del. Laws, c. 570, § 1.)

§ 8710. Appeals.

Any and all rights of appeal now existing by law with respect to any act or acts constituting the exercise of any function or functions transferred by this chapter to the Department or to any division or subdivision thereof shall continue to exist with respect to such act or acts as hereafter performed by the Department or by the division, subdivision or office to which such function is transferred, and each such appeal shall be perfected in the manner heretofore provided by law.

(29 Del. C. 1953, § 8710; 57 Del. Laws, c. 570, § 1.)

§ 8711. Transfers and continuity.

(a) All books, records, papers, maps, charts, plans and other material including, but not limited to, any equipment in the possession of any agency of the State and used in connection with a function transferred by this chapter to the Department shall on the effective date of this chapter be delivered into the custody of the Department. All investigations, petitions, hearings and legal proceedings pending before or instituted by any agency from which functions are transferred and not concluded prior to the effective date of this chapter shall continue unabated and remain in full force and effect, notwithstanding the passage of this chapter and, where necessary, may be completed before, by or in the name of the Department. All orders, rules and regulations made by any agency from which functions are transferred and governing such functions and which are in effect upon the effective date of this chapter shall remain in full force and effect until revoked or modified in accordance with law by the Department. All contracts and obligations of any agency made or undertaken in the performance of a function transferred to the Department and, being in force on the effective date of this chapter, shall, notwithstanding this chapter, remain in full force and effect and be performed by the Department.

(b) Employees of any commission, board, department, council or agency, whose functions are consistent with and have been transferred to the Department by this chapter, shall continue and be deemed to be the employees of the Department on the effective date of this chapter and, where applicable, with all the benefits accrued as merit employees as of the effective date of this chapter.

(c) All definitions and references to any commission, board, department, council or agency which appear in any other act or law shall, to the extent that they are consistent with this chapter and in connection with a function transferred to the Department, be construed as referring and relating to the Department of State as created and established in this chapter.

(d) All definitions and references to any director, commissioner, executive secretary, commission, board or council member or other similar person which appear in any other act or law, shall, to the extent that same are consistent with this chapter, and in connection with a function transferred to the Department, be construed as referring or relating to such person or persons and their powers, duties and functions as established and created in this chapter.

(29 Del. C. 1953, § 8711; 57 Del. Laws, c. 570, § 1.)

§ 8712. Annual report.

The Secretary of the Department shall make an annual report to the Governor and the General Assembly of the Department's operation and render such other reports as the Governor or General Assembly may from time to time request or as may be required by law.

(29 Del. C. 1953, § 8712; 57 Del. Laws, c. 570, § 1.)

§ 8713. Misnomer of Department in donation.

Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Department if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey thereby to the Department or to any commission, board, department, authority, council or agency, to which, by this chapter, the powers, duties and functions have been transferred to the Department, the estate or interest therein expressed or described.

(29 Del. C. 1953, § 8713; 57 Del. Laws, c. 570, § 1.)

§ 8714. Budgeting and financing.

(a) The Secretary, in cooperation with the division directors, shall prepare a proposed budget for the operation of the Department to be submitted for the consideration of the Governor and the General Assembly. The Department shall be operated within the limitation of the annual appropriation and any other funds appropriated by the General Assembly.

(b) Special funds may be used in accordance with approved programs, grants and appropriations.

(29 Del. C. 1953, § 8714; 57 Del. Laws, c. 570, § 1.)

§ 8715. Supremacy.

All other laws or parts of laws now in effect inconsistent with this chapter are hereby repealed, superseded, modified or amended so far as necessary to conform to and give full force and effect to this chapter.

(29 Del. C. 1953, § 8716; 57 Del. Laws, c. 608, § 7.)

§ 8716. Division of the Public Advocate.

(a) There is established within the Department of State the Division of the Public Advocate. The Public Advocate shall be a person qualified by training and/or experience to perform the duties of the office. Beginning in the 149th General Assembly, the Public Advocate

shall be appointed by the Governor with the advice and consent of the majority of the Senate to serve a term of 4 years at the pleasure of the Governor. The Public Advocate shall be a full-time employee of the State.

(b) No person shall be eligible for appointment to be Public Advocate who owns or controls, in that person's own name or as a fiduciary, or whose spouse or minor child residing in that person's household owns or controls any stock, note or debenture in any public utility, or who holds any office or position with any public utility or whose employment or vocation depends directly upon or is under the control of a public utility.

(c) In the event of death, resignation, temporary incapacity or removal of the Public Advocate and prior to the appointment of a successor, the Governor may appoint an Acting Public Advocate. The Acting Public Advocate shall have all the powers and shall perform all the duties and functions of the Public Advocate during such absence or incapacity or until a successor is duly qualified and appointed.

(d) The Public Advocate shall comply with and be held strictly accountable for compliance with the highest standards of Chapter 58 of this title and § 22, Article II of the Delaware Constitution. The Division of the Public Advocate is an agency subject to Chapters 64 and 100 of this title.

(e) The Public Advocate shall have the following powers and duties:

(1) To appear before the Public Service Commission on behalf of the interest of consumers in any matter or proceeding over which the Commission has jurisdiction and in which the Public Advocate deems the interest of consumers requires such participation.

(2) To advocate the lowest reasonable rates for consumers consistent with the maintenance of adequate utility service and consistent with an equitable distribution of rates among all classes of consumers; provided, however that the Public Advocate shall principally advocate on behalf of residential and small commercial consumers and shall not be required to advocate for any class of commercial or industrial consumers that the Public Advocate determines in the Public Advocate's sole discretion on a case by case basis has the ability to advocate on its own behalf before the Public Service Commission.

(3) a. To appear on behalf of the interest of consumers in the courts of this State, the federal courts and federal administrative and regulatory agencies and commissions in matters involving rates, services, and practices of public utilities.

b. To appear before state regulatory agencies or commissions for the limited purpose of offering public comment when public comment is being received in matters involving rates, services, and practices of public utilities.

(4) To hire, as needed, experts in the utility regulation field, including economists, cost of capital experts, rate design experts, accountants, engineers, attorneys, and other specialists. A budget for compensation and expenses of these experts must be provided annually through the Delaware Public Utility Regulatory Revolving Fund. Nothing in this section may be construed to preclude the Public Advocate from applying to the General Assembly for additional funds in specific instances, including emergencies, and from receiving such additional amounts as the General Assembly determines.

(5) To have the same access to and the same right to inspect any and all books, accounts, records, memoranda, property, plant facilities and equipment of the public utilities as is afforded by law or by rule of the Public Service Commission to any other party in interest.

(6) To have full access to the records of the Public Service Commission.

(7) To call upon the assistance of the staff and experts of the Public Service Commission in the performance of duties.

(8) To appoint, fix the compensations and terms of service and prescribe the duties and powers of such staff as may be necessary for the proper conduct of the work of the Division of the Public Advocate, within the conditions and limitations imposed by the merit system of personnel administration.

(9) Upon request of the Governor, the Secretary of the Department, or the General Assembly, the Public Advocate shall provide guidance on matters relating to energy policy and utility consumers, and shall consider such other matters as may be referred to the Public Advocate or the Division by the Governor, the Secretary of the Department, or the General Assembly. The Public Advocate may study, research, plan and make advisory recommendations to the Governor, the Secretary of the Department, or the General Assembly on matters it deems appropriate to advocate on behalf of public utility consumers.

(f) The Public Service Commission shall notify the Public Advocate of all hearings and meetings of the Commission and shall forward to the Public Advocate copies of all applications submitted by public utilities and all formal complaints and petitions filed with the Commission. No formal action taken by the Commission without proof of the receipt of notice by the Public Advocate shall have any legal effect.

(g) The Public Advocate shall be entitled to be present and be heard at any public meeting of the Public Service Commission.

(h) When the Public Advocate shall determine to intervene in a matter before the Public Service Commission, the Public Advocate shall file a statement to that effect with the Public Service Commission. Thereupon, the Public Advocate shall be deemed a party in interest and shall have full power to present evidence, subpoena and cross-examine witnesses, submit proof, file briefs, appeal and do any other act appropriate for a party to the Commission.

(i) The Public Advocate shall make an annual report to the Governor and the General Assembly of the Division's activities, and shall render such other reports as the Governor or General Assembly may from time to time request or as may be required by law.

(71 Del. Laws, c. 138, § 17; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 7, 17(3); 79 Del. Laws, c. 139, § 1; 84 Del. Laws, c. 42, § 1; 82 Del. Laws, c. 144, § 1.)

§ 8717. Division of Public Utility Control.

The Division of Public Utility Control is established within the Department of State having powers, duties and functions as follows:

(1) The administrative, ministerial, budgetary and clerical functions, including but not limited to appointment, removal, compensation and duties of employees as provided by law, of the public service commission, except to the extent such powers, duties and functions are vested in the Public Service Commission under Chapter 1 of Title 26.

(2) Such other powers and functions as the Secretary of State may assign which are not otherwise inconsistent with Title 26 or the other laws of the State.

(63 Del. Laws, c. 195, § 2c; 71 Del. Laws, c. 138, § 18; 75 Del. Laws, c. 88, §§ 8, 9, 17(3).)

§ 8718. State Bank Commissioner.

(a) The Office of State Bank Commissioner established by Chapter 1 of Title 5 is continued.

(b) The Commissioner shall be appointed by the Governor for a term of 4 years and shall hold office until a successor shall be duly appointed. The Commissioner shall be a person qualified by training and experience to perform the duties of the office.

(c) The Commissioner shall receive, in full compensation for the Commissioner's services, such salary as shall be fixed by the Governor within such limitations as may be prescribed by law.

(d) The Governor, upon due notice and hearing, may remove the Commissioner from office for cause.

(e) Upon the resignation, death, disability or removal of the Commissioner, the vacancy shall be filled by appointment of the Governor for the unexpired term. In the event of the death, resignation, disability or removal of the Commissioner, all the powers necessary to perform all the duties and functions of the Commissioner during such incapacity or until a successor is duly appointed and qualified shall be conferred upon the senior Deputy Commissioner appointed by the Commissioner pursuant to § 103 of Title 5. The senior Deputy Commissioner shall be the Deputy Commissioner who has served the longest as a Deputy Commissioner.

(f) In addition to the powers, duties and functions heretofore vested in the State Bank Commissioner by law, the Commissioner shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the Board of Bank Incorporation pursuant to Title 5.

(g) [Repealed.]

(29 Del. C. 1953, § 8809; 57 Del. Laws, c. 581, § 1; 63 Del. Laws, c. 195, § 1A; 66 Del. Laws, c. 203, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 24, § 19.)

§ 8719. Council on Banking.

(a) The Council on Banking is established, and shall serve in an advisory capacity to the State Bank Commissioner and shall consider matters relating to the administration of the banking laws and the strengthening and improving of banking in this State and such other matters as may be referred to it by the Governor, the Secretary of the Department or the State Bank Commissioner. The Council may study, research, plan and advise the Commissioner, the Secretary and the Governor on matters it deems appropriate to enable the office of State Bank Commissioner to function in the best possible manner.

(b) The Council on Banking, upon the effective date of this chapter, shall be composed of the members of the Bank Advisory Board whose terms, as of the effective date of this chapter, have not expired, with the exception of the State Banking Commissioner whose term as a member of the Bank Advisory Board shall end as of the effective date of this chapter. Each member of the Bank Advisory Board shall serve as a member of the Council for the period of the member's unexpired term unless the member vacates the position by resignation, death or incapacity. The Council shall be composed of 7 members. The Governor shall appoint new members. The terms of the newly appointed members shall be staggered. The first 2 appointees shall serve for a term of 1 year, the next 2 appointees shall serve for a term of 2 years and the next 3 appointees shall serve for a term of 3 years. Thereafter all new appointees shall serve for a term of 3 years.

(c) At least 3, but no more than 4, of the newly appointed members of the Council shall be affiliated with 1 of the major political parties and at least 2, but no more than 3, of the newly appointed members shall be affiliated with the other major political party; provided, however, that there shall be no more than a bare majority representation of 1 major political party over the other major political party. Any person who declines to announce a political affiliation shall also be eligible for appointment as a member of the Council.

(d) Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

(e) A Chairperson of the Council shall be chosen by the members of the Council from among its members and shall serve in that capacity for a term of 1 year and shall be eligible for reelection.

(f) Any appointment, pursuant to this section, to replace a member whose position becomes vacant prior to the expiration of the member's term shall be filled only for the remainder of that term.

(29 Del. C. 1953, § 8810; 57 Del. Laws, c. 581, § 1; 63 Del. Laws, c. 195, § 1A; 70 Del. Laws, c. 186, § 1.)

§ 8720. Delaware Commission of Veterans' Affairs — Established; composition; powers [For application of the transfer of this section, see 85 Del. Laws, c. 137, § 12] [Transferred].

Transferred to § 8811 of this title by 85 Del. Laws, c. 137, § 2, effective Aug. 13, 2025.

§ 8721. Delaware Commission of Veterans' Affairs — Duties and responsibilities [For application of the transfer of this section, see 85 Del. Laws, c. 137, § 12] [Transferred].

Transferred to § 8812 of this title by 85 Del. Laws, c. 137, § 2, effective Aug. 13, 2025.

§ 8722. Delaware Commission of Veterans' Affairs — Authority [For application of the transfer of this section, see 85 Del. Laws, c. 137, § 12] [Transferred].

Transferred to § 8813 of this title by 85 Del. Laws, c. 137, § 2, effective Aug. 13, 2025.

§ 8723. Delaware Commission of Veterans' Affairs — Organization and operation [For application of the transfer of this section, see 85 Del. Laws, c. 137, § 12] [Transferred].

Transferred to § 8814 of this title by 85 Del. Laws, c. 137, § 2, effective Aug. 13, 2025.

§ 8724. Delaware Commission of Veterans' Affairs — Funding [For application of the transfer of this section, see 85 Del. Laws, c. 137, § 12] [Transferred].

Transferred to § 8815 of this title by 85 Del. Laws, c. 137, § 2, effective Aug. 13, 2025.

§ 8725. Delaware Commission of Veterans' Affairs — Relationship to other state agencies [For application of the transfer of this section, see 85 Del. Laws, c. 137, § 12] [Transferred].

Transferred to § 8816 of this title by 85 Del. Laws, c. 137, § 2, effective Aug. 13, 2025.

§ 8726. Division of the Arts; definitions.

As used in §§ 8727, 8728, 8729, and 8730 of this title:

(1) "Council" means the Delaware State Arts Council created by this chapter.

(2) "Director" means the Director of the Division of the Arts.

(3) "Division" means the Division of the Arts.

(4) "State" means the State of Delaware.

(67 Del. Laws, c. 128, § 2; 84 Del. Laws, c. 114, § 1.)

§ 8727. Division of the Arts — Establishment; powers and duties.

The Division of the Arts is established and it shall function, as required, as an advisory, coordinating or implementing agency:

(1) To promote and encourage public interest in the cultural heritage of our State and to expand the State's cultural resources, and to promote public education in all fields of artistic and cultural activities, including but not limited to, music, theater, dance, painting, sculpture, architecture and allied arts and crafts;

(2) To encourage and assist freedom of artistic expression;

(3) To encourage, promote and provide technical and professional assistance to arts programs of individuals, organizations and institutions in the State;

(4) To make such surveys as may be deemed advisable of public and private institutions engaged in artistic and cultural activities, and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the needs and aspirations of persons in all parts of the State; and

(5) To cooperate with and assist public and private institutions and organizations with a view toward mutual promotion and improvement of the performing and fine arts.

(67 Del. Laws, c. 128, § 2.)

§ 8728. Division of the Arts — The Delaware State Arts Council [Effective until fulfillment of the contingency in 84 Del. Laws, c. 114, § 3].

(a) *Establishment and purpose.* —

The Delaware State Arts Council is established to promote and encourage the arts in this State. The Council shall provide guidance to the Director on matters of arts policy and shall consider such other matters as may be referred to it by the Governor, the Secretary of the Department of State, or the Director. The Council may study, research, plan, and advise the Director, the Secretary, and the Governor on matters it deems appropriate to enable the Division to function in the best possible manner.

(b) *Members.* —

The Council is composed of 15 members, who the Governor appoints. Membership must meet all of the following qualifications:

(1) Each member is a Delaware citizen.

(2) Membership broadly represents all fields of the performing and fine arts.

(3) Each member is known for the member's interest in a field of the performing or fine arts.

(c) *Term of office. —*

Each member serves for a term of 3 years and may not serve more than 2 consecutive terms. Each term of office expires on the date specified in the appointment, but a member remains eligible to participate in Council proceedings until the Governor replaces that member. The Governor may appoint a member for a term of less than 3 years to ensure that no more than # of membership expires annually.

(d) *Compensation. —*

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

(e) A Chairperson of the Council shall be designated in addition to the members of the Council by the Governor and shall serve in that capacity at the pleasure of the Governor.

(f) *Removal. —*

The Governor may remove a member for gross inefficiency, misfeasance, nonfeasance, malfeasance, or neglect of duty. A member is deemed in neglect of duty if the member is absent from 3 consecutive, regular council meetings or 4 out of 12 regular meetings. The Governor may consider the member to have resigned and may accept the member's resignation.

(g) *Quorum. —*

A majority of members must be present at a council meeting in order to have quorum and conduct official business. A vacancy on the Council is not counted for quorum.

(h) *Staffing. —*

The Division shall provide reasonable staff support to assist the Council in performing its duties under this section.

(i) *Subcommittees. —*

The Council may form subcommittees to assist the Council in performing its duties under this section.

(j) A Council member may participate in the Division's grant review process, as requested by the Division.

(67 Del. Laws, c. 128, § 2; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 258, §§ 1, 2; 84 Del. Laws, c. 114, § 2.)

§ 8728. Division of the Arts — The Delaware State Arts Council [Effective upon fulfillment of the contingency in 84 Del. Laws, c. 114, § 3].

(a) *Establishment and purpose. —*

The Delaware State Arts Council is established to promote and encourage the arts in this State. The Council shall provide guidance to the Director on matters of arts policy and shall consider such other matters as may be referred to it by the Governor, the Secretary of the Department of State, or the Director. The Council may study, research, plan, and advise the Director, the Secretary, and the Governor on matters it deems appropriate to enable the Division to function in the best possible manner.

(b) *Members. —*

The Council is composed of 15 members, who the Governor appoints. Membership must meet all of the following qualifications:

(1) Each member is a Delaware citizen.

(2) Membership broadly represents all fields of the performing and fine arts.

(3) Each member is known for the member's interest in a field of the performing or fine arts.

(c) *Term of office. —*

Each member serves for a term of 3 years and may not serve more than 2 consecutive terms. Each term of office expires on the date specified in the appointment, but a member remains eligible to participate in Council proceedings until the Governor replaces that member. The Governor may appoint a member for a term of less than 3 years to ensure that no more than # of membership expires annually.

(d) *Compensation. —*

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

(e) The Council shall elect a chair from among its members every 3 years. A member may not serve more than 2 consecutive terms as a chair.

(f) *Removal. —*

The Governor may remove a member for gross inefficiency, misfeasance, nonfeasance, malfeasance, or neglect of duty. A member is deemed in neglect of duty if the member is absent from 3 consecutive, regular council meetings or 4 out of 12 regular meetings. The Governor may consider the member to have resigned and may accept the member's resignation.

(g) *Quorum. —*

A majority of members must be present at a council meeting in order to have quorum and conduct official business. A vacancy on the Council is not counted for quorum.

(h) *Staffing. —*

The Division shall provide reasonable staff support to assist the Council in performing its duties under this section.

(i) *Subcommittees. —*

The Council may form subcommittees to assist the Council in performing its duties under this section.

(j) A Council member may participate in the Division's grant review process, as requested by the Division.

(67 Del. Laws, c. 128, § 2; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 258, §§ 1, 2; 84 Del. Laws, c. 114, § 2; 84 Del. Laws, c. 114, § 3.)

§ 8729. Division of the Arts — Assistance for the development of the Arts.

(a) The Director is hereby authorized and directed to establish a special fund of the State to encourage instrumentalities, agencies and political subdivisions of the State and private and public nonprofit associations in the development of the arts in the State and to enhance the appreciation of artistic expressions by citizens of the State.

(b) The Director may contract with any instrumentality, agency or political subdivision of the State, and with any private or public nonprofit association, to accomplish any work authorized by this chapter.

(c) The Director and the Council shall establish such rules and regulations as are necessary to determine the eligibility of any instrumentality, or agency or political subdivision, private or public nonprofit association for participation in contracts authorized by this section. A private or public nonprofit association shall submit a letter of exemption from the Internal Revenue Service as proof of nonprofit status.

(d) The Director shall be responsible for fiscal matters and auditing of funds appropriated under this section. Expenditures from this special fund shall be in accordance with state law and shall be limited to appropriations provided therefor. Moneys on deposit in this special fund which are unexpended or unencumbered shall not revert at the end of each fiscal year.

(67 Del. Laws, c. 128, § 2.)

§ 8730. Division of the Arts — Exemption from Bid Law.

The Division shall be exempt from Chapter 69 of this title.

(67 Del. Laws, c. 128, § 2.)

§ 8731. Division of Libraries.

(a) In addition to any other power granted or duties imposed under this title, the Division of Libraries shall exercise general direction and control over the furnishing of library services within this State. The Director of the Division shall be the State Librarian, who shall be a graduate of a school accredited by the American Library Association. The Division of Libraries shall have the following functions and duties:

(1) To provide information, resource materials and library services to state agencies, state and local governmental units and their subdivisions and, in the Department's discretion, to organizations in need of library services;

(2) To coordinate library services statewide in order to assure to every Delaware citizen free and equal access to services, resources and guidance in the use of such for lifelong learning, continuing self-educational, political, cultural, economic, recreational and intellectual enrichment;

(3) To receive, accept, administer and expend any money, materials or other aid granted, appropriated or otherwise provided by local, state or federal governments, or by any source, public or private, in accordance with the terms thereof, and for the purposes provided hereinafter;

(4) To foster the recruitment, development and maximum utilization of library personnel throughout the State;

(5) To encourage broad community participation in library development, program planning and the implementation of such plans;

(6) To establish and promote cooperation among all types of libraries (including but not limited to public, academic, school, and special) at all service levels;

(7) To ensure the State's compatibility to and reciprocity within an international information resources network;

(8) To administer the Statewide Delaware Library Network and the Statewide Delaware Library Consortium;

(9) To provide online access at each public library in state government to local, state, and federal documents and resources;

(10) To coordinate the provision of accessible library and information services for individuals with disabilities and to serve as the Delaware Regional Library for the Library of Congress Network of Libraries for the Blind and Physically Handicapped;

(11) To stimulate every Delaware library patron to fully utilize the State's cultural resource materials and technologies, and to maintain the individual's privacy, acceptable use, and right of access to those materials, and technologies;

(12) To offer resources which supplement and reinforce local libraries;

(13) To collect, compile, research, publish and disseminate information, including statistics, affecting the efficient operation of the State's library system;

(14) To recommend legislation to achieve meaningful statewide library development and use;

(15) To establish, interpret and administer standards of effective library services;

(16) To enter into contracts and agreements to provide or to obtain library services and materials; and

(17) To perform all other activities pertinent to the organizational function of library services.

(18) To create a Delaware model public library collection development policy, in cooperation with the Library Consortium, as required by § 8734 of this title.

(19) To create a Delaware model school library collection development policy, in cooperation with the Library Consortium, as required by § 7201 of Title 14.

(b) Every state agency shall provide the Department with access to electronic copies of all publications issued by such agencies for the purpose of making accessible to Delaware and other citizens resource materials published at the expense of the State.

(29 Del. C. 1953, § 8610; 57 Del. Laws, c. 583, § 1; 59 Del. Laws, c. 480, § 4; 65 Del. Laws, c. 290, § 1; 68 Del. Laws, c. 149, § 6; 69 Del. Laws, c. 346, § 1; 81 Del. Laws, c. 81, § 1; 85 Del. Laws, c. 218, § 1.)

§ 8732. Council on Libraries.

(a) The Council on Libraries is established.

(b) The Council on Libraries ("Council") serves in an advisory capacity to the Department of State. The Council considers matters relating to libraries and library standards throughout the State and other matters as the Governor, the Secretary of the Department of State, or the General Assembly may refer to the Council. The Council may study, research, plan, or make advisory recommendations to the Governor, the Secretary of the Department of State, or the General Assembly on matters it deems appropriate to provide the best possible library service in Delaware.

(c) The Council consists of 11 members. Membership is composed as follows:

(1) The 3 county librarians of this State.

(2) Each of the 3 county library advisory boards under § 802 of Title 9 shall appoint 1 member from among their respective county library advisory board. Each of these members serves at the pleasure of the member's appointing authority.

(3) a. The president of the Delaware Association of School Librarians. The president may appoint a designee to serve in the president's stead and at the president's pleasure.

b. If the Department of Education re-establishes the Delaware education associate for libraries, media, and technology or a similar position, the associate shall replace the president of the Delaware Association of School Librarians as a member of the Council. The associate may appoint a designee to serve in the associate's stead and at the associate's pleasure.

(4) The director of Adult and Prison Education Resources of the Department of Education. The Director may appoint a designee to serve in the director's stead and at the director's pleasure.

(5) a. The Governor shall appoint 3 public members.

b. If possible, the 3 public members must represent each county.

c. Each member under this paragraph (c)(5) of this section is appointed for a term of 3 years. Each term of office expires on the date specified in the appointment; however, a member remains eligible to participate in the Council's proceedings until the Governor replaces that member. The Governor may appoint a member for less than 3 years to ensure that members' terms expire on a staggered basis.

(d) A member does not receive compensation but may be reimbursed for the member's actual and necessary expenses incurred in the performance of the member's official duties.

(e) A vacancy prior to the expiration of the term of a member of the Council on Libraries may be filled only for the remainder of that term.

(f) The Council shall annually elect a chair from among its members. A chair is eligible for reelection.

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

(h) A member's appointing authority may remove the member for gross inefficiency, misfeasance, 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 or attends less than 50% of Council meetings in a calendar year. The member's appointing authority may consider the member to have resigned and may accept the member's resignation.

(i) The Division of Libraries shall provide reasonable staff support to assist the Council in performing its duties under this section.

(29 Del. C. 1953, § 8611; 57 Del. Laws, c. 583, § 1; 59 Del. Laws, c. 480, § 5; 68 Del. Laws, c. 149, § 6; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 55, § 1.)

§ 8733. The Delaware Library Consortium.

(a) There is hereby created the Delaware Library Consortium. The following entities are eligible to become members of the Delaware Library Consortium:

(1) Any publicly-funded Delaware library

(2) Libraries within school districts and charter schools

(3) Publicly-funded institutions

(4) Private and special libraries upon approval of the Consortium

(b) The Delaware Library Consortium shall be supported by the Division of Libraries.

(c) In order to enable public schools to share services including intra-library loans with Consortium member libraries, the Delaware Library Consortium shall do all of the following:

(1) Facilitate the migration of the library catalog of each of the public schools in the State to the catalog used by Consortium member libraries.

(2) Provide training in the use of the catalog used by Consortium member libraries to public school librarians.

(3) Integrate public school libraries into the intra-library loan program including providing transit of books and media between libraries.

(4) Provide guidance to public school libraries in removing from their shelves old and unnecessary books.

(d) The Delaware Library Consortium shall develop and adopt common policies concerning collection, development, and other topics in order to ensure equitable access and the right to read for all Delawareans.

(83 Del. Laws, c. 325, § 135; 84 Del. Laws, c. 385, § 2.)

§ 8734. Public library collection development policy.

(a) For purposes of this section:

(1) “Public library” means any library in this State which is open to the public and receives funding from this State or from a county or municipality of this State. “Public library” includes privately incorporated public libraries and county libraries. “Public library” does not include public school libraries, libraries within institutions of higher education, or Department of Correction libraries.

(2) “Library materials” or “material” includes books, periodicals and serials, audio materials, audiovisual materials, instructional materials, maps, databases, government documents, records, photographs, and other similar materials, whether in tangible or electronic form.

(b) This State establishes the following public library collection development principles:

(1) Library materials, services, and resources exist and should be provided for the interest, information, and enlightenment of all persons the public library serves.

(2) A public library may not exclude or remove material from its catalog because of the origin, background, or views of a person who created the material.

(3) A public library may not exclude or remove material from its catalog because of partisan, ideological, or religious disapproval.

(4) Nothing in this section is intended to override or negate any provision of state law relating to material that is in violation of Title 11, Chapter 5, subchapter VII, Subpart C.

(c) A public library must adopt and follow a written collection development policy for the operation of a library that is consistent with the public library collection development principles established under subsection (b) of this section. The collection development policy must include a procedure for requesting the removal of library material within a public library. In addition, the collection development policy must include the following provisions:

(1) Library materials under review due to an objection must remain available for use by public library patrons until the review process is concluded.

(2) Only a resident, business owner, property owner of the area the public library serves, or a taxpayer of a library district financing a library, may submit an objection to material in that library.

(3) An individual may only submit 1 objection to library material at a time. An individual may submit a second objection to library material after the previous objection has completed the review process, including any appeals.

(d) The governing board or body of a public library may not dismiss, suspend, discipline, demote, reassign, transfer, or otherwise retaliate against an employee or contractor for acting in a manner consistent with the Delaware public library collection development principles under subsection (b) of this section or the collection development policy under subsection (c) of this section.

(e) The Division of Libraries, in cooperation with the Library Consortium, shall develop model policies and procedures that public libraries may use to ensure compliance with this section.

(f) The Division of Libraries may make rules and regulations governing an appeal from a final decision made by a public library regarding a request for removal of library material. The appeals process may include a review by the Delaware Library Consortium Public Libraries Policy Steering Committee or the Council on Libraries. The State Librarian must make the final decision regarding a request for removal of library material from a public library.

(g) Notwithstanding any provision of § 10002 of this title to the contrary, all records relating to material objections, removals, the review process, appeals, and appeal decisions, including the reasons for material removal, if applicable, are considered public records under Chapter 100 of this title.

(85 Del. Laws, c. 218, § 2.)

§ 8735. Division of Professional Regulation.

(a) The Division of Professional Regulation (Division) has the powers, duties, and functions set forth under this section. The Division shall be responsible for the administrative, ministerial, budgetary, clerical, and exclusive investigative functions, including the appointment, removal, compensation, and duties of employees, as provided by law of the following commissions, boards, and agencies, with the exception that the Secretary of State is not precluded from entering into a memorandum of understanding with the Secretary of the Department of Health and Social Services (DHSS) for the purpose of allowing employees of DHSS to function as inspectors, investigators, and administrative support for the Board of Pharmacy:

(1) Board of Accountancy as set forth in Chapter 1 of Title 24;

(2) Board of Landscape Architecture as set forth in Chapter 2 of Title 24;

(3) Board of Architects as set forth in Chapter 3 of Title 24;

(4) Board of Podiatry as set forth in Chapter 5 of Title 24;

(5) Board of Chiropractic as set forth in Chapter 7 of Title 24;

(6) Licensing of deadly weapons dealers as set forth in Chapter 9 of Title 24;

(7) State Board of Dentistry and Dental Hygiene as set forth in Chapter 11 of Title 24;

(8) Board of Electrical Examiners as set forth in Chapter 14 of Title 24;

(9) Commission on Adult Entertainment Establishments as set forth in Chapter 16 of Title 24;

(10) Board of Medical Licensure and Discipline as set forth in Chapter 17 of Title 24;

(11) Board of Nursing as set forth in Chapter 19 of Title 24;

(12) Board of Occupational Therapy Practice as set forth in Chapter 20 of Title 24;

(13) Board of Examiners in Optometry as set forth in Chapter 21 of Title 24;

(14) Board of Pharmacy as set forth in Chapter 25 of Title 24;

(15) Examining Board of Physical Therapists and Athletic Trainers as set forth in Chapter 26 of Title 24;

(16) Board of Professional Land Surveyors as set forth in Chapter 27 of Title 24;

(17) Real Estate Commission as set forth in Chapter 29 of Title 24;

(18) Board of Mental Health and Chemical Dependency Professionals as set forth in Chapter 30 of Title 24;

(19) Board of Funeral Services as set forth in Chapter 31 of Title 24;

(20) Board of Veterinary Medicine as set forth in Chapter 33 of Title 24;

(21) Board of Examiners of Psychologists as set forth in Chapter 35 of Title 24;

(22) Board of Geologists as set forth in Chapter 36 of Title 24;

(23) Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers as set forth in Chapter 37 of Title 24;

(24) Board of Clinical Social Work Examiners, as set forth in Chapter 39 of Title 24;

(25) Board of Cosmetology and Barbering as set forth in Chapter 51 of Title 24;

(26) Board of Examiners of Nursing Home Administrators as set forth in Chapter 52 of Title 24;

(27) Board of Pilot Commissioners as set forth in Chapter 1 of Title 23;

(28) Committee of Dietetics/Nutrition as set forth in Chapter 38 of Title 24;

(29) Board of Massage and Bodywork, as set forth in Chapter 53 of Title 24;

(30) Board of Charitable Gaming as set forth in Chapter 15 of Title 28;

(31) Board of Plumbing Examiners, as set forth in Chapter 18 of Title 24;

(32) Council on Real Estate Appraisers as set forth in Chapter 40 of Title 24;

(33) Manufactured Home Installation Board as set forth in Chapter 44 of Title 24;

(34) Board of Home Inspectors as set forth in Chapter 41 of Title 24; and

(35) Board of Elevator Mechanics as set forth in Chapter 61 of Title 24.

(b) The Division of Professional Regulation shall have the powers, duties and functions related to the regulation of amateur and professional boxing and combative sports entertainment as set forth in Chapter 1 of Title 28.

(c) The Division of Professional Regulation, with the approval of the Secretary of State, shall establish, for all commissions, boards and agencies and activities administered pursuant to this section, such appropriate fees as shall approximate and reasonably reflect all costs necessary to defray the expenses of each such board or commission, or of the Division on behalf of such board or commission. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in the appropriate chapter of the Delaware Code. No application fee shall be combined with any other fee or charge. At the beginning of each calendar year the Division of Professional Regulation, or any other state agency acting in its behalf, shall compute for each separate service or activity, the appropriate fees for each agency. All revenue generated by any of the activities performed by or on behalf of the boards or commissions listed in this chapter shall be deposited in an appropriated special fund account in the Division of Professional Regulation. These funds

shall be used to fund all costs necessary to defray the expenses of each board or commission or of the Division on behalf of such board or commission, up to the budget authority for any fiscal year or portion thereof.

(d) The Division of Professional Regulation shall have the following powers, duties, and functions relating to the administration of examinations for all boards, commissions, and other agencies listed in this section:

(1) To designate, approve, arrange for and contract for an examination site, for each examination held by such agency;

(2) To deposit all fees received for testing into a special account to be used for the sole purpose of covering the costs of all agency examinations, including test validation;

(3) To pay examination services and other expenses directly related to the administration of examinations;

(4) To review, approve and execute all contracts for examination services;

(5) Review and approve, subject to review by the Joint Legislative Oversight and Sunset Committee, the content and validity of any examination written, developed, or used by a board or commission listed in this section;

(6) Supervise the administration and proctoring of all tests for all boards and commissions;

(7) To contract for a treatment provider for licensed persons, provided however that such treatment provider shall not be employed by or under contract with any professional organization representing licensees regulated by the Division of Professional Regulation or any board in Title 24; and

(8) Permit potential complainants access to an Investigator with the Division of Professional Regulation to discuss issues or concerns regarding their reports or complaints.

(e) The Division of Professional Regulation shall establish a uniform policy for the reimbursement of expenses for members of all boards and commissions listed in this section, which policy shall be set forth in the Division's rules and regulations. In establishing this policy, the Director of Professional Regulation may consider the limits of available appropriations and the need to allocate travel funds for board and commission representation at appropriate national or regional meetings of state professional regulatory boards. In addition to the rate of compensation established in the Delaware Code for each board or commission, each member of a board or commission listed in this section may receive reimbursement or partial reimbursement for necessary expenses to attend meetings. Such expenses shall not exceed the mileage rate paid to state employees, per mile actually traveled, or the cost of public transportation and no more than $10 per meeting for all other miscellaneous expenses.

(f) The Division of Professional Regulation shall establish policies governing the appropriate times, locations and notice for meetings and public hearings of all boards and commissions listed in this section so as to promote public participation. Such policies shall be set forth in the rules and regulations of the Division. Meetings and hearings may only take place in facilities approved by the Division.

(g) (1) The Director of the Division of Professional Regulation (Director) shall ensure that all regulatory actions taken by boards and commissions listed in this section are in conformance with the Administrative Procedures Act, Chapter 101 of this title and the Freedom of Information Act, Chapter 100 of this title. The Director shall review and approve all legal notices, public notices, and agendas for conformance with these requirements.

(2) A Social Security number or alternative personally-identifying number, such as an individual taxpayer identification number, provided to the Division is confidential and is not a public record for the purposes of Chapter 100 of this title. The Division may not disclose the Social Security number or alternative personally-identifying number, except for the following purposes:

a. Tax purposes.

b. Licensing purposes.

c. Enforcement of an order for the payment of child support.

(h) The following procedure shall be followed for the investigation of complaints against licensees of boards, agencies and commissions listed in subsection (a) of this section and otherwise regulated by the Division of Professional Regulation:

(1) Any person who desires to file a complaint against any licensee regulated by a board, commission or agency covered pursuant to this chapter must do so in writing.

(2) The complaint shall state the name of the licensee and sufficient facts as determined by the Division which allegedly constitute the basis for the written complaint. If any of these elements are missing in the written complaint, the Division of Professional Regulation may, in its discretion, sua sponte dismiss the complaint.

(3) The complaint shall be filed with the Director of the Division. The Director shall, within 15 days of the receipt of the complaint, fill out a complaint card, assign a complaint number and log the complaint in the Division of Professional Regulation's records. A record of the complaint shall be kept with the Division for a period of 5 years. The Division shall also assign an investigator employed by the Division to investigate the complaint after this procedure is complied with.

(4) The Division of Professional Regulation shall thereafter mail a copy of the complaint to the licensee named in the complaint at the licensee's address of record in the Division's files. The Division of Professional Regulation may, in its discretion, withhold the name of the complainant. The named licensee, if the licensee chooses, may file an answer to the complaint within 20 calendar days with the Division.

(5) The Division shall, thereafter, provide a copy of the complaint to the board, commission or agency which regulates the named licensee in the complaint. The board, agency, or commission shall maintain a record of the same.

(6) The Division of Professional Regulation shall suspend its investigation and withhold from the respondent reports of unlicensed practice or misconduct if a request to do so is made in writing by the Delaware Department of Justice or a federal law-enforcement authority due to the potential effects of such conduct on a pending criminal investigation. Such written request shall suspend any duty to investigate, advise the complainant or respondent, provide a copy of the complaint to the board, commission or agency which regulates the named licensee, or undertake any other duties that would interfere with the ability of law enforcement to investigate the allegations successfully. The suspension shall remain in effect until the Delaware Department of Justice or federal law enforcement informs the Executive Director in writing that action by the Division of Professional Regulation will not interfere with a pending law-enforcement investigation.

(7) At the board, agency or commission's next regularly scheduled meeting, it may assign a board member to assist the Division with the investigation of the complaint. This board member shall maintain strict confidentiality of the facts of the investigation and shall not discuss any issue of fact or law of the investigation with any other board member or the public. In addition, if a hearing is held, the investigating board member shall excuse oneself as a board member but may otherwise assist in the presentation of the complaint before the board.

(8) The investigator assigned by the Division of Professional Regulation shall direct the investigation of the complaint but shall maintain contact with the investigating board member regarding the investigation. The investigator shall issue a final report at the conclusion of the investigator's investigation. The report shall list the evidence reviewed, the witnesses interviewed and cite the law or regulation alleged to have been violated and the facts to support such finding. The report shall contain a written recommendation to either prosecute or dismiss the complaint approved by the Director of the Division of Professional Regulation.

(9) The Director of the Division of Professional Regulation may forward the complaint and written report to the Department of Justice for review by a Deputy Attorney General. If deemed warranted, the Deputy Attorney General may file a formal written complaint against the named licensee with the board, commission or agency which regulates the licensee and request a hearing before the board, commission or agency. If the Deputy Attorney General assigned to the case recommends not to prosecute or otherwise not file a formal complaint, the Deputy Attorney General shall notify the Director of Professional Regulation in writing.

(10) If the Deputy Attorney General assigned to the case recommends dismissal or no prosecution, the Division shall, thereafter, dismiss the complaint which shall constitute a final order. The Division shall, thereafter, file a copy of the Attorney General's recommendation and an investigator's report with the board, commission or agency which regulates the licensee for informational purposes only.

(11) The Division Director or the Division Director's designee is empowered to issue subpoenas for named respondents, witnesses, documents, physical evidence or any other source of evidence needed during the investigation of the complaint and/or for a public hearing on the complaint. If the party or person subpoenaed fails to comply, the Division may compel compliance with said subpoena by filing a motion to compel in the Superior Court which shall have jurisdiction. The Superior Court may order costs, attorney's fees and/or a civil fine not to exceed $1,000 if the motion to compel is granted.

(i) This chapter does not preclude a commission, board or agency under the jurisdiction of this section from, if its enabling legislation so provides, revoking or immediately suspending a practitioner's license if the board finds the health, welfare and safety of the public is in immediate or imminent danger.

(j) This chapter shall supersede any provisions of any commission, board or agency's procedures named in this section, except the Board of Medical Licensure and Discipline, for handling complaints against practitioners prior to July 20, 1989.

(k) The Division of Professional Regulation shall provide at least once every fiscal year training to members appointed to the regulatory boards listed in subsection (a) of this section. The training shall outline the legal responsibilities of board members to protect the health, safety and welfare of the general public.

(*l*) (1) The provisions of § 516(g) and § 2216 of Title 13, § 3368 of Title 19, and § 547 of Title 30 supersede any provisions of this section to the contrary and any provisions or procedures, by statute or regulation, of any commission, board, or agency named in this section with respect to matters involving any applicant or licensee under § 516(g) or § 2216 of Title 13, § 3368 of Title 19, and § 547 of Title 30.

(2) The Director of the Division of Professional Regulation shall forthwith suspend, or deny to such licensee or applicant the issuance or renewal of, any license, permit, certificate, approval, registration, or other similar form of permission or authorization to practice or engage in any profession, occupation, or business of any commission, board, or agency named in this section, but not including any license issued on behalf of a nonprofit applicant by the Board of Charitable Gaming under Chapter 15 of Title 28, on receipt of notification regarding a licensee or applicant from any of the following:

a. The Family Court under § 516(g) of Title 13.

b. The Director of the Division of Child Support Services under § 2216 of Title 13.

c. The Director of the Division of Unemployment Insurance under § 3368 of Title 19.

d. The Director of the Division of Revenue under § 547 of Title 30.

(m) The Social Security number of the applicant shall be included on the application for issuance or renewal of any license, permit, certificate, approval, registration, or other similar form of permission or authorization to practice or engage in any profession, occupation, or business of any commission, board, or agency under subsection (a) of this section, except for any of the following:

(1) A license issued on behalf of a nonprofit applicant by the Board of Charitable Gaming under Chapter 15 of Title 28.

(2) Notwithstanding any other law or regulation, if an applicant for a license does not have a Social Security number, the applicant must do 1 or more of the following when completing an application for a license:

a. Provide an alternative personally-identifying number, such as the applicant's individual taxpayer identification number,

b. Complete a Social Security number exemption attestation.

(n) Unless otherwise provided by law, any Board within the Division of Professional Regulation may adopt through its rules and regulations the Voluntary Treatment Option for Chemically Dependent or Impaired Professionals for the treatment of chemically dependent or impaired persons regulated by such Board. The Voluntary Treatment Option for Chemically Dependent or Impaired Professionals shall be available to a regulated professional of a participating Board, provided the regulated professional has not committed any offense, other than the status of being chemically dependent or impaired, which otherwise constitutes a ground for discipline under applicable laws governing the regulated professional. The participating Board may defer and ultimately take no disciplinary action with regard to an eligible chemically dependent or impaired regulated professional who voluntarily signs an agreement, in a form satisfactory to the participating Board, agreeing to the terms and conditions specified in the Voluntary Treatment Option. The Board, where it deems appropriate, may proceed with disciplinary action with regard to a disciplinary offense alleged to have occurred prior to the professional's entry into the Voluntary Treatment Option. Any person regulated by a participating Board may refer oneself into this Voluntary Treatment Option. Any member of the public, or member of the participating professions regulated by the Division of Professional Regulation, may make a written report, signed by the complainant, of chemical dependency or impairment affecting any person regulated by a participating Board within the Division of Professional Regulation to the appropriate Board chairperson, that Board chairperson's designate, or designates, or directly to the Director of the Division of Professional Regulation or the Director's designate. Failure to provide such a report may be considered grounds for disciplinary action against a regulated professional so failing to report, if such grounds for disciplinary action are provided in the participating Board's statutes, rules or regulations. When a report is received indicating that a regulated professional of a participating Board may be chemically dependent or impaired, the Boards or Commissions subject to this Voluntary Treatment Option for Chemically Dependent or Impaired Professionals shall follow the following procedures:

(1) If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or the Director's designate of the report. If the Director of Professional Regulation receives the report, the Director shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

(2) The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform that individual in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give that individual the opportunity to enter the Voluntary Treatment Option.

(3) In order for the individual to participate in the Voluntary Treatment Option, the individual shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health-care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate or designates.

(4) A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or the Director's designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or the Director's designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

(5) Failure to cooperate fully with the participating board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or the Director's designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

(6) The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

a. Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

b. Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or the Director's designate at such intervals as required by the chairperson of the participating Board or that

chairperson's designate or designates or the Director of the Division of Professional Regulation or the Director's designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

c. Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

d. Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program or programs. In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this paragraph (n)(6)d. shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

e. Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or such chairperson's designate or designates or to the Director of the Division of Professional Regulation or such Director's designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

f. Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

(7) The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

(8) The participating Board's chairperson, that chairperson's designate or designates or the Director of the Division of Professional Regulation or that Director's designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

(9) If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

(10) Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

(11) Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have that person's confidentiality protected if the matter is handled in a nondisciplinary matter.

(12) Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have that professional's confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

(o) The Secretary of State shall, notwithstanding any law to the contrary, also have the power to establish specific biennial renewal dates for professional licensure registration of Title 23 and Title 24 professional licensing boards in such manner as to promote the efficient administration of professional licensure renewal throughout each biennial period, and to provide for the imposition of licensure and related fees in accordance with § 2320(c) of this title.

(p) *Continuation and issuance of licenses and permits for deployed active duty, activated Reserve and National Guard military personnel.* — (1) Notwithstanding any provision of Title 24 to the contrary, all licenses and permits issued by boards and commissions administered by the Division of Professional Regulation ("Division") pursuant to subsection (a) of this section, shall not expire for a qualifying person as defined in paragraph (p)(7) of this section herein, as follows:

a. For 180 days after the date the qualifying person returns from active deployment, if continuing education credits are not a requirement of the license or permit renewal; or

b. For 270 days after the date the qualifying person returns from active deployment, if continuing education credits are a requirement of a license or permit renewal.

(2) A qualifying person who held or holds a valid license or permit at the time of deployment, which license or permit does not require continuing education requirements, who wishes to renew said license or permit, shall submit to the appropriate board or commission, the required documentation and information necessary, as required by Title 24, for renewal of the same type of permit or license within 90 days after the qualifying person has returned from active deployment.

(3) A qualifying person who held or holds a valid license or permit at the time of deployment, which license or permit has continuing education requirements, who wishes to renew said license or permit, shall submit to the appropriate board or commission the required documentation, including proof of having met the continuing education requirements and information necessary, as required by Title 24, for the same type of permit or license, for renewal within 180 days after the qualifying person has returned from active deployment.

(4) A qualifying person selected for active deployment may apply for a license or permit expiration extension prior to deployment, as allowed by paragraphs (p)(2) and (3) of this section herein. Should a qualifying person hold a license or permit which would have

expired during the qualifying person's period of deployment, said qualifying person may apply to renew said license or permit as allowed by paragraphs (p)(2) and (3) of this section herein. The intent to extend or renew such permit or license shall be made by the qualifying person to the Division on a form stipulated by the Division, accompanied by a copy of official deployment documents, or other official verification acceptable to the Division.

(5) The protection from license or permit expiration provided under this subsection does not void or limit the obligations of the qualifying person to meet all requirements of licensure, as required in the section or sections of Title 24 applicable to the profession or professions for which the license or permit is sought.

(6) Notwithstanding any provision of Title 24 to the contrary, all boards and commissions administered by the Division pursuant to subsection (a) of this section shall accept the military training, education, or experience of a qualifying person so long as such training, education, or experience is substantially equivalent to the requirements established by law and regulations of the respective board or commission and the applicant complies with all other requirements for licensure, including, without limitation, any requirement for examination.

(7) As used in this section, "qualifying person" means an individual who is a member of the active duty military, a member of the National Guard, a member of the military reserve, retired military, or a military veteran.

(q) Notwithstanding any provision of Title 24 to the contrary, a qualifying person, as defined in paragraph (p)(7) of this section, or the spouse of a qualifying person, may apply for reinstatement of any license or permit issued by boards and commissions administered by the Division of Professional Regulation ("Division") pursuant to subsection (a) of this section within 2 years of the lapse or expiration of any such license or permit. The qualifying person or the spouse of a qualifying person shall submit to the appropriate board or commission the documentation and information necessary, as required by Title 24, for reinstatement of the same permit or license and pay all applicable fees. An application to reinstate such license or permit shall be made by the qualifying person or the spouse of a qualifying person to the Division on a form designated by the Division, accompanied by a copy of official verification that the applicant is a qualifying person or the spouse of a qualifying person and that the qualifying person is assigned to a duty station in this State acceptable to the Division. This subsection shall not apply to a license or permit that was suspended or revoked unless said license or permit was reinstated prior to its lapse or expiration.

(r) Notwithstanding any provision of Title 24 to the contrary, a qualifying person, as defined in paragraph (p)(7) of this section or the spouse of a qualifying person, may apply for a provisional license or permit issued by boards and commissions administered by the Division of Professional Regulation ("Division") pursuant to subsection (a) of this section, effective for a period up to 6 months during the pendency of an application for a permit or license by endorsement or reciprocity pursuant to Title 24. A provisional license issued under this subsection expires 6 months from the date of issuance and cannot be renewed. The qualifying person or the spouse of a qualifying person shall submit to the appropriate board or commission the documentation and information necessary, as required by Title 24, for endorsement or reciprocity of the same permit or license and pay all applicable fees. An application to receive such provisional license or permit shall be made by the qualifying person or the spouse of a qualifying person to the Division on a form designated by the Division, accompanied by a copy of official verification that the applicant is a qualifying person or the spouse of a qualifying person, and that the qualifying person is assigned to a duty station in this State acceptable to the Division. The qualifying person or the spouse of a qualifying person must be the holder of an active license or permit in good standing in another State, District of Columbia, or territory of the United States in which the requirements for licensure or certification are substantially similar to this State, with no unresolved complaint, review procedure, or disciplinary proceeding.

(s) The Division of Professional Regulation may investigate complaints of unauthorized practice of the professions governed by the boards, agencies and commissions named in subsection (a) of this section. The Division may issue citations for unlicensed practice discovered during an investigation into a complaint of unlicensed practice, a complaint otherwise under investigation, or an inspection as follows:

(1) Upon discovery of the unlicensed practice of a profession or the unlicensed operation of any facility governed by the boards, agencies and commissions named in subsection (a) of this section, the Division may issue a citation to the person engaging in the unlicensed practice of the profession, or the owner, operator, manager or person otherwise responsible for any facility that is operating without a license or permit required by such board, agency or commission.

(2) The citation shall be prepared on a form approved by the Director of the Division and shall clearly state the violation or violations and the penalty. The penalty for the first occurrence of unlicensed practice by an individual or unlicensed operation of a facility shall be no more than $250.

(3) Any person or facility cited may, within 30 days of the issuance of the citation, admit such violation and remit payment of the penalty to the Division or deny such violation and request a hearing to contest the citation. Denials and requests for hearing must be made within 10 days of the issuance of the citation. Failure to deny and request a hearing within 10 days of any citation will be deemed an admission of the violation. Any admitted violations may be referred to appropriate law-enforcement agencies, including the Delaware Department of Justice, for criminal prosecution.

(4) Any person or facility who either admits, or after a hearing is found guilty of, engaging in unlicensed practice may be fined up to $1,000 per day for every day such unlicensed practice occurs after such admission or finding.

(5) The Division will not issue a license or permit to any applicant with unpaid penalties issued pursuant to this paragraph (s).

(6) The Division of Professional Regulation shall notify the Department of Finance of any person who admits or is found to have engaged in the unlicensed practice of a profession and who the Division has reason to believe should have had a business or occupational license to conduct business.

(t) The Division shall, upon receiving a complaint involving potential criminal conduct, immediately report the complaint to appropriate law-enforcement agencies, including the Delaware Department of Justice.

(u) The Division shall subscribe to and maintain a subscription to a national licensing data-bank reporting service in order to receive proactive notification of all disciplinary actions taken against medical licensees in states outside Delaware. Upon receipt of a disciplinary notification concerning an individual who is certified by the Board of Medical Licensure and Discipline, the Division may take the appropriate steps for investigation and, if appropriate, referral to the Department of Justice.

(v) (1) There is hereby created within the Department of State the full-time position of hearing officer. With respect to case decisions arising under Title 29, Chapter 101, subchapter III, the hearing officers shall have:

a. All powers and duties conferred or imposed upon such hearing officers by law or by the Rules of Procedure for any board or commission under Titles 23, 24, and 28;

b. The power to administer oaths and affirmations;

c. The power to hear and determine any prehearing matter pending before any board or commission under Titles 23, 24, and 28. In such circumstances, the hearing officer's decision has the same authority as a decision of the board or commission and is subject to judicial review on the same basis as a decision of the board or commission;

d. The power to conduct hearings, including any evidentiary hearings. The testimony or evidence so taken or received shall have the same force and effect as if taken or received by the board or commission. Upon completion of such hearing or the taking of such testimony and evidence, the hearing officer shall submit to the board or commission findings and recommendations thereon. The findings of fact made by a hearing officer on a complaint are binding upon the board or commission. The board or commission may not consider additional evidence. When the proposed order is submitted to the board or commission, a copy shall be delivered to each of the other parties, who shall have 20 days to submit written exceptions, comments and arguments concerning the conclusions of law and recommended penalty. The board or commission shall make its final decision to affirm or modify the hearing officer's recommended conclusions of law and proposed sanctions based upon the written record.

(2) Hearing officers shall be appointed by the Secretary of State and shall serve for a term of 5 years; provided however, that the initial hearing officers may be appointed to terms shorter than 5 years, but not less than 3 years, to ensure staggered term expirations. Appointees shall be residents of the State, shall be duly admitted to practice law before the Supreme Court of this State and shall not engage in the practice of law nor any business, occupation or employment inconsistent with the expeditious, proper and impartial performance of their duties. Individuals appointed as hearing officers under this section shall take the oath or affirmation prescribed by article XIV, § 1 of the Delaware Constitution before they enter upon the duties of their office.

(3) Reappointments shall be at the discretion of the Secretary of State.

(4) The removal of a hearing officer by the Secretary of State during the term of appointment may be made for just cause. For the purposes of this subsection only, "just cause" shall be defined as including, but not limited to, reduction in force, inefficiency or unsatisfactory performance of duties.

(w) Any board, commission, committee or council listed in subsection (a) of this section shall have the authority to delegate to the Director or the Director's designee the authority to issue permits and licenses administratively using specific criteria agreed upon by each such entity and the Director.

(x) (1) Because professional licensing requirements can be a substantial barrier to those with a criminal history who are attempting to enter and advance in the workforce and a potential limitation on a robust workforce, it is the policy of this State that criminal history records should disqualify applicants for professional licensure under chapters of Title 24 administered by the Division of Professional Regulation only in the limited circumstances set forth in this subsection. The provisions of this subsection apply to all license procedures in Title 24 except those set forth in Chapters 9, 12, 13, 23, 28, 54, and 55.

(2) Conviction of a crime may be grounds for the denial of a license only if the underlying offense is 1 identified by the licensing board as being substantially related to the practice of the occupation or profession.

(3) A licensing board shall grant a waiver to an applicant with a criminal conviction, unless granting a waiver would create an unreasonable risk to public safety. In making the waiver determination, a licensing board shall make an individualized assessment of the applicant, considering all of the following:

a. The nature and seriousness of the offense.

b. The amount of time that has passed since the conviction.

c. The age of the applicant at the time the offense was committed.

d. Evidence relevant to the circumstances of the offense, including any aggravating or mitigating circumstances or social conditions surrounding the commission of the crime.

e. The relationship between public safety, the offense, and the specific tasks and duties for which licensure is required.

f. Evidence of rehabilitation or treatment undertaken by the applicant since the conviction.

(4) The following criminal history records and dispositions may not be considered by a licensing board or the Division of Professional Regulation and may not be grounds for the initial denial of a license unless an exception is specifically set forth in Title 24 for certain licenses:

a. A criminal charge, indictment, or arrest that is no longer pending and did not lead to a criminal conviction.

b. A criminal conviction that has been pardoned, sealed, or expunged.

c. A juvenile adjudication of delinquency.

d. A criminal conviction where more than 10 years have passed since the date of conviction if there have been no other criminal convictions in the intervening time.

(5) An individual convicted of an offense that has been identified by a licensing board as being substantially related to the practice of an occupation or profession may at any time prior to applying for a license, petition the Division of Professional Regulation, in a form prescribed by the Division, for an official determination as to whether the individual's criminal conviction will prevent the individual from receiving a license. The petition must list each of the specific offenses for which the individual was convicted and may include evidence relevant to each of the factors described in paragraph (x)(3) of this section, including personal references or testimonials.

(6) Before a licensing board makes an official determination that a criminal conviction will prevent an individual from receiving a license under paragraph (x)(5) of this section, the licensing board must provide the individual with written notice containing all of the following:

a. An identification of the conviction that is substantially related to the practice of the occupation or profession.

b. A statement of the reason the individual's conviction was determined to pose an unreasonable risk to public safety.

c. Instructions for the applicant or individual seeking a determination to submit evidence that the licensing board will consider before issuing an official determination.

(7) If a licensing board makes an official determination under paragraph (x)(5) of this section that a criminal conviction will not prevent an individual from receiving a license, the licensing board must inform the individual in writing and this determination will be binding on the licensing board at the time of the individual's licensure application, so long as there has been no substantial change in circumstances. If a licensing board makes an official determination under paragraph (x)(5) of this section that a criminal conviction may prevent an individual from receiving a license, the individual's licensure application may not be denied until after a hearing, conducted pursuant to Chapter 101, of Title 29, at which time the entirety of the application will be considered.

(8) For purposes of this subsection "licensing board" includes a commission, council, or any other entity with authority over the licensing procedures in Title 24 that are not specifically excluded under paragraph (x)(1) of this section.

(y) The Division shall support health-care workforce research and planning by collaborating with relevant licensing boards, commissions, and agencies to identify data pertinent to health-care workforce research and planning, and by collecting the identified data from applicants during the licensing or renewal process.

(29 Del. C. 1953, § 8808; 57 Del. Laws, c. 581, § 1; 60 Del. Laws, c. 511, § 64; 60 Del. Laws, c. 716, § 1; 60 Del. Laws, c. 722, § 3; 62 Del. Laws, c. 68, § 114; 62 Del. Laws, c. 86, § 9; 62 Del. Laws, c. 277, § 57; 63 Del. Laws, c. 150, § 2; 63 Del. Laws, c. 195, § 1C; 65 Del. Laws, c. 172, § 3; 65 Del. Laws, c. 355, §§ 1-5; 66 Del. Laws, c. 85, § 124; 66 Del. Laws, c. 105, § 9; 66 Del. Laws, c. 128, § 3; 66 Del. Laws, c. 303, § 261(b); 66 Del. Laws, c. 402, § 1; 67 Del. Laws, c. 144, §§ 6-8; 67 Del. Laws, c. 365, § 1; 67 Del. Laws, c. 369, § 1; 68 Del. Laws, c. 84, § 173(b); 68 Del. Laws, c. 132, § 1; 68 Del. Laws, c. 236, § 2; 68 Del. Laws, c. 290, § 103; 69 Del. Laws, c. 306, § 2; 70 Del. Laws, c. 143, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 196, § 1; 70 Del. Laws, c. 242, § 2; 70 Del. Laws, c. 452, § 11; 70 Del. Laws, c. 582, § 2; 71 Del. Laws, c. 138, § 16; 71 Del. Laws, c. 185, § 2; 71 Del. Laws, c. 216, §§ 55, 89; 71 Del. Laws, c. 298, § 5; 71 Del. Laws, c. 303, § 1; 71 Del. Laws, c. 460, § 5; 72 Del. Laws, c. 265, § 5; 73 Del. Laws, c. 144, § 2; 74 Del. Laws, c. 381, § 7; 75 Del. Laws, c. 88, §§ 5, 6, 17(3); 75 Del. Laws, c. 105, § 8; 75 Del. Laws, c. 215, § 1; 75 Del. Laws, c. 280, § 1; 75 Del. Laws, c. 365, §§ 1-4; 76 Del. Laws, c. 245, § 2; 76 Del. Laws, c. 391, § 13; 76 Del. Laws, c. 413, § 3; 77 Del. Laws, c. 319, §§ 1, 9; 77 Del. Laws, c. 325, §§ 23-26; 77 Del. Laws, c. 463, § 3; 78 Del. Laws, c. 88, § 1; 78 Del. Laws, c. 102, § 1; 78 Del. Laws, c. 170, §§ 2-4; 78 Del. Laws, c. 253, § 1; 78 Del. Laws, c. 265, § 2; 78 Del. Laws, c. 376, § 7; 79 Del. Laws, c. 168, § 1; 79 Del. Laws, c. 329, § 1; 79 Del. Laws, c. 402, § 1; 80 Del. Laws, c. 234, § 28; 80 Del. Laws, c. 260, § 4; 81 Del. Laws, c. 79, § 45; 81 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 129, § 5; 83 Del. Laws, c. 433, § 2; 83 Del. Laws, c. 469, § 3; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 193, § 2; 85 Del. Laws, c. 204, § 2.)

§ 8736. Division of Human and Civil Rights.

(a) The Division of Human and Civil Rights is established, and shall be responsible for the performance of all the administrative, ministerial, fiscal and clerical functions of the Delaware Human and Civil Right Commission. The Director of the Division may appoint and remove employees of the Division as provided by law.

(b) Except as provided in subsection (a) of this section, the membership, remuneration, organization, meetings, powers, duties and functions of the Delaware Human and Civil Rights Commission shall remain as prescribed in Chapters 45 and 46 of Title 6 and Chapter 30 of Title 31.

(29 Del. C. 1953, § 8604; 57 Del. Laws, c. 583, § 1; 68 Del. Laws, c. 149, § 7; 75 Del. Laws, c. 356, §§ 1, 2; 83 Del. Laws, c. 305, § 9; 83 Del. Laws, c. 325, § 135.)

§§ 8737-8743. Diamond State Port Corporation — Definitions; appointment of Executive Director; general powers; no pledge of state credit; no assumption of liability by state; reports and audits; tax status; appropriated funds; employees of the Corporation [Transferred].

Transferred.

Subchapter II

Diamond State Port Corporation

§ 8780. Diamond State Port Corporation — Policy and purpose.

The General Assembly declares the following to be the policy and purpose for creation of the Diamond State Port Corporation:

(1) That the continued economic viability of the Port of Wilmington and its related facilities, and improvements to these facilities and to the commerce involving these facilities, benefits the entire State;

(2) That it is in the best interest of the State to create a corporate entity which shall assume, by agreement, operation of the Port of Wilmington and its related facilities and to assume certain obligations of the City of Wilmington;

(3) That, in that regard, the General Assembly shall, in its discretion, appropriate an amount to fund the initial capital and operating responsibilities of such corporation and shall consider the future appropriations as appropriate;

(4) That this Corporation is intended to have all power and authority necessary to be exercised in accordance with the form of governance expressed herein, to operate the Port of Wilmington and related facilities so as to maintain and expand the business of these facilities.

(70 Del. Laws, c. 210, § 25; 75 Del. Laws, c. 88, § 19.)

§ 8781. Creation of Diamond State Port Corporation.

(a) There shall be established within the Department of State a body corporate and politic, with corporate succession, constituting a public instrumentality of the State, and created for the purpose of exercising essential governmental functions which is to be known as the "Diamond State Port Corporation." This Corporation shall exercise all such functions necessary in connection with the assumption, establishment, acquisition, construction, rehabilitation, improvement, operation and maintenance of the Port of Wilmington and related facilities, including without limitation marine terminal facilities, which shall be deemed and held to be essential governmental functions of this State. The Corporation shall be a membership corporation with the Department of State as sole member and shall have a certificate of incorporation and by-laws consistent with this subchapter. The certificate of incorporation of the Corporation shall provide for approval of the Delaware General Assembly in order to amend the certificate of incorporation, to effect a merger or dissolution of the Corporation or to effect a sale of all or substantially all of the assets of the Corporation.

(b) The Corporation shall be governed by a board of directors consisting of 15 members, all of whom shall be residents of this State. Eight of these directors shall be:

(1) The Secretary of State;

(2) The Secretary of Transportation;

(3) [Repealed.]

(4) The Secretary of Finance;

(5) The Controller General;

(6) The Co-Chairs of the General Assembly's Joint Legislative Committee on the Capital Improvement Program or their designee or designees; and

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

The Governor shall appoint the Chair from among the 5 cabinet directors and the Chair shall serve at the pleasure of the Governor. The Chair shall be subject to the advice and consent of the Senate; however, such consent shall be limited to the additional duties of the Chair of this Corporation and not impact the prior confirmation as Cabinet Secretary. The remaining 7 directors shall be appointed by the Governor with the advice and consent the Senate. These 7 directors shall consist of individuals from the private or public business sectors and organized labor familiar with port and economic development issues. There shall be at least 1 director from each of the 3 counties of the State, at least 1 director from the City of Wilmington and 3 directors who shall fill at-large positions on the Board. Of these 7 directors no more than 4 shall be registered in the same major political party. The terms of the original of these 7 such directors shall be as follows: 2 directors to serve for 1 year; 2 directors to serve for 2 years; and 2 directors to serve for 3 years. Each noncabinet director shall serve a term of 3 years.

(c) As to the 7 noncabinet directors, in the event of the death of a director, permanent disability of a director, resignation of a director or failure of a director to perform their duties, the Governor shall appoint an interim director to serve for a period not to exceed 6 months, unless such interim director shall be confirmed by the Senate, in which case the interim director shall complete the term of the replaced director.

(d) For purposes of conducting business of the Corporation, 6 directors shall constitute a quorum, except as otherwise provided. A vote of 6 members shall be required for action on any matter before the Corporation, except as otherwise provided herein.

(e) The Diamond State Port Corporation shall have an advisory board consisting of 9 members. The 9-member advisory board shall be individuals representing port businesses, labor organizations and individuals with expertise in business, trade, or economic development. The Governor, the President Pro Tempore of the Senate and the Speaker of the House shall each appoint 2 members. The Port of Wilmington Maritime Association and the State Chamber of Commerce shall each appoint 1 member from their respective organizations. The Chair of the Diamond State Port Corporation shall appoint a member from the Diamond State Port Corporation Board. The Chair of the advisory board shall be selected from among the advisory board members by a majority vote. The purpose of the advisory board shall be to advise the Diamond State Board of Directors on strategic planning, capital investment, business development opportunities, and on issues involving the maritime community. The advisory board shall meet at least quarterly. The governing board of the Diamond State Port Corporation shall meet with the advisory board twice a year. Four members of the advisory board will have 2-year terms at advisory board creation and 5 shall have 4-year terms. Every member thereafter shall serve 4 years, with 2 possible consecutive reappointments.

(70 Del. Laws, c. 210, § 25; 73 Del. Laws, c. 95, §§ 50, 51; 74 Del. Laws, c. 308, § 101(d)-(f); 75 Del. Laws, c. 88, § 19; 75 Del. Laws, c. 124, §§ 1-12; 76 Del. Laws, c. 2, § 4; 79 Del. Laws, c. 432, § 1; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 29.)

§ 8782. Definitions.

The following terms and phrases as used in this subchapter shall have the following meanings:

(1) “Corporation” means the Diamond State Port Corporation.

(2) “Facilities” means all works, buildings, structures, appliances and appurtenances necessary and convenient for the proper construction, equipment, operation and maintenance of such facility or facilities or any 1 or more of them.

(3) “Marine terminal facility” means wharves, piers, slips, ferries, anchorages, docks, dry-docks, bulkheads, dock-walls, basins, car-floats, float-bridges, grain or other storage elevators, warehouses, cold or heated storage, tracks, yards, sheds, switches or other buildings, structures or facilities or improvements or appurtenances necessary or convenient to the accommodation of ships or vessels or their cargoes or passengers.

(4) “Person” means any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision or other duly established legal entity.

(5) “Port of Wilmington” means all wharves, piers, slips, ferries, anchorages, docks, dry-docks, bulkheads, dock-walls, basins, car-floats, float-bridges, grain or other storage elevators, warehouses, cold or heated storage, tracks, yards, sheds, switches or other buildings, structures or facilities or improvements or appurtenances operated as of the date of creation of the Corporation by the Wilmington Department of Commerce as the Port of Wilmington and Wilmington Marine Terminal Wharf and such other facilities, structures, improvements or appurtenances as may be developed, constructed or operated on land contiguous to, adjacent to or proximate to the Port of Wilmington as may be acquired by the Corporation or the City of Wilmington for the purpose of port development.

(70 Del. Laws, c. 210, § 25; 75 Del. Laws, c. 88, § 19.)

§ 8783. Executive Director.

An Executive Director shall be selected by a majority vote of the Board. The Executive Director shall be experienced in port or transportation-related management and shall be the principal executive officer of the Corporation. The Executive Director shall be an employee of the Corporation, and the compensation of the Executive Director shall be established by the Board. The Executive Director shall serve at the pleasure of the Board.

(70 Del. Laws, c. 210, § 25; 75 Del. Laws, c. 88, § 19; 85 Del. Laws, c. 64, § 187; 85 Del. Laws, c. 233, § 15.)

§ 8784. General powers [For application of this section, see 84 Del. Laws, c. 297, § 75].

The Corporation shall have upon enactment of this subchapter and upon its creation as provided for herein the powers listed in this section. The Corporation shall be empowered, without limitation and notwithstanding any other laws:

(1) To adopt by-laws to govern the conduct of its affairs and to carry out and discharge its powers, duties and functions and to adopt rules and regulations as appropriate to carry out and discharge its power, duties, and function and to sue and be sued, to enter into contracts and agreements and to plan, finance, develop, construct, purchase, lease, maintain, improve, own, operate or control facilities and such real and personal property as it may deem necessary, convenient or desirable. However, the provisions of this section and any other laws notwithstanding, the Corporation shall not enter into any agreement or transaction to transfer, privatize, or lease all or substantially all of the Port of Wilmington to a single entity, or to a related group of entities unless:

a. The Chair of the Board of the Corporation makes a presentation to the Joint Committee of Capital Improvement discussing the terms of the proposed final agreement or transaction;

b. Following the presentation, the members of the Joint Committee on Capital Improvement explain the terms of the proposed final agreement or transaction to their respective caucuses; and

c. The General Assembly within 30 days of the presentation of the chairperson of the Board of the Corporation to the Joint Committee on Capital Improvement to the General Assembly approves by concurrent resolution the proposed final agreement or transaction in its entirety.

The Delaware General Assembly may reject by concurrent resolution the proposed final agreement or transaction in its entirety in which case the Corporation shall not enter into the proposed final agreement or transaction. Notwithstanding the foregoing, if the General Assembly does not approve or reject the proposed final agreement or transaction in its entirety by concurrent resolution within 30 days of the presentation of the proposed final agreement or transaction to the Joint Committee on Capital Improvement then the proposed final agreement or transaction shall be deemed rejected by the General Assembly and the Corporation shall not enter into the proposed final agreement or transaction. No assignment, of any agreement or transaction that has been approved in accordance with this subparagraph, shall be valid unless such assignment is itself approved in accordance with the procedures set forth herein.

(2) To employ such personal and provide such benefits as necessary to carry out its functions and to retain, by contract, engineers, advisors, legal counsel, and other providers of advice, counsel and services which it deems advisable or necessary in the exercise of its purposes and powers and upon such terms as it deems appropriate.

(3) To exercise all of the power and the authority with respect to operation and development of the Port of Wilmington granted to the City of Wilmington by statute enacted by the General Assembly including, without limitation, 22 Del. Laws, c. 118, § 1, 50 Del. Laws, c. 457, § 3, and 50 Del. Laws, c. 4, § 2, but shall not have the power to tax, to issue bonds or to exercise the power of eminent domain.

(4) To have and exercise any and all powers available to a corporation organized pursuant to Chapter 1 of Title 8, the Delaware General Corporation Law.

(5) To do all acts and things necessary or convenient to carry out its functions of operating and developing the Port of Wilmington and related marine terminal facilities.

(70 Del. Laws, c. 210, § 25; 75 Del. Laws, c. 88, § 19; 79 Del. Laws, c. 4, § 1.)

§ 8785. No pledge of state credit; no assumption of liability by State.

The Corporation shall have no power, except where expressly granted by separate act of the General Assembly, to pledge the credit or to create any debt or liability of the State or of any other agency or of any political subdivision of the State, and the State shall not assume or be deemed to have assumed any debt or liability of the Corporation as the result of any exercise of power by the Corporation.

(70 Del. Laws, c. 210, § 25; 75 Del. Laws, c. 88, § 19.)

§ 8786. Reports and audits.

The Corporation shall make annual reports to the Governor and the General Assembly setting forth in detail its operations and transactions, which shall include annual audits of the books and accounts of the Corporation made by a firm of independent certified public accountants (CPAs) mutually agreed to by the Auditor of Accounts and the Secretary of State, and may make such additional reports from time to time as it desires.

(70 Del. Laws, c. 210, § 25; 75 Del. Laws, c. 88, § 19.)

§ 8787. Tax status.

The powers and functions exercised by the Corporation are and will be in all respects for the benefit of the people of the State, and to this end, the Corporation will be exercising essential governmental functions. To this end, the Corporation shall not be required to pay any taxes or assessments or charges of any character, including, without limitation, real property taxes or head taxes levied upon employers, upon any of the property used by it or leased to third parties in connection with the exercise of its powers, or any income or revenue therefrom, including, without limitation, any profit from any sale or exchange.

(70 Del. Laws, c. 210, § 25; 75 Del. Laws, c. 88, § 19.)

§ 8788. Appropriated funds.

(a) If the Corporation's final budget for any fiscal year includes a proposal for an appropriation from the General Assembly for operating or capital funds, the budget shall be approved by the Chair of the Corporation before its submission to the General Assembly as part of the Governor's proposed capital or operating budget. Any such appropriation shall be designated for and allocated to the Port Account.

(b) Any capital expenditures of any such further appropriated moneys or of moneys derived from any other source, but not including Twenty-First Century Fund moneys, which expenditures within any 1 fiscal year in the aggregate exceed $2 million, shall be made pursuant to a request by a resolution passed by 7 of 9 directors of the Corporation and delivered to the State Budge Director which resolution certifies that the request is in compliance with the Corporation's legislative purpose and function.

(70 Del. Laws, c. 210, § 25; 75 Del. Laws, c. 88, § 19.)

§ 8789. Employees of the Corporation.

(a) All employees of the Corporation shall be exempt from the provisions of Chapter 59 of this title, 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 same group medical risk pool, Workers' Compensation Insurance Fund and the same deferred compensation plans available to state

employees, although the terms of the group medical insurance, including benefits and coverage options provided to such employees, shall be determined by the Corporation and need not be the same as the terms available to state employees. The Corporation shall remit the full cost of such insurance to the State no later than the first day of each calendar month for which such insurance is being provided. The cost of such insurance shall be redetermined annually. The terms of medical insurance and deferred compensation programs available through the state shall not be a subject of collective bargaining. The Corporation shall establish pension plans for its employees who shall, for purposes of participation in any such plans, be governmental employees. Contributions by the Corporation and/or its employees pursuant to such plans shall be deposited into a fund established for these purposes. Benefits, fees and expenses authorized to be paid pursuant to such plans shall be paid from said fund. The assets of such fund may be commingled for investment purposes with the assets of the fund created by § 5541 of this title, referred to as the State Employees' Retirement Fund. The fund established by the Corporation shall at all times be maintained separately for purposes of accounting and expenses. No assets of the State Employees' Retirement Fund shall be used to pay benefits owed to employees of the Corporation. The Corporation's pension plans shall be administered by the Board of Pension Trustees established by § 8308 of this title, upon such terms and conditions as the Corporation may negotiate with the Board of Pension Trustees.

(b) The Corporation shall be a public employer, as provided in § 1302(n) of Title 19, and the Corporation shall be subject to the Public Employment Relations Act, Chapter 13 of Title 19.

(70 Del. Laws, c. 210, § 25; 70 Del. Laws, c. 290, § 12; 71 Del. Laws, c. 150, § 29; 75 Del. Laws, c. 88, § 19.)

Subchapter III

Riverfront Development Corporation of Delaware.

(81 Del. Laws, c. 448, § 1.)

§ 8791. Creation; purpose.

(a) The Riverfront Development Corporation is created by 70 Del. Laws, c. 210.

(b) The Riverfront Development Corporation's purpose is to promote the common good of the citizens of this State through the planning, development, and management of programs and projects intended to foster, encourage, and promote recreational, residential, commercial, and industrial development and redevelopment along or in proximity to the Brandywine and Christina Rivers, as recommended in the report of the Governor's Task Force on the Future of the Brandywine and Christina Rivers, "A Vision for the Rivers" (1994).

(81 Del. Laws, c. 448, § 1.)

§ 8792. Board of Directors of the Riverfront Development Corporation of Delaware; membership; chair; quorum.

(a) The Board of Directors ("Board") of the Riverfront Development Corporation consists of 21 directors, as follows:

(1) The following 8 directors who serve by virtue of their position:

a. The Governor, or a designee appointed by the Governor.

b. The President Pro Tempore of the Senate, or a designee appointed by the Pro Tempore.

c. The Speaker of the House of Representatives, or a designee appointed by the Speaker.

d. The Senate Co-Chair of the Joint Legislative Committee on Capital Improvement, or a designee appointed by the Senate Co-Chair.

e. The House of Representatives Co-Chair of the Joint Legislative Committee on Capital Improvement, or a designee appointed by the House of Representatives Co-Chair.

f. The New Castle County Executive.

g. The Mayor of the City of Wilmington.

h. The President of the City of Wilmington Council.

(2) Eight directors appointed by the Governor. The directors appointed by the Governor must have experience in economic development. The Governor shall appoint 1 of the directors appointed by the Governor to serve as Chair of the Board.

(3) One director appointed by the President Pro Tempore of the Senate.

(4) One director appointed by the Speaker of the House of Representatives.

(5) One director appointed by the Mayor of the City of Wilmington. The director appointed by the Mayor must be selected from among private citizens who are active in the nonprofit community or residential organizations in the City of Wilmington.

(6) Two directors elected by a majority of the Board.

(b) An appointed director of the Board serves at the pleasure of the appointing authority.

(c) All of the following apply to directors elected by the Board under paragraph (a)(6) of this section:

(1) A director who has served for a full term of 4 years may be reelected for only 1 additional term.

(2) A director who misses 3 consecutive meetings may be assumed to have resigned. The Board may accept a resignation and elect a new director.

(3) A director may be removed by the Board for misfeasance, nonfeasance, or malfeasance.

(d) If the Board establishes a community advisory board, the director appointed by the Mayor of the City of Wilmington must be the chair of the community advisory board.

(e) A majority of the Board constitutes a quorum.

(81 Del. Laws, c. 448, § 1.)

Part VIII
Departments of Government
Chapter 87A
Economic Development
Subchapter I
General Provisions

§ 8701A. Legislative findings.

(a) The General Assembly finds and declares that the good order of the State depends upon the steady employment in useful occupations of the citizens of the State. Such steady and useful employment can be made available by encouraging the economic development of the State through the inducement of a full range of commercial, industrial, agricultural and other enterprises to locate, remain and expand in the State. Uncontrolled industrialization and expansion, however, may contribute to possible dangers to the public health and welfare through the pollution of the air, water and soil of the State. The reduction, abatement and prevention of the pollution of the State's environment and the protection of its natural resources are important concerns to be considered in the process of encouraging the economic development of the State.

(b) The General Assembly further finds that promotion of the State as a destination for tourists and other travelers will help to enhance the State's economy and provide employment and recreational opportunities for citizens of the State.

(c) The General Assembly further finds that promotion and assistance to small and minority-owned businesses is vital to the overall balance between large and small firms, and that it is in the State's interest to insure a strong and diversified business community.

(d) The General Assembly further finds and declares that the creation of a Public/Private Partnership to attract large employers, innovative enterprises and international business opportunities while transferring duties formerly performed by the Delaware Economic Development Office to a division within the Department of State is in the best interest of the State to foster development in an increasingly competitive economy.

(63 Del. Laws, c. 189, § 2; 81 Del. Laws, c. 49, § 1.)

§ 8702A. Definitions.

As used in this chapter:

(1) "Council" means the Council on Development Finance created by § 8707A of this title.

(2) "Director" means the Director of the Division of Small Business.

(3) "Division" means the Division of Small Business.

(4) "Plan" means the Comprehensive State Plan for Economic Development created by § 8705A of this title.

(5) "Public/Private Partnership" means a nonprofit corporation not established by the General Assembly consisting of business and community leaders and public officials formed to enhance the State's ability to attract, grow and retain businesses; facilitate the development of a stronger entrepreneurial and innovative economic system within the State; coordinate with the Division of Small Business; and, support private employers within the State in identifying, recruiting and developing talent for the operation of their business within the State.

(6) "Secretary" means the Secretary of State.

(7) "State" means the State of Delaware.

(63 Del. Laws, c. 189, § 2; 69 Del. Laws, c. 458, § 1; 80 Del. Laws, c. 93, § 1; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 1; 84 Del. Laws, c. 115, § 1.)

§ 8703A. Division of Small Business — Created; purposes.

(a) There is hereby created a division of economic development which shall be known as the Division of Small Business within the Department of State.

(b) The Division shall be responsible to the Secretary.

(c) The Division shall serve the Secretary in all general and economic development matters, and it shall function, as required, as an advisory, coordinating and implementing agency:

(1) To harmonize its activities with similar activities of other departments, boards, commissions, agencies or instrumentalities of federal, state, county or municipal government;

(2) To render, as necessary, assistance to all units of government and to private enterprise;

(3) To stimulate public interest and participation in the orderly growth and development of the State; and

(4) To insure that all private and public development activities are carried out in conformity with state law.

(63 Del. Laws, c. 189, § 2; 69 Del. Laws, c. 458, § 1; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 2.)

§ 8704A. Division of Small Business — Appointment, qualifications and compensation of Director; Acting Director.

(a) The Division shall be headed by the Director. The Director shall be appointed by the Secretary, and shall serve at the pleasure of the Secretary. The Director shall be qualified by training and experience to perform the duties of the position, and preference shall be given to a resident of this State, provided the resident is acceptable and equally qualified. The Director shall be paid an annual salary established by the Secretary within the limitation of the funds appropriated therefor.

(b) In the event of the death, resignation, temporary incapacity or removal of the Director, and prior to the appointment of a successor, the Secretary may appoint any qualified employee of the Division or any of its subdivisions to serve as Acting Director. The Director may, during an absence from the State, appoint any qualified employee of the Division or any of its subdivisions to serve as Acting Director during such absence. In either case, the Acting Director shall have all the powers and shall perform all the duties and functions of the Director during the Director's absence or incapacity or until a successor is duly appointed and qualified.

(63 Del. Laws, c. 189, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 3.)

§ 8705A. Division of Small Business — Powers, duties, and functions of Director.

The Director shall have the following powers, duties, and functions:

(1) To supervise, direct and account for the administration and operation of the Division, its subdivisions, offices, functions and employees.

(2) To serve as Chairperson of the Delaware Economic Development Authority and to supervise the administration of the Authority and to perform all duties heretofore vested in the Director of the Delaware Economic Development Office and the Secretary of the Department of Community Affairs and Economic Development as shall be related to the Authority.

(3) To appoint and remove the staff of the Division in accordance with this chapter and such other limitations as may be imposed by law.

(4) To advise the Secretary and other officials of the state government on all matters of economic development and to consult with them on matters of economic development affecting the duties and responsibilities of their offices.

(5) To have access (or to designate staff members who shall have access) to information, reports and data which relate to economic development which are in the possession of departments, boards, commissions, agencies or instrumentalities of the State or in the possession of county, municipal or other local agencies and instrumentalities.

(6) To hold hearings on matters of general economic development or such other matters as may be required by law after notice thereof to interested parties.

(7) To attend and participate in meetings of federal, county or municipal economic development bodies, interstate agencies and other entities, whether public or private. The Director may cooperate with such instrumentalities in matters affecting the duties and responsibilities of the Division.

(8) To establish, consolidate or abolish such subdivisions within the Division or transfer or combine the powers, duties and functions of the subdivisions within the Division as the Director may deem necessary, and subject to the approval of the Secretary, provided that all powers, duties and functions required by law shall be provided for and maintained.

(9) To make and enter into any and all contracts, agreements or stipulations, to retain, employ and contract for the services of private and public consultants, professional, research and technical personnel, including the temporary exchange of personnel from all public or private entities, and to procure by contract consulting, research, professional, technical and other services, whenever they shall be deemed by the Director, subject to the approval of the Secretary, necessary or desirable in the performance of the functions of the Division and whenever funds shall be available for such purpose. Legal services shall be procured pursuant to Chapter 25 of this title.

(10) To delegate any of the Director's powers, duties or functions to a member of the staff authorized by this subchapter, except the power to remove employees of the Division or to fix their compensation.

(11) To establish and promulgate such rules and regulations governing the administration and operation of the Division as may be deemed necessary by the Director and which are not inconsistent with the laws of this State.

(12) To occupy and/or maintain such facilities as may be required for the effective and efficient operation of the Division.

(13) To adopt an official seal or seals for the Division, subject to the approval of the Secretary.

(14) To exercise all other powers necessary and proper for the discharge of the Director's duties and such other powers as may be delegated by the Secretary, not inconsistent with state law.

(15) [Repealed.]

(16) To develop a 5-year Comprehensive State Plan for Economic Development.

a. The Plan shall include all of the following:

1. Description of the Division's vision, goals, objectives, and strategies.

2. Identification of business sectors, including those sectors which have potential growth in this State's economy and global business image.

3. Strategies to encourage the creation and expansion of businesses in this State and the relocation of businesses to this State.

4. Potential partners for the implementation of the strategy required in paragraph (16)a.3. of this section, including federal and local governments, local and regional organizations for economic development growth, chambers of commerce, private businesses and investors, and nonprofit entities.

5. Strategies for talent development necessary to encourage economic development growth in this State, taking into consideration factors such as this State's education and training opportunities and available workforce.

6. Strategies to engage women, veterans, and minorities in developing businesses.

7. Strategies to improve and develop tourism.

8. An analysis of current and projected economic indicators, which shall be completed through the Division's coordination with the appropriate state agencies and shall include:

A. Unemployment rate.

B. Average annual wage.

C. Gross domestic product.

D. Number of jobs created.

E. Number of jobs retained.

9. An analysis of the return on investment produced through the Strategic Fund.

b. At least 2 months prior to submitting the Plan as required in this chapter, the Division shall hold a public meeting to allow public input regarding the Plan. The meeting shall be held in all 3 counties in this State. The Division may hold separate meetings in each county or hold 1 meeting and, through the use of technology, provide the public with access to attend and participate in the meeting simultaneously from each of the 3 counties.

c. The Plan shall be submitted every 5 years to the Governor, President Pro Tempore of the Senate, Speaker of the House of Representatives, the Secretary, and, for public distribution, to the Director and the Librarian of the Division of Legislative Services, and the Director of Public Archives. The Division shall also publish the Plan on the Division's public website. The initial Plan is due December 1, 2020.

(63 Del. Laws, c. 189, § 2; 66 Del. Laws, c. 190, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 357, § 2; 80 Del. Laws, c. 93, § 2; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 4; 84 Del. Laws, c. 255, § 54.)

§ 8706A. Responsibilities of the Public/Private Partnership and the Division.

(a) The Public/Private Partnership shall be governed by a board of directors comprised of no less than 15 members, and shall to be composed of the following:

(1) The Governor, who shall serve as co-chair.

(2) One member of the majority party and 1 member of the minority party of the Senate appointed by the President Pro Tempore.

(3) One member of the majority party and 1 member of the minority party of the House of Representatives appointed by the Speaker of the House.

(4) At least 10 additional members appointed by the Governor. Such members shall collectively represent expertise on various economic development topics, including land use planning, finance, entrepreneurial investment and incubation, workforce development, labor, higher education, and regulatory compliance. Six of these 10 members shall be chosen from a list of recommended candidates provided by the Delaware State Chamber of Commerce and the Delaware Business Roundtable. One of the 6 individuals chosen from this list of recommendations shall be appointed by the Governor to serve as co-chair. The Governor may appoint additional members as necessary.

(b) No financial contribution to the Public/Private Partnership shall be required as a condition of or in connection with an appointment to the board of directors.

(c) The Public/Private Partnership formed pursuant to § 8702A(5) of this title shall have the following responsibilities:

(1) Work with the Division to assist early stage technology enterprises and entrepreneurs to apply for grants, loans, bonds or other financial incentives.

(2) Develop the workforce and establish recruiting processes to fill talent gaps in a changing market and continually supply trained workers for an innovative, technology-based economy.

(3) Recruit innovative and high-technology employers.

(4) Expand international business opportunities.

(5) Develop marketing strategies for long term growth.

(6) Provide guidance to start-up businesses and early stage ventures, focusing on high-growth firms and industries.

(7) Conduct research on trends in industry and opportunities that may impact Delaware's economy.

(8) Coordinate such other activities to encourage the economic development of the State through commercial, industrial, agricultural and other enterprises to locate, remain and expand in the State.

(d) The Public/Private Partnership shall submit the following annual reports, which shall be subject to Chapter 100 of this title, to the Governor and the General Assembly on or before June 30 each year:

(1) Internal Revenue Service Form 990 tax returns.

(2) Audited financial reports.

(3) The organization's conflict, audit and expense policies.

(e) The Public/Private Partnership shall make available for inspection corporate documents and meeting minutes upon request by the Governor or the General Assembly.

(f) Any director of the Public/Private Partnership who is not a "public officer" as defined by § 5812(n)(1) of this title shall submit, on or before June 30 each year, to the General Assembly and the Governor the financial information listed in 5813(a)(1)-(5) of this title in a form substantially similar to that used by public officers to disclose financial information to the Public Integrity Commission; provided however, that any financial information submitted by such directors shall not constitute public records subject to Chapter 100 of this title.

(g) The conflict of interest policy for the Public/Private Partnership shall include the following provisions:

(1) All members, directors, officers, or members of any committee with powers delegated to it by the board of directors of the Public/Private Partnership shall have a duty to disclose any actual or possible conflict of interest or financial interest related to any proposed transaction, contract, or arrangement under consideration by the Public/Private Partnership.

(2) Procedures for addressing a conflict of interest, including consideration of alternatives to the proposed transaction, contract, or arrangement that do not present a conflict of interest.

(3) Procedures to determine whether a violation of the conflict of interest policy has occurred.

(4) A clear statement that any person found to have violated the conflict of interest policy shall be removed from that person's position.

(5) Provision for periodic review of the operations of the Public/Private Partnership to ensure compliance with the conflict of interest policy and that compensation arrangements and benefits are reasonable and the result of arm's length bargaining.

(h) The Division shall:

(1) Be responsible for attracting new investors and businesses to the State, promoting the expansion of existing industry, assisting small and minority-owned businesses, promoting and developing tourism and creating new and improved employment opportunities for all citizens of the State at every economic level, provided that such development is carried out with a view to preserving existing agriculture, commercial, industrial and recreational opportunities to be had within the State and conserving the natural resources and wildlife of the State.

(2) Act as the Governor's principal staff agency in economic development matters; make studies and investigations, insofar as they may be relevant to the State's economy, of the resources of the State and of existing and emerging problems of agriculture, industry, commerce, transportation and other matters affecting the development of the State and, in making such studies, seek the cooperation and collaboration of the appropriate departments, boards, commissions, agencies and instrumentalities of federal, state and local government, educational institutions and research organizations, whether public or private, and of civic groups and private persons and organizations; render advice and act as the Governor's designated agency in the execution of such matters relating to its powers as the Governor may request.

(3) Provide information to, and cooperate with, the General Assembly or any of its committees in connection with studies relevant to the overall development of the State's economy.

(4) Cooperate with, and within the limitations of its appropriations, provide requested assistance to county or local governments in the State, or any of their instrumentalities; and cooperate with and assist departments and other agencies or instrumentalities of federal, state and local government, as well as regional, metropolitan, county, municipal or other local or private agencies in the execution of their functions with a view to harmonizing their development activities with the overall development plans and policies of the State. Whenever cooperation or assistance under this subdivision includes the rendering of technical services, such services may be rendered free or in accordance with an agreement for reimbursement.

(5) Provide information to officials of departments, boards, commissions, agencies and instrumentalities of state and local government, to civic and other groups, and to the public at large in order to foster public awareness and understanding of the objectives of a strong state economy and to stimulate public interest and participation in the orderly and integrated development of the State.

(6) Accept and receive, in furtherance of its function, funds, grants and services from the federal government or its agencies, from departments, agencies and instrumentalities of state or local government or from private and civic sources.

(7) Collect, compile and audit the information and data necessary to discharge its principal functions. Where such data cannot be secured from federal, state or local agencies or private organizations, the Division may engage in the required research. Before publishing any historical information, the information shall be reviewed and approved by the Department of State of the State.

(8) Perform and be responsible for the performance of all powers, duties and functions heretofore vested in the Delaware Office of Economic Development immediately prior to July 1, 2017, and the powers, duties and functions heretofore vested in the Division of Economic Development of the Department of Community Affairs and Economic Development immediately prior to November 1, 1981.

(9) Exercise all other powers necessary and proper for the discharge of its duties.

(i) The Public/Private Partnership and the Division will coordinate on proposed economic development projects for consideration by the Council, as necessary.

(63 Del. Laws, c. 189, § 2; 69 Del. Laws, c. 10, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1; 84 Del. Laws, c. 115, § 1.)

§ 8707A. Council on Development Finance.

(a) The Council on Development Finance is hereby established and shall serve in an advisory capacity to the Director and shall consider matters relating to the financing and modernization of agricultural, industrial, commercial, emerging technologies and other facilities in the State and such other matters as may be referred to it by the Governor, or by the Director. The Council may study research, plan and advise the Director and the Governor on matters relating to economic development and strategic opportunities. The Council may consider projects and initiatives proposed by a Public/Private Partnership and make recommendations to the Division.

(b) (1) The Office of Management and Budget and the Office of the Controller General shall appoint 1 designee from each of their respective offices to support the staff of the Council. Upon request of the Council, the designees shall assist the Council by providing relevant analysis and research. The designees must be available to attend all Council meetings.

(2) The Chair of the Council, with prior notice to the Controller General, may engage professional contractual services when necessary to provide analysis and research for specific applications recommended to the Council by the Division of Small Business. The Office of the Controller General shall administer contracts for such services.

(c) The Council shall be composed of 9 members who are Delaware residents. The Governor shall appoint 7 members: 2 members from New Castle County, 1 member from Kent County, 1 member from Sussex County and 3 at-large members. The President Pro Tempore of the state Senate shall appoint 1 member of the Senate and the Speaker of the state House of Representatives shall appoint 1 member of the House of Representatives. Council members shall serve for 3-year terms and may be reappointed. Council members appointed after July 1, 2018, may be reappointed for only 1 additional 3-year term.

(d) At least 3, but no more than 4 members of the Council shall be affiliated with 1 of the major political parties and at least 2, but no more than 3 of the members shall be affiliated with the other major political party; provided however, that there shall be more than a bare majority representation of 1 major political party over the other major political party. Any person who declines to announce a political affiliation shall also be eligible for appointment as a member of the Council.

(e) In making appointments to the Council, the Governor shall appoint professionals possessing 1 or more of the following designations: a member of the Bar of the Supreme Court of the State, an officer of a bank or trust company located in the State, an expert in private equity or a venture capital expert.

(f) Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident of their duties as members in accordance with state law.

(g) Chairperson of the Council shall be appointed by the Governor. Such Chairperson shall serve at the pleasure of the Governor.

(h) Any appointment, pursuant to this section, to replace a member whose position becomes vacant prior to the expiration of the member's term shall be filled only for the remainder of that term. However, a person who is appointed to fill such a vacancy may be reappointed. Any person appointed to fill such a vacancy after July 1, 2018, may be reappointed for only 2, 3-year terms.

(i) The Council shall conduct its business only when a quorum is present. A quorum shall consist of 5 of the 9 members being present in person, by telephone, or by videoconference. The consent of a majority of the quorum is required for approval on any vote. Upon written request from the Council, the Governor may declare a vacancy for any member who is absent from 4 consecutive Council meetings. The Council Chair should schedule meetings so that they are centrally located and geographically balanced in number.

(63 Del. Laws, c. 189, § 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 308, § 37; 76 Del. Laws, c. 79, § 56; 76 Del. Laws, c. 361, § 1, 2; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 5.)

§ 8708A. Tourism Advisory Board [Repealed].

(63 Del. Laws, c. 189, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1; repealed by 84 Del. Laws, c. 115, § 2, effective July 25, 2023.)

§ 8709A. Division of Small Business — Staff.

The Director and all employees of the Division shall be exempt from Chapter 59 of this title.

(63 Del. Laws, c. 189, § 2; 65 Del. Laws, c. 225, § 1; 69 Del. Laws, c. 458, § 1; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 6.)

§ 8710A. Division of Small Business — Collection and distribution of information; sale of publications.

(a) The Division may collect and disseminate any data or other information including, but not limited to, the population, demographics and economy of the State. The Division shall take such steps as the Director deems appropriate to emphasize the investment, business, employment and recreational opportunities and advantages of the State, and the potential for future development within the State.

(b) The Division may elect to publish any information on its own or to use any of the accepted advertising media to carry out the purposes of this chapter. The Division may also distribute information and materials donated to, or purchased by, the Division, from private or public agencies, organizations, corporations or individuals.

(c) The Director may offer such publications and other materials described in this chapter for sale if deemed by the Director to be in the best interests of the State, provided that the price so charged for the sale of said publications and materials shall not exceed their original cost with the addition of a charge for postage and handling, if applicable.

(d) Such moneys as received by the Division from the sale of publications and materials shall be deposited with the Treasurer of the State in a special fund of the State upon which the Director may draw to replace such publications and materials offered for sale. Unexpended funds remaining in the special fund at the close of the fiscal year, and not previously expended or encumbered, shall not revert but shall remain on deposit in such special fund for future use pursuant to this section.

(63 Del. Laws, c. 189, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 7.)

§ 8711A. Site Readiness Fund.

(a) The Site Readiness Fund ("Fund") is established to provide economic assistance for renovation, construction, or other improvements to infrastructure to attract new businesses to this State, or expand existing businesses in this State, when such an economic development opportunity would create a significant number of direct, quality, full-time jobs within the State.

(b) The purpose of the Fund is to cultivate a resource of commercial, industrial sites that are readily available to new businesses, established businesses that are considering moving to the State, or existing businesses within the State that need additional sites to remain or expand within the State. To expand and sustain economic growth within the State, it is critical to consistently maintain readily available commercial, industrial sites to attract new business, or expand existing businesses. Without a stable inventory of sites that are ready or able to be developed in a timely manner for business use, the delay in converting undeveloped sites capable of conducting business in compliance with applicable regulations and ordinances may cause the State to lose significant business opportunities that would benefit the economic well-being of its citizens.

(c) The applicant must meet all of the following criteria for projects to be eligible for funding under this section:

(1) Be sponsored by at least 1 public entity. For purposes of this section, a public entity is ether a county or a municipality. The sponsoring public entity must identify any regulations, zoning requirements, or local ordinances that apply to the project.

(2) Establish that the proposed improvement will create a significant number of direct, quality, full-time jobs.

(3) Demonstrate financial stability.

(4) Serve a public purpose.

(d) In addition to the criteria established in subsection (c) of this section, an applicant to the Fund must establish all of the following business organizational requirements:

(1) Validly exist as a corporation, public entity, limited liability company, or other regulated entity.

(2) Be in good standing under the laws of this State, duly qualified to do business.

(3) Be in good standing in each other jurisdiction in which its conduct of business requires such qualification.

(4) Possess any business and professional licenses required under Titles 24 and 30.

(e) Applications to the Fund shall be administered by the Division of Small Business within the Department of State in accordance with 1 Del. Admin. Code § 402 that governs the administration of projects under the Delaware Strategic Fund.

(f) The Council on Development Finance shall review projects and make recommendations to the Director of the Division of Small Business, as chairperson of the Delaware Economic Development Authority, pursuant to § 8707A of this title.

(g) The Director may consider recommendations of the Council made under subsection (f) of this section. The Director is authorized to determine whether the applicant and the improvements are eligible under the requirements of this section.

(h) The Director is further authorized to approve projects and make grants, loans, or other economic assistance from the Fund to qualified applicants.

(i) The administration of funding approved under this section shall be administered pursuant to the requirements of this chapter and 1 Del. Admin. Code § 402.

(j) To ensure that Fund assets are expended in the public interest, the Director may require recapture provisions in any contract agreements for grants, loans, or other economic assistance from the Fund to recover for any substantial or complete cessation of operations by the applicant, or failure to reach any employment or other project benchmarks. The Director may impose the recapture provisions for the number of years necessary to realize the purpose of the Fund.

(k) The Director may require the applicant to report financial statements, progress reports on the status of the project, including, the number of direct, quality, full-time jobs created or saved as a result of the project, any economic impact of the funding, and any other information required to assess the project. The reporting period for each project is within the discretion of the Director to determine that the purpose of the Fund is realized.

(83 Del. Laws, c. 86, § 1.)

§ 8712A. Assistance for tourism and business promotion.

(a) The Director is hereby authorized and directed to establish a special fund of the State to encourage instrumentalities and political subdivisions of the State and private and public nonprofit associations to attract new investors and businesses to the State, and to promote the State as a destination for tourists and other travelers.

(b) The Director may contract with any instrumentality or political subdivision of the State, and with any private or public nonprofit association, to accomplish any work authorized by this chapter, provided that the said instrumentality or political subdivision of the State, private or public nonprofit association, contributes an equal share to the cost of the project.

(c) The Director shall establish such rules and regulations as are necessary to determine the eligibility of any instrumentality or political subdivision, private or public nonprofit association for participation in contracts authorized by this section. A private or public nonprofit association shall submit a letter of exemption from the Internal Revenue Service as proof of nonprofit status.

(d) The Director may, if the Director deems it necessary, limit the amount of money granted to any single project funded under this section. Expenditures from this special fund shall be in accordance with state law and shall be limited to appropriations provided therefor. Moneys on deposit in this special fund which are unexpended or unencumbered shall not revert at the end of each fiscal year.

(63 Del. Laws, c. 189, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1.)

§ 8713A. Assumption of powers of Division.

The Division shall have the power to perform and shall be responsible for the performance of all powers, duties and functions heretofore vested by law in the Division of Economic Development of the Department of Community Affairs and Economic Development immediately prior to November 1, 1981, and the Delaware Economic Development Office prior to July 1, 2017, and which are not otherwise specifically transferred by this chapter.

(63 Del. Laws, c. 189, § 2; 81 Del. Laws, c. 49, § 1.)

§ 8714A. Rights of appeals continued.

Any and all rights of appeal now existing by law with respect to any act or acts constituting the exercise of any function or functions transferred by this chapter to the Division, to any subdivision thereof or to any council or board created by this chapter shall continue to exist with respect to such act or acts as hereafter performed by the Division, by the subdivision, by the council or by the board to which such function is transferred by this chapter, and each such appeal shall be perfected in the manner heretofore provided by law.

(63 Del. Laws, c. 189, § 2; 81 Del. Laws, c. 49, § 1.)

§ 8715A. Transition provisions.

(a) All property, including all books, records, papers, maps, charts, plans, equipment and other materials owned by or in the possession of any agency of the State and used in connection with a function transferred by law to the Delaware Economic Development Office on November 1, 1981, and all property, including all books, records, papers, maps, charts, plans, equipment and other materials owned by or in the possession of any agency of the State and used in connection with a function transferred by this chapter to the Division on July 1, 2017, shall be delivered into the custody of the Division. All investigations, petitions, hearings and legal proceedings pending before, or instituted by, any agency from which functions are transferred by this chapter and which are not concluded prior to June 30, 2017, shall continue unabated and remain in full force and effect, notwithstanding the passage of this chapter and, where necessary, may be completed before, by or in the name of the Division. All orders, rules and regulations made by any agency from which functions are transferred by this chapter and which govern such functions, and which are in effect upon June 30, 2017, shall remain in full force and effect until revoked or modified in accordance with law by the Division. All contracts and obligations of any agency made or undertaken in the performance of a function transferred by law to the Delaware Economic Development Office and being in force on November 1, 1981, and all contracts and obligations of any agency made or undertaken in the performance of a function transferred by this chapter to the Division, and being in force on June 30, 2017, shall, notwithstanding this chapter, remain in full force and effect and be performed by the Division. All real estate owned by any agency from whom functions are transferred by this chapter to the Division, shall become property of the Division as of July 1, 2017.

(b) All definitions and references to any commission, board, department, council or agency which appear in any other act or law shall, to the extent that they are consistent with this chapter and in connection with a function transferred by this chapter to the Division or to any subdivision thereof or to any council or board created by this chapter, be construed as referring and relating to the Division, to the appropriate subdivision thereof or to the council or board as created and established by this chapter.

(c) All definitions and references to any director, commissioner, executive secretary, commission, board or council member or other similar person which appear in any other act or law shall, to the extent that they are consistent with this chapter and in connection with a function transferred by this chapter to the Division or to any subdivision thereof or to any council or board created by this chapter, be construed as referring to or relating to the equivalent person or persons and their powers, duties and functions as established and created in this chapter.

(63 Del. Laws, c. 189, § 2; 81 Del. Laws, c. 49, § 1.)

§ 8716A. Reports.

(a) The Division shall submit 1 annual report on or before December 1 of each year that includes all of the following information:

(1) The status of the Division's efforts to meet the vision, goals, objectives, strategies, and economic indicators included in its comprehensive economic development planning.

(2) A summary of the work of the Council on Development Finance.

(3) The uses of the Delaware Strategic Fund for the previous year. The Director shall notify the Co-Chairs of the Joint Legislative Committee on the Capital Improvement Program on the remaining Strategic Fund balance available for commitment.

(4) The status of assistance for small business, including the Small Business Technology Transfer Program and the Small Business Innovative Research Program.

(5) The programs and funding under the Delaware Economic Development Training Act authorized by subchapter VIII of this chapter, including an evaluation of the performance of each program, a summary of the public moneys expended and an analysis of the participants in the programs, a report on the number of minority and economically disadvantaged individuals included in the programs.

(6) The names of all certified sponsor and new business firms, the total amount of tax credits awarded, and the number of jobs created under the new business certification tax program.

(b) The Division shall notify the Co-Chairs of the Joint Legislative Committee on the Capital Improvement Program of its intention to make a commitment of funds from the Strategic Fund before the commitment being made to the intended recipient of the funds.

(c) The Division shall also submit special reports upon the request of the Governor, the General Assembly, the Secretary, the Council on Development Finance, or at the discretion of the Director of those aspects of the Division's work which may be deemed of current interest. Copies of all reports shall be made available for general distribution or sale and published on the Division's public website.

(d) In preparing any reports on its operations, the Division may seek the advice of outside experts in the fields of tourist and travel promotion or general economic development.

(e) The Division shall submit all reports, when due, to the Governor, President Pro Tempore of the Senate, Speaker of the House of Representatives, the Secretary, and, for public distribution, to the Director and the Librarian of the Division of Legislative Services, and the Director of Public Archives. The Division shall also publish the reports on the Division's public website.

(63 Del. Laws, c. 189, § 2; 80 Del. Laws, c. 93, § 2; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 8; 84 Del. Laws, c. 115, § 3; 84 Del. Laws, c. 255, § 55.)

§ 8717A. Misnomer of Division in donation.

Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Division if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey thereby to the Division, the estate or interest therein expressed or described.

(63 Del. Laws, c. 189, § 2; 81 Del. Laws, c. 49, § 1.)

§ 8718A. Budget.

The Director shall prepare a proposed budget for the operation of the Division to be submitted along with the proposal for the Department of State for the consideration of the Secretary, Governor and the General Assembly. The budget may be presented in any manner consistent with guidelines provided by the Director of the Office of Management and Budget; provided, however, that at least 1 budget unit, or successor budgetary component, shall detail the proposed budget for the support of tourism. The Division shall be operated within the limitation of the annual appropriation and any other funds appropriated by the General Assembly. Special funds may be used in accordance with approved programs, grants or appropriations.

(63 Del. Laws, c. 189, § 2; 75 Del. Laws, c. 88, § 21(13); 81 Del. Laws, c. 49, § 1.)

§ 8719A. Supremacy.

All other laws or parts of laws now in effect inconsistent with this chapter are hereby repealed, superseded, modified or amended so far as necessary to conform to, and give full force and effect to, this chapter.

(63 Del. Laws, c. 189, § 2; 81 Del. Laws, c. 49, § 1.)

Subchapter II

Delaware Strategic Fund

§ 8727A. Findings and purpose; creation of the Fund.

(a) The General Assembly finds that Delaware's development finance programs are necessary to compete for new and existing businesses. Furthermore, the General Assembly finds the number and limited previous funding of finance programs of the Delaware Economic Development Office do not maximize efficiency of administration by the State or the business community. It is the intent of the General Assembly to solve this problem by consolidating the existing development finance programs of the Delaware Economic Development Office into a Delaware Strategic Fund.

(b) A special fund to be known as the "Delaware Strategic Fund" ("Fund") shall be created.

(1) The Fund shall initially consist of $2,250,000 as authorized in 69 Del. Laws, c. 77 to the Delaware Economic Development Office on behalf of the Delaware Economic Development Authority ("Authority") and funds subsequently appropriated to the Authority or the Division. Funds appropriated pursuant to this or subsequent acts are to be used for Fund activities as defined in the following paragraphs. The Fund shall also consist of present balances and future payments of moneys transferred from discontinued programs.

(2) The Fund shall be invested by the State Treasurer in securities consistent with the policies established by the Cash Management Policy Board. All moneys generated by the Fund shall be deposited in the Fund.

(69 Del. Laws, c. 386, § 26; 69 Del. Laws, c. 458, § 1; 81 Del. Laws, c. 49, § 1.)

§ 8728A. Fund purposes.

(a) Moneys appropriated to the Fund may be loaned, granted or used in other financing mechanisms by the Authority within the State. The Fund may be used for the following purposes:

(1) Retention and expansion of existing firms;

(2) Recruitment of new firms;

(3) Formation of new businesses; and

(4) To the extent provided in subsection (c) of this section, and for 1 or more of the purposes set forth in paragraphs (a)(1) through (3) of this section, environmental assessment and remediation of certified brownfields and subchapter III of this chapter regarding the Delaware Technical Innovative Program.

For purposes other than stated above, the Co-Chairs of the Joint Legislative Committee on the Capital Improvement Program, Director of the Office of Management and Budget and Controller General shall be informed prior to any action by the Division.

(b) Moneys appropriated to the Fund may be used for the following activities:

(1) Working capital;

(2) Renovation, construction or any other type of improvements to roads, utilities and related infrastructure and public facilities;

(3) Assistance for equipment, machinery, land and building acquisition and development;

(4) Assistance with relocation expenses;

(5) Loans or loan guarantees;

(6) Assistance for the development of startup strategies such as seed capital and incubator programs;

(7) Assistance for the development of re-use strategies and implementation plans for sites located in the State and targeted for development by the Division;

(8) Assistance for the development and implementation of modernization strategies for existing manufacturing firms to strengthen their competitive position in regional, national and international markets; and

(9) To develop and implement strategies to maintain or enhance important economic sectors in the State.

(c) During any fiscal year of the State, up to $1,000,000, in aggregate, of the moneys appropriated to the Fund may be used to provide matching grants for the costs of environmental assessment and remediation at certified brownfields. The amount of a matching grant with respect to a certified brownfield shall not exceed the lesser of $100,000 or 50 percent of environmental assessment and remediation costs with respect to such certified brownfield. For purposes of this subsection, a “certified brownfield” is a brownfield, as defined in § 9103 of Title 7, that the Secretary of the Department of Natural Resources and Environmental Control has certified as a brownfield pursuant to regulations promulgated under § 9104(b)(2)p. of Title 7. The Chairperson of the Authority may at any time suspend the making of grants under this subsection if the Chairperson finds that moneys in the Fund would be better used for other Fund purposes consistent with this subchapter, and may resume the making of grants under this subsection at any time after previously suspending the making of such grants.

(69 Del. Laws, c. 386, § 26; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 473, § 32; 73 Del. Laws, c. 183, §§ 4, 5; 74 Del. Laws, c. 409, §§ l, 2; 75 Del. Laws, c. 88, § 21(13); 81 Del. Laws, c. 49, § 1.)

§ 8729A. Findings and determinations for assistance.

(a) The Authority shall draft rules and regulations pertaining to the Fund eligibility, and establish criteria to administer the Fund.

(b), (c) [Repealed.]

(d) The amount and type of assistance provided by the Division to a firm through the Strategic Fund will be based upon the following criteria:

(1) Consistency with state economic development strategies;

(2) Number of jobs created or retained;

(3) Competitiveness of Delaware versus other locations under consideration as measured by tax comparison and relative site location factors;

(4) Quality of jobs using measures such as the average wage and benefits of the jobs to be created or retained as compared to labor force characteristics of the county and community in which the project will be located;

(5) Comparative overall economic impact of the project at the state, county and local levels as measured by job creation and retention, private investment leverage and revenue generation;

(6) Feasibility of the project as determined by the applicant’s business plan, business history and collateral or other financial resources available to adequately secure assistance; and

(7) Any environmental consideration related to siting decisions, manufacturing processes or byproducts.

(69 Del. Laws, c. 386, § 26; 69 Del. Laws, c. 458, § 1; 72 Del. Laws, c. 489, § 39; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 9.)

Subchapter III
Delaware Technical Innovation Program

§ 8735A. Delaware Technical Innovation Program — Creation; definitions.

(a) There is hereby created the Delaware Technical Innovation Program to be administered by the Division.

(b) For the purpose of this subchapter the following definitions shall apply:

(1), (2) [Repealed.]

(3) "Small business" means a corporation, partnership, limited liability company, statutory or common law business trust, sole proprietorship or individual, operating a business for profit, with 100 employees or fewer, including employees employed in any subsidiary or affiliated corporation or other form of business entity which otherwise meets the requirements of the federal Small Business Innovation Research Program or Small Business Technology Transfer Program.

(4) "Small Business Innovation Research Program" or "SBIR Program" means that program, enacted pursuant to the Small Business Innovation Development Act of 1982 (P.L. 97-219) [15 U.S.C. § 638], which provides funds to small businesses to conduct innovative research having commercial application.

(5) "Small Business Technology Transfer Program" or "STTR Program" means that program, enacted pursuant to the Small Business Technology Transfer Act of 1992, P.L. 102-564 (15 U.S.C. § 638), which provides funds to small businesses to conduct jointly with nonprofit research institutions, cooperative research and development having commercial application.

(66 Del. Laws, c. 351, § 1; 69 Del. Laws, c. 458, § 1; 74 Del. Laws, c. 314, §§ 1-3; 81 Del. Laws, c. 49, § 1.)

§ 8736A. Duties.

In carrying out this Program, to promote technology development and utilization within the small business sector, the duties of the Division shall include but not be limited to:

(1) Promote the SBIR and STTR Programs among Delaware small businesses.

(2) Seek technical assistance for small businesses to participate more effectively in the federal SBIR and STTR Programs.

(3) Coordinate efforts with small business, institutions of higher education, financial institutions and government to affect timely development and utilization of new development of technology.

(4) Administer state matching funds in association with the Delaware Technical Innovation Program for the federal SBIR and STTR Programs to provide state matching funds to compensate for the lag between federal Phase I and Phase II awards under the SBIR and STTR Programs.

(5) Coordinate efforts within the business sector to commercialize innovative products and processes developed by small businesses.

(6) Assist small businesses that are engaged in technology development and utilization in obtaining private sector financing.

(7) Develop job training programs to meet specific needs for small business.

(8) Review and recommend ways of streamlining relevant state regulations to expedite the development of innovative products and processes.

(66 Del. Laws, c. 351, § 1; 69 Del. Laws, c. 458, § 1; 74 Del. Laws, c. 314, §§ 4-6; 81 Del. Laws, c. 49, § 1.)

§ 8737A. Matching funds for federal Small Business Innovation Research Program.

(a) The State may provide matching funds up to a maximum of the federal grant for Phase I if:

(1) A small business has won a Phase I award in the federal SBIR or STTR Programs;

(2) Such small business has submitted a proposal for a Phase II award;

(3) Such small business' principal place of business is located in this State; and

(4) Such small business certifies that the research to be conducted will benefit the Delaware economy.

(b) The Council shall establish criteria and the Division shall administer the state matching funds.

(66 Del. Laws, c. 351, § 1; 74 Del. Laws, c. 314, § 7; 81 Del. Laws, c. 49, § 1.)

§ 8738A. Reporting [Repealed].

(66 Del. Laws, c. 351, § 1; 69 Del. Laws, c. 458, § 1; 81 Del. Laws, c. 49, § 1; repealed by 81 Del. Laws, c. 374, § 10, effective July 1, 2018.)

Subchapter IV
Human Investment and Partnership Program

§ 8739A. Declaration of policy [Repealed].

(68 Del. Laws, c. 446, § 1; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1; repealed by 81 Del. Laws, c. 374, § 11, effective July 1, 2018.)

§ 8740A. Establishment of the Human Investment and Partnership Program [Repealed].

(68 Del. Laws, c. 446, § 1; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1; repealed by 81 Del. Laws, c. 374, § 11, effective July 1, 2018.)

§ 8741A. Responsibilities and functions of the Human Investment and Partnership Program [Repealed].

(68 Del. Laws, c. 446, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1; repealed by 81 Del. Laws, c. 374, § 11, effective July 1, 2018.)

§ 8742A. [Reserved].

§ 8743A. Reporting to the Governor and the General Assembly [Repealed].

(68 Del. Laws, c. 446, § 1; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1; repealed by 81 Del. Laws, c. 374, § 11, effective July 1, 2018.)

Subchapter V

The Small Business Revolving Loan and Credit Enhancement Fund

§ 8746A. Legislative intent.

The General Assembly finds that small businesses in the State are of vital significance to Delaware's economic well-being and that small businesses provide the vast majority of jobs in the State. The General Assembly also finds that small businesses have a difficult time borrowing needed funds on a conventional basis due to the high cost of these funds and the reluctance of banks to provide 100 percent financing. To help allay these obstacles, the General Assembly hereby directs the Division to use the Small Business Revolving Loan and Credit Enhancement Fund to assist small businesses in reducing the cost of loan funds by offering partial, low-cost loans or by purchasing credit enhancements for small business' sustenance and growth.

(67 Del. Laws, c. 46, § 26(a); 69 Del. Laws, c. 77, § 25(a); 69 Del. Laws, c. 458, § 1; 81 Del. Laws, c. 49, § 1.)

§ 8747A. Creation of the Fund.

(a) A special fund to be known as the "Small Business Revolving Loan and Credit Enhancement Fund," hereinafter referred to as the "Fund" shall be created and administered by The Delaware Economic Development Authority, hereinafter referred to as the "Authority."

(b) The Fund shall be invested by the State Treasurer in securities consistent with the policies established by the Cash Management Policy Board. All interest on the Fund's moneys and any repayment of loans shall be deposited in the Fund.

(c) Loans made by the Authority to small businesses under the Fund shall be loaned at a below-market rate.

(67 Del. Laws, c. 46, § 26(a); 81 Del. Laws, c. 49, § 1.)

§ 8748A. Fund purposes.

(a) The moneys appropriated to the Fund may be used by the Authority for loans up to 25 percent of the total debt required, but not to exceed $100,000 for working capital and fixed asset purposes.

(b) The moneys appropriated to the Fund may also be used to purchase credit enhancements on behalf of targeted businesses which shall support loans made by and/or through financial institutions to such targeted businesses. Credit enhancements purchased shall not exceed $100,000 and the credit enhancement amount purchased shall be determined by the Authority.

(c) The moneys appropriated to the Fund shall not be used for the following purposes:

(1) Grants;

(2) Restaurants and professional office buildings except in those targeted census tracts, defined in § 2020(1)d. of Title 30;

(3) Projects which do not attract or retain employment opportunities;

(4) Private, nonprofit activities; and

(5) Private or public speculative real estate ventures.

(67 Del. Laws, c. 46, § 26(a); 67 Del. Laws, c. 285, § 21(a); 69 Del. Laws, c. 77, § 25(b); 81 Del. Laws, c. 49, § 1.)

§ 8749A. Fund eligibility.

In order for a project to be eligible for the Fund purposes cited in § 8748A of this title, the project must meet the following criteria:

(1) For the purpose of administering the Fund, a small business shall be defined as a firm having a full-time equivalent complement of 100 or fewer Delaware based employees at the time of application;

(2) The firm to benefit from Fund proceeds must create or retain direct, permanent, quality, full-time jobs;

(3) The firm eligible for Fund proceeds must be eligible for and have received commitments for at least 75 percent of the debt amount needed;

(4) The firm eligible for Fund proceeds must be able to collateralize the Fund proceeds to the satisfaction of the Authority which shall use to the greatest extent possible bank like underwriting procedures;

(5) The firm eligible for Fund proceeds must be able to repay the Fund proceeds within a time period and at an interest rate determined by the Authority; and

(6) Projects to be aided by the Fund shall be recommended by the Council on Development Finance ("Council") and approved by the Chairperson of the Authority. No project shall receive any benefit from the Fund unless such benefit is approved by a majority of the Council.

(67 Del. Laws, c. 46, § 26(a); 67 Del. Laws, c. 285, § 21(b), (c); 69 Del. Laws, c. 77, § 25(c)-(e); 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1.)

Subchapter VI

Delaware Motion Picture and Television Development Commission

§ 8750A. Delaware Motion Picture and Television Development Commission.

(a) There is hereby established the Delaware Motion Picture and Television Development Commission (the "Commission") which shall consist of 9 members who shall be residents of the State and shall consist of the following:

(1) Director of the Division of Small Business or the Director's designee;

(2) Secretary of the Department of Natural Resources and Environmental Control;

(3) Three members appointed by the Governor;

(4) Two members appointed by the President Pro Tempore;

(5) Two members appointed by the Speaker of the House.

(b) Members shall serve at the pleasure of the appointing authority. Members serving by virtue of position may appoint a designee to serve in their stead and at their pleasure.

(c) The Commission shall be formed under the Division of Small Business.

(d) The Commission may create subcommittees, which may consist of nonmembers, to facilitate its work.

(e) The Commission shall organize itself in such manner as it deems desirable and necessary, including electing a Chair, but no action shall be taken or motion or resolution adopted by the Commission except by an affirmative vote of a majority of the current members of said body.

(f) The Commission shall have the following powers:

(1) To adopt such rules and regulations as it deems advisable with respect to the conduct of its own affairs;

(2) To hold hearings, and to do or perform any acts which may be necessary, desirable or proper to carry out the purposes of this Commission;

(3) To request and obtain from any department, division, board, bureau, commission, or other agency of the State or of any county, municipality, authority or other political subdivision within the State such assistance and data as will enable it to carry out its powers and duties hereunder;

(4) To accept any federal funds granted, by act of Congress, or by executive order, for all or any of the purposes of this Commission;

(5) To accept any gifts, donations, bequests or grants of funds from private and public agencies for all or any of the purposes of this Commission;

(6) To coordinate the activities of similar councils or boards appointed by any city or county within the State for all or any of the purposes of this Commission;

(7) To create advisory councils necessary for the performance of responsibilities pursuant to this Commission and to appoint members thereto; and

(8) To assist with obtaining permits from any department, division, board, bureau, commission or other agency of the State or from any county, municipality, authority, or other political subdivision within the State for applicants interested in motion picture and television production within the State.

(g) The Commission shall prepare and implement programs to promote a motion picture and television industry within the State. Such programs shall include, but not be limited to:

(1) The preparation and distribution of promotional and informational materials pointing out desirable locations within the State, explaining the benefits and advantages of producing within the State, and detailing the services available at the state and local level and within the industry;

(2) Facilitating cooperation from local, state and federal government agencies and private-sector groups in regard to applications, locations, production and ancillary facilities;

(3) Cooperating with all sections of management and labor engaged in the motion picture and television industry; and

(4) Appearing on its own behalf before boards, commissions, departments, or other agencies of municipal, county or state government, or the federal government.

(h) The Division shall be responsible for administrative support.

(80 Del. Laws, c. 369, § 1; 81 Del. Laws, c. 49, § 2; 81 Del. Laws, c. 374, § 12.)

Subchapter VII
Delaware Economic Development Authority

§ 8751A. Findings; declaration of policy.

(a) It is determined and declared as a matter of legislative finding that:

(1) The good order of the State and the health and welfare of its citizens depend upon the steady employment, in useful occupations, of the citizens of the State;

(2) In certain areas of the State, many citizens are employed sporadically or not at all. In these areas of the State, many citizens have heretofore found employment in agricultural pursuits. As agriculture becomes more efficient, and requires fewer employees for the maintenance of economic output levels, increasing numbers of citizens cannot find agricultural employment. Opportunities for other forms of employment in these areas are very limited. This condition threatens the economic stability of the State, discourages thrift and depresses the standard of living of the citizens of the State, all to the detriment of the public health, welfare and order. Moreover, the viability and attractiveness of expanded agricultural enterprise in the State (with consequential increase in agricultural employment opportunity) is jeopardized by competition from agricultural enterprises located in states enjoying longer growing seasons and other competitive advantages;

(3) Stable and useful employment can be made available for citizens of the State by financing the construction, acquisition, rehabilitation, modernization or renovation of commercial, industrial and agricultural facilities in the State;

(4) In many areas of the State, substantial unemployment or cyclical employment (involving cessations of work and temporary layoff of employees) exists. This condition threatens the economic stability of the State, discourages thrift and depresses the standard of living of the citizens of the State, all to the detriment of the public health, welfare and order;

(5) There is a continuing need to prevent decline in business employment, including employment in industrial, commercial and agricultural businesses within the State and to reduce unemployment and cyclical employment within the State;

(6) The availability of financial assistance and suitable facilities are important inducements to industrial, commercial and agricultural businesses to locate, remain and expand in the State which in time will result in increased employment opportunities in the State;

(7) Due to increased industrialization and urbanization of many areas of the State, greater dangers to the public health and welfare exist because of pollution of the air, water and soil, and high levels of noise. Therefore, it is necessary to protect the public health and welfare by fostering the reduction, abatement or prevention of the pollution of the State's environment and the protection of its natural resources;

(8) There is a need to assist in the financing of medical facilities, nursing facilities and facilities for the residence or care of the aged in order to provide modern and efficient medical and nursing care and residence facilities for the citizens of the State thereby promoting their health and welfare;

(9) There is a need to encourage the development of the State as a banking and financial service center by expanding the types of projects and activities for which the State will provide financing assistance, thereby enhancing the inducements for banks and financial service enterprises to locate, remain and expand in the State which in time will result in increased employment opportunities and commercial transactions in the State; and

(10) There is a need to assist in the financing of facilities and activities of exempt persons in order to contribute to the prosperity, health or general welfare of the citizens of the State.

(11) [Repealed.]

(b) It is further determined and declared that in order to aid in remedying such conditions and to implement the purposes of this subchapter, there shall be created an Authority which shall be a body politic and corporate having the powers, duties and functions provided in this subchapter; that the creation of the Authority and the powers conferred upon such Authority under this subchapter and the expenditure of moneys pursuant to this subchapter 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.

(6 Del. C. 1953, § 7001; 53 Del. Laws, c. 167; 54 Del. Laws, c. 66, § 1; 57 Del. Laws, c. 679, §§ 3A-3C; 58 Del. Laws, c. 316, §§ 2-4; 62 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 189, § 5(a), (b); 64 Del. Laws, c. 131, § 10(a); 64 Del. Laws, c. 343, § 18(a); 67 Del. Laws, c. 46, § 18(a)(1), (2); 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 13.)

§ 8752A. Definitions.

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meaning:

(1) "Agricultural business" means any enterprise engaged in raising, preparing or marketing crops, timber, nursery stock, livestock or the like or any related products, and facilities directly related, incidental or subordinate to any of the foregoing.

(2) "Assisted 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 for which a project is undertaken or proposed to be undertaken.

(3) "Authority" means the Delaware Economic Development Authority created by § 8753A of this title.

(4) “Bonds” means bonds, notes or other obligations issued by the Authority pursuant to this subchapter.

(5) “Commercial business” means any enterprise other than an agricultural business or industrial business which may include, but is not limited to, wholesale, retail or other mercantile activities; office buildings; cable television facilities; hotels; motels; shopping centers; department stores; sports facilities; restaurants; convention, auditorium or trade show facilities; tourism and recreational facilities; medical facilities, nursing facilities and facilities for the residence or care of the aged; public transportation facilities; parking facilities; and facilities directly related, incidental or subordinate to any of the foregoing.

(6) “Cost” means, with respect to any project, all costs, whether capital or otherwise, and includes the cost of acquisition, construction, reconstruction, repair, alteration or extension of any building, structure, facility or other improvement; the cost of demolishing, removing or relocating any building, structure, facility or other improvement, including the cost of acquiring any lands to which such building, structure, facility or other improvement may be moved or relocated; the cost of machinery and equipment; the cost of acquisition, construction, reconstruction, repair, alteration, modernization, renovation, rehabilitation, improvement or extension of pollution control devices, equipment or facilities; the cost of land, rights-in-land, easements, privileges, agreements; franchises, utility extension, disposal facilities, access roads and site developments necessary, useful or convenient for any project or in connection therewith; the cost of providing working capital or the acquisition or carrying of accounts receivable, chattel paper or other commercial instruments or inventory; interest prior to, during and for a reasonable period after completion of construction; discount on bonds; costs of issuance of bonds; engineering and inspection costs; costs of financial, legal, professional and other services; organizational, administrative, insurance, operating and other expenses of the Authority or any assisted person prior to and during any acquisition or construction; all such expenses as may be necessary or incident to the financing, acquisition, construction or completion of any project or part thereof; and all provision for reserves for payment or security of principal, premium, if any, or interest on, bonds during or after acquisition or construction of any project as the Authority may determine to be appropriate. Cost with respect to any project financed by state-guaranteed bonds shall not include the cost of providing working capital or inventory.

(7) [Repealed.]

(8) “Exempt person” means a governmental unit or an organization described in § 501(c)(3) of the federal Internal Revenue Code [26 U.S.C. § 501(c)(3)] and exempt from tax under § 501(a) of the federal Internal Revenue Code [26 U.S.C. § 501(a)] but only with respect to a trade or business carried on by such organization which is not an unrelated trade or business, determined by applying § 513(a) of the federal Internal Revenue Code [26 U.S.C. § 513(a)] to such organization.

(9) “Industrial business” means any enterprise other than an agricultural business or commercial business and may include, but is not limited to, industrial parks; public utilities; activities involving the development, production, collection, conversion, storage, conservation or transmission of coal, electricity, gas, oil, steam, water or sources of energy not covered by the foregoing; manufacturing, fabricating or processing activities; research and development activities; docks, wharves, airports; storage, shipping, receiving, warehouse and distribution facilities; and facilities directly related, incidental or subordinate to any of the foregoing.

(10) “Outstanding bonds” means the principal amount of state-guaranteed bonds on which there is principal and interest owing and for which there have not been set aside with a trustee sufficient moneys to pay principal, premium, if any, and interest on such state-guaranteed bonds, which moneys are subject to an irrevocable instruction that they be applied to the payment of principal, premium, if any, and interest on such state-guaranteed bonds when due and payable, whether at maturity or otherwise.

(11) “Pollution control project” means any device, equipment, improvement, structure or facility or any land and any building, structure, facility or other improvement thereon, or any combination thereof, whether or not in existence or under construction, or additions thereto or upgrading thereof, and all real and personal property deemed necessary thereto, having to do with, or the end purpose of which is, the control, abatement or prevention of land, water, air or general environmental pollution in or adjacent to the State, whether by solids, liquids, gases, particulates, radiation, heat, noise or otherwise, including, but not limited to, any air pollution control facility, noise abatement facility, water management facility, wastewater collection system, wastewater treatment works, sewage treatment system or solid waste disposal or resource recovery facility or site.

(12) “Project” means:

a. Acquisition, construction, reconstruction, repair, alteration, improvement, extension or financing of any building, structure or facility whether or not in existence or under construction;

b. Purchase, installation or financing of equipment, machinery and other personal property;

c. Acquisition, improvement or financing of real estate and the extension or provision of utilities, access roads and other appurtenant facilities; or

d. Any other activity (including, without limitation, the providing of working capital or the acquisition or carrying of inventory, accounts receivable, chattel paper or commercial instruments);

any of which are to be used, occupied or undertaken by any assisted person in any enterprise which will tend to maintain or provide gainful employment within the State, including, but not limited to, facilities and activities for industrial business, agricultural business, commercial business or any combination thereof. Project, in addition, shall mean a pollution control project. A project shall not be considered a public work or public improvement for purposes of this subchapter or for purposes of any other law, rule or regulation of the State or any political subdivision thereof.

(13) “Related person” means a person who is a related person under § 144(a)(3) of the Internal Revenue Code of 1986 [26 U.S.C. § 144(a)(3)], as amended.

(14) “Resolution” means any resolution adopted, or trust agreement or other agreement executed, by the Authority pursuant to which bonds are authorized to be issued.

(15) “Revenues” means receipts, fees, rentals, loan repayments or other payments or income derived from the lease, sale or other disposition of a project, the loan of money, the acquisition and sale of loans, moneys or securities in reserve and insurance funds or accounts or other funds and accounts and income from the investment thereof, and fees, charges or other moneys to be received by the Authority in connection with a project.

(16) [Repealed.]

(17) “State-guaranteed bonds” means bonds to which the full faith and credit of the State has been pledged as provided in this subchapter.

(6 Del. C. 1953, § 7002; 58 Del. Laws, c. 316, § 5; 58 Del. Laws, c. 356, § 1; 62 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 189, § 5(a)-(d), (f); 64 Del. Laws, c. 131, § 10(b), (c); 64 Del. Laws, c. 343, § 18(b); 66 Del. Laws, c. 92, § 17(a), (b); 69 Del. Laws, c. 458, § 1; 81 Del. Laws, c. 49, § 1.)

§ 8753A. Established; organization.

(a) There is hereby established a body corporate and politic, with corporate succession, to be known as “The Delaware Economic Development Authority.” The Authority is hereby constituted as an instrumentality of the State exercising public and essential governmental functions, and the exercise by the Authority of the powers conferred in this subchapter shall be deemed and held to be an essential governmental function of the State.

(b) The Authority shall consist of the Director who shall serve ex officio. The Director shall hold office for the term of the Director’s appointment. Should a vacancy in the Office of the Director occur, then the Authority shall consist of the Acting Director (with references to the Director in this chapter deemed to refer to such Acting Director) until the Director’s successor is duly qualified and appointed.

(c) The Director shall be the Chairperson of the Authority. Subject to its annual budget as approved by the Governor and the General Assembly, the Authority shall employ such persons as the Director shall determine are necessary to fulfill the powers granted to the Authority in this subchapter. The powers of the Authority shall be vested in the Director and all action by the Authority shall be taken by the Director or by a designee acting on the Director’s behalf as provided in this subchapter.

(d) Notwithstanding any other law, neither the Director nor any officer or employee of the State shall be deemed to have forfeited or shall forfeit such office or employment or any benefits or emoluments thereof by reason of such service as an officer of the Authority.

(e) The Director may designate officers or employees of the Division to represent the Director, and each such designee may lawfully act on behalf of the Director; provided, however, that, except in instances where the Director determines that the Director may have a direct interest in a project as provided in subsection (i) of this section and therefore disassociates from that project, no such designee may lawfully approve a project or adopt a resolution. However, notwithstanding the foregoing, the Director may during absence from the State, in accordance with § 8704A of this title, appoint any qualified employee of the Division to serve as Acting Director during such absence and such Acting Director may, among other things, lawfully approve a project, adopt a resolution or sign a bond. Neither the Director nor any such designee shall be subject to any personal liability or accountability by reason of execution of any bonds or the issuance thereof.

(f) The Authority may be dissolved by 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.

(g) The Authority shall prepare an annual budget for each fiscal year of the Authority (the “annual budget”) and shall submit the annual budget to the Director of the Office of Management and Budget and General Assembly with the Department of State’s budget request in accordance with Chapter 63 of this title. The annual budget need not include amounts representing expenditures for debt service on bonds, except for such amounts with respect to projects which are financed by proceeds from state-guaranteed bonds and for which either:

(1) Any payment due to the Authority or to a trustee or other person as assignee of the Authority is in default; or

(2) Sufficient revenues are not available to make payments due to such trustee or other person.

(h) The Office of Auditor of Accounts shall cause an audit of the Authority’s bonds issued under § 8754A(d) of this title to be made annually by a certified public accountant licensed to practice in the State. In addition, the Authority shall make an annual report of its activities to the Governor which shall set forth a complete operating and financial statement covering the Authority’s operations during the year and shall include the report of the certified public accountant who makes the audit of the Authority’s books and accounts. The Authority shall furnish a copy of the annual report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate, the Auditor of Accounts and Controller General.

(i) No member, 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 subchapter.

(j) All expenses incurred by the Authority shall be included and charged to the project to which they apply. Any refunds or reimbursements of such expenses shall be credited to the same project to which such expense was charged.

(k) The Authority shall prescribe such regulations as may be necessary to carry out the purposes of this subchapter and, in addition to any other regulation, the Authority shall require that any new applicant approved for a loan under this chapter shall agree to give the first opportunity of employment to qualified Delaware residents.

Each applicant shall report to the Authority, no later than June 30 of the year following the start of its operation in this State, the number of employees and the number of employees who were residents of Delaware at the time of their employment. This subsection shall not apply to industry employing highly skilled workers, except that any such industry, if it employs unskilled or semiskilled workers as a part of its work force, shall comply.

(*l*) Any net earnings of the Authority (beyond those necessary for retirement of any indebtedness or to implement the public purposes of this subchapter) shall not inure to the benefit of any person other than the State.

(62 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 189, § 5(a)-(d); 64 Del. Laws, c. 131, § 10(d); 64 Del. Laws, c. 320, § 1; 65 Del. Laws, c. 212, § 17(c); 69 Del. Laws, c. 438, § 1; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(13); 76 Del. Laws, c. 79, § 57; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 14.)

§ 8754A. Deauthorization of state-guaranteed bonds.

(a) The Authority may issue bonds to finance the cost of any project or part thereof with respect to which the Authority has adopted a resolution.

(b) The Authority may issue bonds to refund bonds previously issued by the Authority or any other issuer, past or present, within the State (including, without limitation, the former Department of Community Affairs and Economic Development and the former Delaware Office of Economic Development), including the payment of any redemption premium thereon and any interest accrued to the date of redemption of such bonds.

(c) The Authority may issue bonds payable solely from the revenues of the project for which the bonds have been issued. Such bonds may be issued for a project whether or not such project is or will be financed by state-guaranteed bonds.

(d) The Authority may pledge the full faith and credit of the State to the payment of principal, premium, if any, and interest due on bonds (whether at stated or accelerated maturity or otherwise) subject to the following conditions:

(1) With respect to any project proposed to be financed by state-guaranteed bonds, the Authority shall find and determine, which findings and determinations shall be conclusive, in addition to making the appropriate findings and determinations required by § 8755A of this title, that:

a. The aggregate principal amount of state-guaranteed bonds, the proceeds of which are used to finance the proposed project together with the aggregate principal amount of outstanding bonds used to finance any other project or projects owned, used, leased or occupied by the same assisted person, or by a related person to the assisted person, does not exceed $3,000,000;

b. Not more than 50 percent of the cost of the proposed project shall be financed by state-guaranteed bonds, and no part of the assisted person's contribution to the cost of a proposed project may be supplied, in whole or in part, by funds appropriated by an act of the General Assembly of the State; and

c. The fulfillment, discharge and satisfaction of the assisted person's obligations under the terms of the lease, mortgage, loan agreement or other financing agreements between the Authority and the assisted person shall be adequately secured.

(2) The aggregate principal amount of state-guaranteed bonds that may be authorized to be outstanding shall be limited to $4,449,015. The limit shall automatically be reduced below $4,449,015, once the aggregate principal amount of outstanding state-guaranteed bonds is reduced to $4,449,015 by an amount equal to the principal amount of state-guaranteed bonds thereafter retired by the Authority.

(3) In no event shall the proceeds of state-guaranteed bonds be used to finance a project for commercial business or agricultural business.

(4) The Authority may not adopt a resolution authorizing the issuance of state-guaranteed bonds without the approval of at least 5 of the 7 members (the "members") of the Council on Development Finance (the "Council") or $^{3}/_{4}$ of the members if vacancies on the Council exist.

(5) The assisted person shall be legally obligated to deposit (prior to the delivery of the bonds and from a source other than the proceeds of the bonds), and thereafter maintain, with a person in trust, a cash reserve fund in an amount equal to the maximum principal and interest payable on such bonds during any consecutive 12-month period by such assisted person to the Authority under the terms of the lease, mortgage, loan agreement or other financing agreement between the Authority and such assisted person. Such cash reserve fund shall be pledged solely for the purposes provided in § 8761A of this title and shall not be construed as a security deposit under the State's Landlord Tenant Code (Part III of Title 25).

(6) In the case of accelerated maturity, the pledge of the full faith and credit of the State to the payment of principal, premium, if any, and interest due on state-guaranteed bonds prior to their stated maturity shall not apply without the express written approval of the Secretary of Finance. Such approval may be given at any time after the occurrence of a default which would permit the acceleration of payment of principal, premium, if any, or interest on such state-guaranteed bonds under the terms of the lease, mortgage, loan agreement or other financing agreements between the Authority and the assisted person.

(e) The Authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this subchapter including without limitation the power:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to adopt rules, regulations and policies in connection with the performance of its functions and duties;

(2) To adopt, use and alter at will an official seal;

(3) To sue in its own name;

(4) To acquire in its own name by purchase, lease or otherwise, on such terms and conditions and in such manner as it may deem proper, any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein, whether or not in connection with a project, and to sell, lease as lessor, mortgage or otherwise encumber, transfer or dispose of any such property or interest therein;

(5) To enter into contracts with a person upon such terms and conditions as the Authority shall determine to be reasonable, providing, without limitation, for reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of a project and to pay or compromise any claims arising from any such contracts;

(6) To enter into loan agreements with, to provide any other forms of financing support and to make loans to, an assisted person, for the cost of a project (title to which project may remain or vest in such assisted person), which loans or other financing support may be secured or evidenced by notes, debentures, bonds, mortgages, leases or other instruments, delivered to the Authority or to a trustee or other person as assignee of the Authority, all upon such terms and conditions as the Authority may deem advisable;

(7) To establish and maintain funds of any kind, including without limitation reserve and insurance funds with respect to any financing of a project;

(8) To mortgage, pledge, assign or otherwise encumber all or any portion of a project or revenues;

(9) To grant options to purchase or renew a lease for any project;

(10) To contract for and to accept any gifts, grants or loans of funds or property or financial or other aid from any source, and to comply, subject to this subchapter, with the terms and conditions thereof;

(11) To charge and collect such fees and charges as it shall determine to be reasonable for the use of its services;

(12) To acquire, purchase, manage, operate, hold and dispose of real and personal property or interests therein, take assignments of rentals and leases and make and enter into all contracts, leases, agreements and arrangements necessary or incidental to the performance of its duties;

(13) To purchase, acquire and take assignments of notes, mortgages and other forms of security and evidences of indebtedness;

(14) To purchase, acquire, attach, seize, accept or take title to any project by conveyance or by foreclosure, and sell, lease, manage or operate any project for a use specified in this subchapter;

(15) To borrow money and issue bonds (the interest on which may be taxable or exempt from tax under the Internal Revenue Code of 1986, as amended) as provided in this subchapter, and provide for the rights of the holders thereof;

(16) To pledge the full faith and credit of the State to the payment of the principal, premium, if any, and interest on bonds, but only to the extent permitted under this subchapter;

(17) To invest any funds or moneys of the Authority pending the application of such funds or moneys to the purposes specified in this subchapter;

(18) To employ consulting engineers, architects, attorneys (in accordance with § 2507 of this title), real estate counselors, appraisers and such other consultants and employees, who shall not be members of the classified service, as may be required in the judgment of the Authority to carry out the purposes of this subchapter, and to fix and pay their compensation from funds available to the Authority therefor;

(19) To do and perform any acts and things authorized by this subchapter under, through or by means of its own officers, agents and employees, or by contracts with any person; and

(20) To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it deems desirable.

(21) [Repealed.]

(f) Notwithstanding any other provision in this subchapter, the Authority shall have the power to issue bonds for the benefit of any exempt person, subject only to the following conditions:

(1) The Authority may not pledge the full faith and credit of the State to the payment of principal, premium, if any, or interest due on such bonds; and

(2) Prior to approving an application for the issuance of such bonds, the Authority shall find and determine, which finding and determination shall be conclusive, on the basis of all information reasonably available to it, that any proposed financing for an exempt person will effectuate the purpose set forth in § 8751A(a)(10) of this title. With respect to such applications, the Authority need not make the findings and determinations otherwise required under this subchapter.

(6 Del. C. 1953, § 7003; 53 Del. Laws, c. 167; 54 Del. Laws, c. 66, §§ 2-7; 57 Del. Laws, c. 679, § 3C; 58 Del. Laws, c. 316, § 6; 58 Del. Laws, c. 356, §§ 2-4; 60 Del. Laws, c. 211, § 1; 62 Del. Laws, c. 269, § 1; 62 Del. Laws, c. 277, § 96; 62 Del. Laws, c. 407, § 4(a); 62 Del. Laws, c. 423, § 6; 63 Del. Laws, c. 179, § 4(a); 63 Del. Laws, c. 189, § 5(a), (b), (d), (e); 63 Del. Laws, c. 387, § 7(a); 64 Del. Laws, c. 131, § 3(a); 64 Del. Laws, c. 343, §§ 4(a), 18(c); 65 Del. Laws, c. 212, § 6(a); 66 Del. Laws, c. 92, §§

5(a), 17(c), (d); 66 Del. Laws, c. 360, §§ 4(a), 29(h); 67 Del. Laws, c. 46, §§ 4(a), 18(a)(3)-(5); 67 Del. Laws, c. 285, § 4(a); 68 Del. Laws, c. 156, § 2(a); 68 Del. Laws, c. 405, § 1(a); 69 Del. Laws, c. 77, § 2(a); 69 Del. Laws, c. 386, § 2(a); 70 Del. Laws, c. 210, § 2(a); 70 Del. Laws, c. 473, § 2; 71 Del. Laws, c. 150, § 2; 71 Del. Laws, c. 378, § 2(a); 72 Del. Laws, c. 258, § 2; 72 Del. Laws, c. 489, § 2(a); 73 Del. Laws, c. 95, § 2; 73 Del. Laws, c. 350, § 2(a); 74 Del. Laws, c. 69, § 2(a); 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 374, § 15.)

§ 8755A. Application for assistance; findings and determinations.

(a) The Authority may adopt a resolution, provided that an application for assistance under this subchapter shall be submitted to the Authority, for the advice or, where required by this subchapter, the approval of the Council on Development Finance, requesting the issuance of bonds to finance a project or to provide another form of financing support to a project. Prior to approving such application, the Authority shall find and determine, which findings and determinations shall be conclusive, on the basis of all information reasonably available to it, that any project financed:

(1) Will tend to maintain or provide gainful employment for citizens of the State, or, in the case of a pollution control project, will reduce, abate or prevent pollution of the State's environment or protect its natural resources, or, in the case of a medical facility, nursing facility or facility for the residence or care of the aged, will help to provide modern and efficient medical, nursing or residence facilities as the case may be for the citizens of the State;

(2) Will serve a public purpose by contributing to the prosperity, health or general welfare of the citizens of the State;

(3) In the case of a project for agricultural business will require a capital investment of at least $10,000, which funds, including the proceeds of the bonds to be issued, if any, will be available or expended on the day the Authority issues the bonds or provides another form of financing support to the project;

(4) In the case of a project for commercial business will require a capital investment of at least $10,000, which funds, including the proceeds of the bonds to be issued, if any, will be available or expended on the day the Authority issues the bonds or provides another form of financing support to the project;

(5) Will be leased to, sold to or financed for a financially responsible assisted person who has not been convicted of a major labor law violation or of illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the 2-year period immediately prior to the approval of the assisted person's application for assistance; and

(6) Will effectuate the purposes of this subchapter.

(b) The Authority may make the foregoing findings and determinations on a prospective basis prior to the receipt of any such application provided that the proceeds of bonds are not disbursed or another form of financing support is not provided to any assisted person until such findings and determinations are made specifically with respect to such assisted person's project or projects.

(c) The Authority may issue bonds to refund bonds issued pursuant to this subchapter without making any of the foregoing findings or determinations.

(d) The Council on Development Finance is delegated the authority and responsibility for conducting a public hearing following reasonable public notice prior to the issuance by the Authority of any bond or the provision by the Authority of any other form of financing support. The Council on Development Finance shall adopt such rules and procedures as it determines to be necessary or desirable in fulfilling its responsibilities.

(e) For purposes of § 147(f) of the Internal Revenue Code of 1986 [26 U.S.C. § 147(f)], as amended, the Governor of this State, or an elected official of the State designated by the Governor for this purpose as permitted by such Code, shall have the authority and responsibility for approving, or withholding approval of, the issuance by the Authority of any bond. If, in connection with an application for the issuance of any bond by the Authority, the Governor or the elected official designated by the Governor advises the Attorney General of the State that the Governor or such elected official is unable or believes it would be inappropriate for the Attorney General to consider such application, then the Attorney General shall have the authority and responsibility for approving, or withholding approval of, the issuance of such bond by the Authority.

(62 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 189, § 5(a), (b), (e); 64 Del. Laws, c. 10, §§ 1, 2; 65 Del. Laws, c. 212, § 17(b); 66 Del. Laws, c. 92, § 17(e); 66 Del. Laws, c. 360, § 29(h); 67 Del. Laws, c. 46, §§ 30(d)-(g); 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1.)

§ 8756A. Bonds.

(a) The bonds authorized to be issued by this subchapter shall be authorized by a resolution and shall be of such series; bear such date or dates; mature at such time or times, not exceeding 20 years for state-guaranteed bonds; bear interest at such rate or rates; be in such denominations; be of a single denomination payable in installments; be in such form, either coupon or fully registered without coupon; carry such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places; be subject to such terms of redemption; and be entitled to such priorities in the revenues of the Authority as such resolution may provide. The bonds shall bear the manual or facsimile signature of the Director, and of the Secretary of the Council on Development Finance, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of the Director. Any such bonds may be issued and delivered notwithstanding the fact that 1 or more of the officials signing such bonds, or whose facsimile signature shall be upon the bonds or coupons, shall have ceased to be such official or officials at the time when such bonds shall actually be delivered.

(b) The bonds may be sold at public or private sale for such price or prices as the Authority shall determine. Any bonds may be consolidated for sale with any other bonds of the Authority and sold as a single issue. Pending the preparation of the definitive bonds, temporary bonds may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the Authority may determine.

(6 Del. C. 1953, § 7004; 53 Del. Laws, c. 167; 57 Del. Laws, c. 679, § 3C; 58 Del. Laws, c. 316, § 7; 62 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 189, § 5(a)-(c), (e); 63 Del. Laws, c. 387, § 15; 81 Del. Laws, c. 49, § 1.)

§ 8757A. Covenants with bondholders.

(a) The Authority shall have the power to covenant and to agree with the holders of bonds in order to secure the payment of such bonds, as to:

(1) The custody, security, use, expenditure, investment or application of the proceeds of bonds;

(2) The use, regulation, operation, maintenance, insurance or disposition of all or any part of any project;

(3) The payment of the principal, premium, if any, and interest on bonds, the sources and methods of payment thereof, the rank or priority of any such bonds as to any lien or security or the acceleration of the maturity of any such bonds;

(4) The use and disposition of any moneys of the Authority, including all revenues;

(5) The mortgage, pledge, assignment or deposit of all or any part of the revenues or other moneys of the Authority or of all or any part of a project to secure the payment of the principal, premium, if any, and interest on bonds, and the powers and duties of any trustee or agent with regard thereto;

(6) The segregation of revenues or other moneys of the Authority into reserves and sinking funds, and the source, custody, investment, security, regulation, application and disposition thereof;

(7) The rents, fees or other charges for the use of any project, including any parts, replacements or improvements thereafter constructed or acquired, and the fixing, establishment, collection and enforcement of the same;

(8) Any limitation on the issuance of additional bonds or on the incurrence of indebtedness of the Authority;

(9) Any vesting in a trustee or trustees, fiscal or escrow agent or agents, within or without the State, or such property, rights, powers and duties as the Authority may determine, and any limitation on the rights, duties and powers of such trustee or agent;

(10) The payment of costs or expenses incident to the enforcement of the bonds, the resolution or any covenant or contract with the holders of bonds;

(11) The procedure, if any, by which the terms of any covenant or contract with, or duty to, 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 such consent may be given or evidenced; or

(12) Any other matter or course of conduct which, by recital in a resolution, is declared to secure further the payment of the principal, premium, if any, or interest on bonds.

(b) All such provisions of a resolution and all such covenants and agreements shall constitute valid and legally binding contracts between the Authority and the several holders of bonds to which they relate, regardless of the time of issuance of such bonds.

(62 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 189, § 5(a); 81 Del. Laws, c. 49, § 1.)

§ 8758A. Pledge of revenues or other property.

Any pledge of revenues or other property made by the Authority shall be valid and binding from the time when the pledge is made. Revenues so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge or revenues or other property shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, whether or not such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded; however, copies of such resolution or instrument shall be retained by the Authority.

(62 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 189, § 5(a); 81 Del. Laws, c. 49, § 1.)

§ 8759A. Limitation on liability of State.

(a) Bonds, other than state-guaranteed bonds, issued pursuant to this subchapter shall not constitute a debt of the State or any political subdivision or any agency thereof, or a pledge of the full faith and credit or taxing power of the State or any political subdivision or any agency thereof, and shall not obligate the State or the Authority to make any appropriation for their payment.

(b) All bonds, other than state-guaranteed bonds, shall contain on the face thereof a statement to the following effect:

"Neither the faith and credit nor the taxing power of the State is pledged to the payment of the principal of, premium, if any, or interest on this bond, nor is the State or the Delaware Economic Development Authority in any manner obligated to make any appropriation for payment thereof."

(c) State-guaranteed bonds shall be a debt of the State.

(62 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 189, § 5(a), (b); 81 Del. Laws, c. 49, § 1.)

§ 8760A. Negotiability of bonds.

The bonds and any coupons appurtenant thereto shall be negotiable instruments and securities under the Uniform Commercial Code of the State.

(62 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 189, § 5(a); 81 Del. Laws, c. 49, § 1.)

§ 8761A. Default in payment of state-guaranteed bonds; insufficient revenues to make payment.

If any payment of principal, premium, if any, or interest due to the Authority or to a trustee or other person as assignee of the Authority with respect to a project financed by proceeds from state-guaranteed bonds is in default, or if sufficient revenues are not available to make such payment, the Authority:

(1) Shall forthwith direct (if it has not previously done so) the person holding the cash reserve fund deposited pursuant to § 8754A(d)(5) of this title to apply such cash reserve fund to the payment of principal, premium, if any, and interest on such state-guaranteed bonds as the same become due;

(2) Shall forthwith give notice of such default or occurrence to the Governor, the Secretary of State, the Secretary of Finance, the Auditor of Accounts, the Speaker of the House of Representatives, the President Pro Tempore of the State and the Controller General. Thereafter, the General Assembly shall appropriate sufficient funds to pay principal, premium, if any, and interest on such state-guaranteed bonds when due. Any funds made available pursuant to such appropriation shall be deposited by the Authority in the appropriate cash reserve fund;

(3) Shall exercise its rights to secure its title and take possession of the project and any other assets pledged, assigned or transferred to the Authority in connection with the financing of the project. The Authority shall thereupon attempt to realize from the sale, lease or other disposition of the project assets sufficient funds to meet debt service on the outstanding state-guaranteed bonds. Realized funds shall first be applied to meet the costs, incurred or to be incurred, of administering such project. Thereafter, such funds shall be applied by the Authority to any lawful purpose of the Authority including, but not limited to, the payment of principal and interest on state-guaranteed bonds for such project. The remainder of such funds, after payment of or provision for the payment of the foregoing, shall be paid into the General Fund of the State;

(4) Trustees for holders of state-guaranteed bonds are hereby authorized to release to the Authority the proceeds of sale, lease or other disposition of any real or personal property comprising the project less any proceeds, to be held in a principal or interest payment fund necessary to meet principal of and interest on such state-guaranteed bonds for the 12-month period following the date of such transfer. The State shall indemnify, defend and hold harmless the trustee for any losses that may reasonably be incurred by the trustee by virtue of the transfer of such proceeds of the property.

(6 Del. C. 1953, § 7005; 53 Del. Laws, c. 167; 54 Del. Laws, c. 66, §§ 8-10; 57 Del. Laws, c. 679, § 3C; 58 Del. Laws, c. 316, § 9; 62 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 189, § 5(a), (b); 63 Del. Laws, c. 387, § 12; 81 Del. Laws, c. 49, § 1.)

§ 8762A. Limitation of powers of State.

The State pledges to and agrees with any holder of the bonds that the State will not limit or alter the rights vested in the Authority until all bonds at any time issued, together with the interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders, are fully met and discharged. Nothing herein contained shall preclude such limitation or alteration, if, and when, adequate provision shall have been made by law for the protection from impairment of the contracts represented by such bonds.

(6 Del. C. 1953, § 7006; 53 Del. Laws, c. 167; 58 Del. Laws, c. 316, § 10; 62 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 189, § 5(a); 81 Del. Laws, c. 49, § 1.)

§ 8763A. [Reserved].

§ 8764A. Bonds as legal investments for institutions and fiduciaries.

Bonds issued under this subchapter are made securities in which all state and municipal officers and administrative departments, boards and commissions of the State, all banks, bankers, savings banks or societies, trust companies, 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 administrators, executors, guardians, trustees and other fiduciaries and all other persons whatsoever authorized to invest in bonds or other obligations of the State, may properly and legally invest any funds, including capital belonging to them or within their control. State-guaranteed bonds are made securities which may properly and legally be deposited with and received by any officer of the State, or of any county, municipality or agency of the State for any purpose for which the deposit of bonds or other obligations of the State is authorized by law.

(6 Del. C. 1953, § 7007; 53 Del. Laws, c. 167; 58 Del. Laws, c. 316, § 11; 62 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 189, § 5(a), (b); 63 Del. Laws, c. 387, § 13(b); 81 Del. Laws, c. 49, § 1.)

§ 8765A. Exemption from taxation.

(a) Interest on bonds issued under this subchapter shall be exempt from income taxation by the State or any political subdivision thereof.

(b) Any real or personal property of the Authority which is not used by an assisted person as part of, or in connection with, a project shall be exempt from any and all taxation by the State or any political subdivision thereof.

(62 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 189, § 5(a), (b); 63 Del. Laws, c. 387, § 13(b); 81 Del. Laws, c. 49, § 1.)

§ 8766A. Property of Authority exempt from judicial process.

All property of the Authority shall be exempt from execution process, and no attachment, sequestration, execution, levy or other judicial process shall issue against the same, nor shall any judgment against the Authority be a charge or lien upon its property; provided, however, that nothing herein contained shall apply to or limit the rights of the holder of any bonds to pursue any remedy for the enforcement of any pledge or lien given by the Authority on or with respect to any project or any revenues or other moneys.

(62 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 189, § 5(a); 63 Del. Laws, c. 387, § 13(b); 81 Del. Laws, c. 49, § 1.)

§ 8767A. Liberal construction of subchapter.

This subchapter, being necessary for the prosperity and welfare of the State and its citizens, shall be liberally construed to effect the purposes of this subchapter.

(62 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 189, § 5(a), (b); 63 Del. Laws, c. 387, § 13(b); 81 Del. Laws, c. 49, § 1.)

§ 8768A. Inconsistent laws inapplicable; facsimile signatures.

Insofar as any provision of this subchapter is inconsistent with any general, special or local laws, or part thereof, this subchapter shall be controlling. Facsimile signatures of officers of the Authority and the Council on Development Finance on bonds issued by the Authority shall have the same legal effect as the manual signatures of such officers, whether or not such officer filed with the Secretary of State the officer's manual signature certified by the officer under oath in accordance with the Uniform Facsimile Signatures of Public Officials Act [§ 5401 et seq. of this title].

(62 Del. Laws, c. 269, § 1; 63 Del. Laws, c. 189, § 5(a), (b); 63 Del. Laws, c. 387, § 13(b); 68 Del. Laws, c. 405, § 20; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1.)

Subchapter VIII

Delaware Economic Development Training Act

§ 8770A. Definitions.

(a) "Added cost to employers" means the actual increased costs incurred by employers when they assume the responsibility for career worksite training. Such increased costs must be specifically identified and may include such costs as those incurred for training supervision, maintaining training records, monitoring the progress of training and implementing performance standards, additional costs of production time allocated for training on the job, wage subsidies to trainees and similar functions essential to career worksite training programs.

(b) "Classroom instruction" means job-related instruction on or off the jobsite, the provision of which is normally outside of scheduled working hours and is neither in the course of production nor in the course of rendering a service. Classroom instruction can be used in coordination with on-site training so that the skills acquired both in the classroom and on the job are mutually reinforced in a manner that enhances the career education and the productivity of the trainee.

(c) "Covered costs of classroom instruction" means costs incurred in the provision of classroom instruction for both entry level and on-site training and may include specially identified costs incurred for instructors, classroom space and facilities, liability insurance, administrative support services and related costs. To the extent possible, funds allocated from this source shall be utilized in the provision of classroom training. Costs such as those for specialized equipment and materials not appropriately attributable to classroom training shall not be allowed.

(d) [Repealed.]

(e) "Eligible applicant" means an applicant who may apply for funds that are made available to fund the purposes of this subchapter. Eligible applicants shall include, but not be limited to, local education agencies, employers, employee organizations, community-based organizations and other providers of training with demonstrated effectiveness, or any combination thereof. No party to a collective bargaining agreement shall be an eligible applicant unless all parties to the agreement apply in writing.

(f) "Entry level training" means instruction conducted in the classroom, worksite or any combination thereof which is short-term in nature and is either preparatory for employment or an integral part of employment in an entry classification in a particular occupation or industry.

(g) [Repealed.]

(h) "On-site training" means the progressive development of skills associated with a defined set of work processes to be covered sequentially in the course of employment in an occupation, trade or industry and shall be consistent with a career pattern of advancement, as measured by skill proficiency and the progression of earnings and related benefits that is recognized within the occupation, trade or industry.

(64 Del. Laws, c. 460, § 6; 69 Del. Laws, c. 458, § 1; 71 Del. Laws, c. 163, § 1; 81 Del. Laws, c. 49, § 1.)

§ 8771A. [Reserved].

§ 8772A. Powers and duties.

(a) The Director shall carry out the provisions of this subchapter and adopt rules, regulations and guidelines as necessary to implement and administer the program and may enter into contracts with eligible applicants for the purpose of funding approved programs.

(b) In order to assure timely coordination and cooperation between the State, local training providers, employee organizations, employers and industry representatives, the Director shall appoint staff, employ consultants and incur such other administrative expenses as are necessary to carry out the provisions of this subchapter.

(c) The Director may contract with eligible applicants for amounts not in excess of $100,000 per contract; provided, however, that such contracts shall be used exclusively for programs which are consistent with this subchapter and, provided further, that the contract is made only after:

(1) Receipt of an application from the eligible applicant which contains a proposal for a program of skills training and education, including a description of the program, the type of skills training or education to be provided, a statement of the total cost of the program and a breakdown of the costs associated with equipment, personnel, facilities and materials, a statement from a designated business or industry of the employment need for the program and evidence in support thereof, a statement of the technical assistance and financial support for the program received or to be received from business and industry, assurance that at least 25 percent of the trainees are Delaware residents and such other information as the Director shall request;

(2) The commitment of financial support from business or industry shall be equal to the amount of the requested contract, except that the Director may waive the requirement for such matching financial support upon finding that the program funded by the contract will materially increase the employment opportunities for targeted individuals and that the businesses or industries participating in the program have agreed to contribute personnel, facilities, equipment, supplies, stipends or other items of value to the program in an amount approved by the Director; and

(3) Binding commitment shall be made to the Director by the applicant for adequate reporting of information and data regarding the program, particularly information concerning the recruitment and employment of trainees and students, and including a requirement for a periodic audit of the books of the applicant directly related to the program, and such control on the part of the Director as the Director shall consider prudent over the management of the program, so as to protect the use of public funds including, at the discretion of the Director and without limitation, right of access to financial and other records of the applicant directly related to the program.

(64 Del. Laws, c. 460, § 6; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 163, § 2; 81 Del. Laws, c. 49, § 1.)

§ 8773A. Annual report [Repealed].

(64 Del. Laws, c. 460, § 6; 81 Del. Laws, c. 49, § 1; repealed by 81 Del. Laws, c. 374, § 16, effective July 1, 2018.)

Subchapter IX

Allocation of State Private Activity Bond Ceiling to Governmental Units, Establishment of Industrial Revenue Bond Committee and Reporting Requirements

§ 8790A. Definitions.

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings:

(1) “Authority” means the Delaware Economic Development Authority created by § 8753A of this title.

(2) “Chairperson” means the Chairperson of the Authority.

(3) “Chief elected official” means the highest elected official of any political subdivision of the State, including, but not limited to, the County Executive of New Castle County, the President of the Sussex County Council, the President of the Levy Court of Kent County and the Mayor of the City of Wilmington.

(4) “Code” means the Internal Revenue Code of 1986, as amended.

(5) “Committee” means the Industrial Revenue Bond Committee established pursuant to § 8792A of this title.

(6) “Private activity bond” has the meaning ascribed to that term in the Code.

(7) “Secretary of Finance” means the Secretary of Finance of this State.

(8) [Repealed.]

(9) “State ceiling” has the meaning ascribed to that term in the Code.

(10) “Volume cap” has the meaning ascribed to that term in the Code.

(65 Del. Laws, c. 212, § 17(a); 66 Del. Laws, c. 92, § 16(a); 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1.)

§ 8791A. Allocation of state ceiling.

(a) The state ceiling applicable to the State for each calendar year is allocated, and the volume cap for the state and local governmental issuers for each calendar year after 1987 is, as follows:

	Annual Volume Cap
State	50.0 Percent
New Castle County	17.5 Percent
City of Wilmington	12.5 Percent
Kent County	10.0 Percent
Sussex County	10.0 Percent

(b) The entire volume cap of the State for each calendar year shall be retained by the State for future allocation by the Governor among the Delaware State Housing Authority and the other governmental issuers within the State.

(c) Each issuer's volume cap may be used for any type of private activity bond and other tax-exempt obligations to which § 146 of the Code [26 U.S.C. § 146] applies.

(d) The Governor shall have the right, by executive order, to modify the allocations made under subsection (a) of this section; provided, however, that no such modification shall cause any obligation issued prior to the date of such modification to lose its qualification for tax-exempt treatment under the Code. This authority given to the Governor shall be exercisable by the Governor in the Governor's discretion, but in so doing, the Governor shall consider any recommendation by the Committee that is adopted by a majority of the Committee's members.

(e) An issuer's application and allocation of any portion of its volume cap to any obligations of such issuer shall be considered effective upon such issuer's delivery to the Secretary of Finance of a notice of the issuance of the obligations identifying the issuer, the proposed purchaser of such obligations, the amount of its volume cap allocated to such obligations and the purpose of the financing, and providing such other information as the Secretary of Finance may require. Upon the request of any issuer, the Governor or the Secretary of Finance shall certify, based on notices of issuance and notices of reassignments filed with the Secretary of Finance pursuant to this section, whether or not:

(1) Volume cap in the required amount is available for the issuer in connection with the issuance of certain of its obligations; and

(2) There is a valid allocation of volume cap for such issue pursuant to Section 146 of the Internal Revenue Code of 1986 [26 U.S.C. § 146].

(f) At the end of each calendar year commencing with calendar year 2020, any volume cap of a city or county, which has not been used by a city or county as determined by the records of the Secretary of Finance, automatically reverts to the State, and is carried forward subject to subsection (d) of this section and requirements of the Code.

(65 Del. Laws, c. 212, § 17(a); 66 Del. Laws, c. 92, § 16(a); 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 378, § 44; 73 Del. Laws, c. 95, § 58; 81 Del. Laws, c. 49, § 1; 82 Del. Laws, c. 226, § 5.)

§ 8792A. Industrial Revenue Bond Committee.

(a) There is hereby established the Industrial Revenue Bond Committee, to be composed of the Chairperson, the Secretary of Finance, a representative of the Delaware State Housing Authority and 1 representative each from Sussex County, New Castle County, Kent County and the City of Wilmington, appointed by each jurisdiction pursuant to those procedures deemed by such jurisdiction to be necessary and appropriate. The Chairperson shall be the Chairperson of the Committee.

(b) The Committee shall make recommendations to the Governor of the State regarding modification of the allocation of the state ceiling made in § 8791A(a) of this title. The Secretary of Finance shall be responsible for monitoring the volume of private activity bonds issued by each of the participating jurisdictions and for recommending to the Committee changes in the allocation of the state ceiling as circumstances dictate.

(c) The Committee shall meet at such times and in such places as its members determine to be appropriate for carrying out its functions and purposes. The Committee shall engage in other activities to promote the cooperation of jurisdiction on economic development projects within the State. The Secretary of Finance shall report to the Governor, the General Assembly and the Committee at the conclusion of each year on the projects financed with private activity bonds and on other matters as appropriate.

(65 Del. Laws, c. 212, § 17(a); 66 Del. Laws, c. 92, § 16(a); 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1.)

§ 8793A. Reports to Secretary of Finance.

(a) The Secretary of Finance is authorized to make such rules and regulations requiring any issuer allocated a volume cap for any calendar year under § 8791A of this title to file with the Secretary of Finance such reports as the Secretary of Finance may deem necessary to carry out the purposes of this subchapter. Any such reports required by the Secretary of Finance shall contain at least the following information with respect to each obligation issued or planned to be issued by such issuer:

(1) A brief description of the project financed or to be financed by such obligation;

(2) The amount of such obligation that is subject to such issuer's volume cap, and, to the extent that any portion of such obligation is claimed to be not subject to its volume cap, an opinion of bond counsel to that effect;

(3) The date of issuance of such obligation or the date of preliminary approval if such obligation has not yet been issued; and

(4) A status report on the issuance, including the anticipated date of issue, if not yet issued.

(b) A copy of any report required by the Secretary of Finance pursuant to subsection (a) of this section shall be filed with the Secretary of Finance. In turn, the Secretary of Finance shall compile such reports and distribute the compilation to each issuer.

(65 Del. Laws, c. 212, § 17(a); 66 Del. Laws, c. 92, § 16(a); 81 Del. Laws, c. 49, § 1.)

Subchapter X

Delaware Investment Tax Credit Program

§ 8795A. Legislative findings; authorization [Repealed].

(68 Del. Laws, c. 203, § 2; 69 Del. Laws, c. 458, § 1; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 244, § 1; repealed by 81 Del. Laws, c. 374, § 48, effective July 1, 2018.)

§ 8796A. Eligibility for tax credits [Repealed].

(68 Del. Laws, c. 203, § 2; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 244, § 1; repealed by 81 Del. Laws, c. 374, § 48, effective July 1, 2018.)

§ 8797A. Qualification of businesses seeking investment under Program [Repealed].

(68 Del. Laws, c. 203, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 244, § 1; repealed by 81 Del. Laws, c. 374, § 48, effective July 1, 2018.)

§ 8798A. Certification of individuals for tax credits [Repealed].

(68 Del. Laws, c. 203, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 244, § 1; repealed by 81 Del. Laws, c. 374, § 48, effective July 1, 2018.)

§ 8799A. Revocation of qualification or certification [Repealed].

(68 Del. Laws, c. 203, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 1; 81 Del. Laws, c. 244, § 1; repealed by 81 Del. Laws, c. 374, § 48, effective July 1, 2018.)

Part VIII
Departments of Government

Chapter 88
Department of Veterans Affairs [For application of this chapter, see 85 Del. Laws, c. 137, § 12]

(85 Del. Laws, c. 137, § 1.)

Subchapter I
Administration [For application of this subchapter, see 85 Del. Laws, c. 137, § 12]

§ 8801. Establishment of Department of Veterans Affairs; definitions; operations and transition report [For application of this section, see 85 Del. Laws, c. 137, § 12].

(a) A Department of Veterans Affairs is established. The Department of Veterans Affairs has the powers, duties, and functions set forth in this chapter.

(b) As used in this chapter:

(1) "Commission" means the Delaware Commission of Veterans Affairs.

(2) "Department" means the Department of Veterans Affairs.

(3) "Secretary" means the Secretary of the Department of Veterans Affairs.

(c) For administrative, budgetary, and operational purposes, the Department of Veterans Affairs is a division of the Department of State until such time as the General Assembly approves the transition report authorized by subsection (d) of this section.

(d) (1) The Secretary shall develop a transition plan to separate the Department of Veterans Affairs from the Department of State for administrative, budgetary, and operational purposes by July 1, 2030, or such time as there will be no negative impacts to the funding for veterans-related programs in Delaware. The Secretary shall prepare a transition report outlining the transition plan, including projections of the fiscal costs of the transition. The Secretary shall consult all of the following individuals or their designees when developing the plan and transition report:

a. The Governor.

b. The Lieutenant Governor.

c. The Secretary of State.

d. The Director of the Office of Management and Budget.

e. The Chief Information Officer of the Department of Technology and Information.

f. The Secretary of the Department of Human Resources.

g. The Controller General.

(2) The Secretary shall present the transition report to the General Assembly no later than 6 months in advance of the proposed transition to a separate Department.

(3) The General Assembly may approve the transition report through passage of a concurrent resolution that sets forth and approves the proposed date on which the transition will occur.

(85 Del. Laws, c. 137, § 1.)

§ 8802. Secretary; appointment [For application of this section, see 85 Del. Laws, c. 137, § 12].

(a) The Secretary of the Department of Veterans Affairs is the administrator and head of the Department. The Secretary must be a veteran, qualified by training and experience to perform the duties of the office, and preference shall be given to a resident of this State provided that such person is acceptable and equally qualified. The Secretary is appointed by the Governor, with the advice and consent of the Senate, and serves at the pleasure of the Governor. The Secretary shall be paid an annual salary as set forth in the annual Budget Appropriation Bill.

(b) In the event of death, resignation, temporary incapacity, or removal of the Secretary and prior to the appointment of a successor, the Governor may appoint a member of the Department to serve as Acting Secretary. The Secretary may, during an absence from this State, appoint a member of the Department to serve as Acting Secretary during such absence. In either case the Acting Secretary has all the powers and shall perform all the duties and functions of the Secretary during such absence or incapacity or until a successor is duly qualified and appointed.

(85 Del. Laws, c. 137, § 1.)

§ 8803. Powers, duties, and functions of the Secretary [For application of this section, see 85 Del. Laws, c. 137, § 12].

The Secretary has the following powers, duties, and functions:

(1) To supervise, direct, and account for the administration and operation of the Department, its offices, functions, and employees.

(2) To hire such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law. The Secretary shall hire veterans to fill positions within the Department where possible. For purposes of this paragraph, "veteran" means a person who has served on active duty in the U.S. Armed Forces, including the National Guard or the reserves, and who was discharged under other than dishonorable conditions.

(3) To establish, consolidate, or abolish such divisions and offices within the Department or transfer or combine the powers, duties, and functions of the divisions and offices within the Department as the Secretary, with the advice and consent of the Commission and the written approval of the Governor, may deem necessary, provided that all powers, duties, and functions required by law shall be provided for and maintained.

(4) To make and enter into any and all contracts, agreements, or stipulations, and to retain, employ, and contract for the services of private and public consultants, research, and technical and other services and facilities, whenever the same is deemed by the Secretary necessary or desirable in the performance of the functions of the Department and whenever funds are available for such purpose. All necessary legal services must be provided pursuant to Chapter 25 of this title.

(5) To delegate any of the Secretary's powers, duties, or functions to a director of a division, except the power to remove employees of the Department or to fix their compensation.

(6) To establish and to promulgate such rules and regulations governing the administration and operation of the Department as are deemed necessary by the Secretary and which are consistent with the laws of this State.

(7) To maintain such facilities throughout this State as may be required for the effective and efficient operation of the Department.

(8) To promulgate rules and regulations as necessary to carry out the Department's functions and duties.

(9) To adopt an official seal or seals for the Department.

(85 Del. Laws, c. 137, § 1.)

§ 8804. Duties of the Secretary with the advice of the Commission [For application of this section, see 85 Del. Laws, c. 137, § 12].

(a) The Secretary shall, with the advice of the Commission, do all of the following:

(1) Develop and propose strategies for providing alternative forms of elder care or to create 1 or more additional veterans homes to ensure that as many veterans as possible can be served and housed as they grow older.

(2) Operate and administer 1 or more Delaware veterans memorial cemeteries in this State and promulgate such rules and regulations governing the operation of the cemeteries as necessary.

(3) Maintain a repository for all veterans' "Statement of Service" or similar documentary verification of active armed service.

(4) Administer the Delaware Veterans Trust Fund, which will provide financial assistance or grants to veterans with a minimum discharge status of general discharge under honorable conditions to cover costs associated with medical and dental needs; medical transportation; homelessness support; home repairs and safety modifications; household utilities; and educational or retraining programs.

(5) Represent this State in concert with other states' veterans' agencies and the U.S. Department of Veterans Affairs on matters of mutual interest and concern.

(6) Coordinate with and advise all departments and agencies of this State on all matters pertaining to education, training, employment, medical, and financial benefit programs for veterans, their dependents, and their survivors.

(b) The Commission shall provide advice to the Secretary in the financial oversight and operation of the Delaware State Veterans Home.

(c) The Department and the Secretary shall augment, not replace nor infringe upon, the functions of the service officers of veterans' organizations. The Department may accredit claims representatives in each county. Department-accredited claims representatives are accountable to the Department.

(85 Del. Laws, c. 137, § 1.)

Subchapter II

Delaware Commission of Veterans Affairs [For application of this subchapter, see 85 Del. Laws, c. 137, § 12]

§ 8811. Established; composition; powers [For application of this section, see 85 Del. Laws, c. 137, § 12].

(a) There is established the Delaware Commission of Veterans Affairs.

(b) The Commission is composed of 15 Commissioners all of whom are appointed by the Governor for terms of 4 years. Commissioners must be veterans, residents of this State, and citizens of the United States.

(1) Ten Commissioners shall be representatives of statewide veterans organizations that are chartered by Congress or authorized under federal law. Where a Commissioner represents a veterans organization, that organization must, within 60 days prior to the expiration of a Commissioner's term or within 30 days following a vacancy, submit to the Office of the Governor a letter of recommendation which

shall include at least 3 nominees and their application packet. Commissioners who are appointed to represent a statewide veterans organization must, during the course of their term, remain members in good standing of the nominating organization. The following veterans organizations shall be represented on the Commission:

a. American Legion.

b. American Veterans.

c. Air Force Sergeants Associations.

d. Disabled American Veterans.

e. Korean War Veterans or National Association of Black Veterans. Until such time as any current Korean War Veterans representative serving as Commissioner as of August 9, 2023, has completed a current full term or otherwise resigned the commission, that Commissioner shall retain the appointment and seat on the Commission. At the completion of that term or upon resignation of the Commissioner, the Korean War Veterans Commissioner seat shall be filled by a representative of the National Association of Black Veterans.

f. Marine Corps League.

g. Military Officers Association of America.

h. Military Order of the Purple Heart.

i. Veterans of Foreign Wars.

j. Vietnam Veterans of America.

(2) Five Commissioners shall be at-large Commissioners, who shall also be a member of any veterans organization or may be a veteran who has applied directly to the Office of the Governor.

(c) For purposes of this section, a "veteran" is any person who has served on active duty in the U.S. Armed Forces, including the National Guard or the reserves, and who was discharged under other than dishonorable conditions.

(65 Del. Laws, c. 232, § 1; 69 Del. Laws, c. 145, § 4; 69 Del. Laws, c. 228, § 1; 78 Del. Laws, c. 308, § 1; 80 Del. Laws, c. 217, § 1; 84 Del. Laws, c. 163, § 1; 85 Del. Laws, c. 137, § 2.)

§ 8812. Duties and responsibilities [For application of this section, see 85 Del. Laws, c. 137, § 12].

(a) (1) The Commission shall recommend candidates to the Secretary, who shall hire and employ an Executive Director that will also provide services to the Commission. The Executive Director is exempt from Chapter 59 of this title and must be a veteran as defined in § 8811 of this title.

(2) The Executive Director is an employee of the Department of Veterans Affairs.

(3) The Executive Director reports to the Secretary and consults with the Commission on all substantive matters.

(b) The Commission has the power of general oversight in the administration of the Delaware State Veterans' Home and may recommend such rules, regulations, and policy as is necessary to the operation of a veterans' home provided, however, such rules, regulations, and policy are not inconsistent with the other provisions of this chapter.

(c) The Commission shall establish and administer the "Delaware Veterans Trust Fund" which will provide financial assistance or grants to veterans with a minimum discharge of general discharge under honorable conditions to cover costs associated with medical and dental needs; medical transportation; homelessness support; home repairs and safety modifications; household utilities; and educational or retraining programs.

(d) The Commission shall serve in an advisory capacity to the Secretary on all matters relevant to veterans in this State and specifically with respect to those duties set forth under § 8804 of this title.

(e) The Commission may initiate, review, and sponsor state legislation pertaining to veterans.

(f) The Commission shall submit to the Governor, Secretary, Secretary of State, and to the General Assembly an annual report of the Commission's activities and recommendations. Submission to the General Assembly shall be made by delivering a copy of the annual report to the Secretary of the Senate, the Chief Clerk of the House, the Chairs of the House and Senate Veterans Affairs Committees, and the Director and Librarian of the Division of Legislative Services.

(65 Del. Laws, c. 232, § 1; 67 Del. Laws, c. 42, §§ 1, 2; 69 Del. Laws, c. 225, § 1; 69 Del. Laws, c. 228, § 3; 70 Del. Laws, c. 358, §§ 1, 2; 75 Del. Laws, c. 288, § 1; 79 Del. Laws, c. 183, § 1; 80 Del. Laws, c. 217, § 1; 82 Del. Laws, c. 18, § 1; 82 Del. Laws, c. 70, § 1; 83 Del. Laws, c. 37, § 37; 84 Del. Laws, c. 320, § 1; 85 Del. Laws, c. 137, § 2.)

§ 8813. Authority [For application of this section, see 85 Del. Laws, c. 137, § 12].

The Commission is authorized to develop and promulgate bylaws and rules necessary to its functions.

(65 Del. Laws, c. 232, § 1; 85 Del. Laws, c. 137, § 2.)

§ 8814. Organization and operation [For application of this section, see 85 Del. Laws, c. 137, § 12].

(a) A veterans organization listed in § 8811(b) of this title may petition the Governor to remove from the Commission a member which said organization recommended, provided the reasons for said removal are clearly stated in said petition.

(b) In the event any Commissioner fails to attend 3 successive scheduled meetings without just cause such failure shall be sufficient grounds for the representative of the particular veterans organization to be removed by the Governor.

(c) As vacancies occur, they shall be filled in accordance with § 8811(b) of this title.

(d) The names of prospective members of the Commission shall be submitted to the Governor by letter from the senior official of each respective statewide veterans organization.

(e) The members of the Commission shall elect 1 of their members to serve as Chair and 1 as Vice-Chair who shall not serve more than 2 consecutive terms. Such elections shall be held annually in September.

(f) The Chair and Vice-Chair shall serve as voting members of the Commission.

(g) or the Executive Director's designee The Department shall provide clerical and staff support to the Commission.

(h) The Commission shall hold monthly meetings at such time and location as prescribed by the Chair. Special meetings may be called by the Chair or a majority of the Commission membership.

(i) A quorum shall consist of a simple majority of the Commission members.

(j) Members of the Commission shall serve without compensation except that they may be reimbursed for reasonable and necessary travel expenses incident to their duties as members of the Commission to the extent that funds are available and in accordance with state law.

(65 Del. Laws, c. 232, § 1; 69 Del. Laws, c. 225, § 2; 71 Del. Laws, c. 188, § 1; 84 Del. Laws, c. 320, § 2; 85 Del. Laws, c. 68, § 45; 85 Del. Laws, c. 137, § 2.)

§ 8815 Funding [For application of this section, see 85 Del. Laws, c. 137, § 12].

Annually, the Commission shall submit a proposed budget to the Department of Veterans Affairs for review and approval by that Department. The Department of Veterans Affairs shall then recommend to the General Assembly that the Commission's budget be included as a line item within said Department's funding.

(65 Del. Laws, c. 232, § 1; 85 Del. Laws, c. 137, § 2.)

§ 8816. Relationship to other state agencies [For application of this section, see 85 Del. Laws, c. 137, § 12].

(a) The Commission may request the advice, opinion, or assistance of other appropriate state agencies as necessary to properly discharge its duties and responsibilities.

(b) The Department of Veterans Affairs shall provide reasonable office and meeting facilities and other logistic support as requested by the Commission.

(c) The Department of Veterans Affairs shall maintain an overview of the Commission's operation in order to insure proper use of, and accountability for, state funds appropriated for that purpose.

(65 Del. Laws, c. 232, § 1; 75 Del. Laws, c. 98, § 56; 84 Del. Laws, c. 320, § 3; 85 Del. Laws, c. 137, § 2.)

Part VIII
Departments of Government
Chapter 89
Department of Correction
Subchapter I
General Provisions

§ 8901. Established.

The Department of Correction is established.

(60 Del. Laws, c. 251, § 14.)

§ 8902. Appointment, qualifications, etc., of Commissioner; Deputy Commissioner; bureau chiefs; Acting Commissioner.

(a) The administrator and head of the Department is the Commissioner of the Department of Correction ("Commissioner"), who must be a person qualified by training and experience to perform the duties of the office.

(1) The Commissioner is appointed, confirmed, and holds office as provided in § 10 of Article III of the Delaware Constitution.

(2) The Commissioner is to be paid an annual salary as determined by the General Assembly in the annual appropriations act.

(3) The Commissioner must obtain and retain residency in this State as provided in § 10 of Article III of the Delaware Constitution.

(b) In the event the position of Commissioner is vacant, the Governor, by appointment, shall have the power to fill the position or positions of Deputy Commissioner and bureau chief as are vacant. Deputy Commissioner and chiefs so appointed shall serve at the pleasure of the Governor, and, upon the position of Commissioner being filled, such Deputy Commissioner and chiefs may be removed from office by the Commissioner with the written approval of the Governor.

(c) In the event of death, resignation, temporary incapacity or removal of the Commissioner and prior to the appointment of a successor, the Governor may appoint the Deputy Commissioner or chief of any bureau of the Department to serve as Acting Commissioner. The Governor may during the Commissioner's absence from the State appoint the Deputy Commissioner or chief of any bureau of the Department to serve as Acting Commissioner during such absence. In either case, the Acting Commissioner shall have all the powers and perform all the duties and functions of the Commissioner during such absence or incapacity or until the successor is duly qualified and appointed.

(60 Del. Laws, c. 251, § 14; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 140, § 9; 78 Del. Laws, c. 305, § 4; 83 Del. Laws, c. 31, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 455, § 14; 85 Del. Laws, c. 43, § 1.)

§ 8903. Powers, duties and functions — Commissioner.

The Commissioner shall:

(1) Supervise, direct and account for the administration and operation of the Department, its bureaus, subbureaus, offices, functions and employees;

(2) Appoint and fix the salary, with the written approval of the Governor, of the Deputy Commissioner and chiefs of the Department's Bureaus and other office heads, who may be removed from office by the Commissioner with the written approval of the Governor, and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Commissioner.

(3) Appoint such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law;

(4) Establish, consolidate, abolish, transfer or combine the powers, duties and functions of the bureaus, subbureaus and offices within the Department as the Commissioner, with the written approval of the Governor, may deem necessary, providing that all powers, duties and functions required by law shall be provided for and maintained;

(5) Make and enter into any and all contracts, agreements or stipulations, and retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract, consulting, research, technical and other services and facilities, whenever the same shall be deemed by the Commission necessary or desirable, in the performance of the functions of the Department, and whenever funds shall be available for such purpose. All necessary legal services shall be provided pursuant to Chapter 25 of this title;

(6) Delegate any of the Commissioner's powers, duties or functions to the Deputy Commissioner or a chief of a bureau, except the power to remove employees of the Department or to fix their compensation;

(7) Establish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Commissioner and which are not inconsistent with the laws of this State;

(8) Maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department;

(9) Adopt an official seal or seals for the Department;

(10) Adopt a plan for use of personnel within the correctional system;

(11) Adopt a plan to identify and classify very low risk inmates convicted of misdemeanors and sentenced to serve no more than 24 months of incarceration and to provide an ongoing list of such inmates eligible for release to alternative programs of punishment which do not include incarceration. Such plan shall include a provision that all inmates sentenced to serve no more than 24 months of incarceration shall be so identified and classified within 90 days of their commitment to an institution supervised by the Department;

(12) Devise and adopt a plan to provide weapons training to all probation and parole officers. Such plan shall include an option for each such officer to carry a firearm, after successful completion of a course in weapons, during work in the field. Said course of training shall meet or exceed the standards established by the Police Officer Standards and Training Commission. Such plan shall be in operation no later than September 15, 1992;

(13) Upon an order of the court directing the Department to debit moneys in an inmate account in accordance with Chapter 88 of Title 10, the Department shall, to the extent adequate funds are available, transfer such moneys to the court. To the extent an inmate's account does not have adequate funds to comply with the court's order, the Department shall debit the inmate's account for future payment to the court. The Department shall retain records of an inmate's account upon the release of the prisoner from the custody of the Department if such account has a negative balance pursuant to a court order under Chapter 88 of Title 10. The outstanding balance of such an account shall be reinstated should that person be committed to the custody of the Department at some future time. Notwithstanding the above, no court order pursuant to Chapter 88 of Title 10, shall have priority over charges or debits pursuant to § 6536(b) or (c) of Title 11; and

(14) Provide feminine hygiene products to inmates at no cost in facilities maintained by the Department. For purposes of this paragraph, "feminine hygiene products" means tampons and sanitary napkins, for use in connection with the menstrual cycle.

(60 Del. Laws, c. 251, § 14; 61 Del. Laws, c. 15, §§ 1, 2; 62 Del. Laws, c. 283, § 1; 64 Del. Laws, c. 108, § 15; 64 Del. Laws, c. 304, § 1; 68 Del. Laws, c. 414, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 411, § 2; 78 Del. Laws, c. 305, § 4; 81 Del. Laws, c. 436, § 1; 83 Del. Laws, c. 31, § 1; 84 Del. Laws, c. 149, § 1.)

§ 8904. Powers, duties and functions — Department.

The Department of Correction shall have the powers, duties and functions as follows:

(1) To perform and shall be responsible for the performance of all the powers, duties and functions heretofore vested in:

The Division of Corrections, pursuant to Chapter 79 of this title, which was vested with the powers, duties and functions which were previously vested in:

a. The Department of Correction and the Board of Correction pursuant to Chapters 43 and 65 of Title 11;

b. [Repealed.]

(2) The Department of Correction shall furnish the Board of Parole adequate office facilities and supplies to properly perform its duties pursuant to Chapter 43 of Title 11.

(60 Del. Laws, c. 251, § 14; 64 Del. Laws, c. 108, § 15.)

§ 8905. Council on Correction [Effective until Sept. 17, 2026].

(a) *Purpose. —*

The Council on Correction, referred throughout this section as "the Council," is established to serve in an advisory capacity to the Commissioner of the Department of Correction. The Council's purpose is to collect and evaluate the best available data to make recommendations to the Commissioner of the Department of Correction to further the following goals:

(1) Enhance the safe and orderly operation of Department of Correction facilities, for both employees and offenders.

(2) Enhance the efficiency of Department of Correction policies.

(3) Ensure system and offender accountability.

(4) Foster a constructive and respectful relationship between the Department of Correction and the public.

(b) The Council shall consider matters relating to the development and progress of the adult correctional system of this State, including all of the following:

(1) Correctional facilities.

(2) Services provided to an adult offender.

(3) The care and supervision of an individual released on probation or parole.

(4) Another matter that the Governor, the Commissioner of the Department of Correction, or a chief of a bureau or division within the Department of Correction may refer to the Council.

(c) The Council may study, research, plan, and advise the Governor, the Commissioner of the Department of Correction, or the chiefs of the bureaus or divisions within the Department of Correction on matters that the Council identifies as appropriate to enable the Department to function in the best manner.

(d) *Council membership. —*

(1) The Council is comprised of 7 members who are appointed by the Governor. The Council may submit names for the Governor to consider when making an appointment.

(2) Each member is appointed for a period of 3 years. Each term of office expires on the date specified in the appointment; however, a member remains eligible to participate in council proceedings until the Governor replaces that member. The Governor may appoint a member for a term of less than 3 years to ensure that members' terms expire on a staggered basis.

(3) The Council shall annually elect a chair and a vice chair from among its members.

(4) a. The Governor may remove a member for gross inefficiency, misfeasance, nonfeasance, or neglect of duty in office.

b. A member is deemed in neglect of duty if the member is absent from 3 consecutive, regular council meetings without good cause or attends less than 50% of council meetings in a calendar year.

c. The Governor may consider a member who is deemed in neglect of duty as having resigned, and may accept the member's resignation.

(5) A member does not receive compensation but may be reimbursed for actual and necessary expenses incurred in the performance of official duties.

(e) *Meetings and quorum. —*

(1) The Council shall meet at least 6 times per year.

(2) The Council shall conduct at least 1 meeting in each county per calendar year.

(3) The number of council members who must be present at a meeting to have quorum and conduct official business is the majority of appointed members. A member vacancy is not counted for quorum.

(f) The Council may adopt bylaws or other procedural rules to carry out its functions under this section.

(g) The Council must conduct its meetings and other business under Chapter 100 of this title (Freedom of Information Act).

(h) The Council shall submit an annual report no later than December 1 to the Governor, General Assembly, Commissioner of the Department of Correction, chiefs of the bureaus and divisions under the Department of Correction, Executive Director of the Criminal Justice Council, and Director and the Librarian of the Division of Legislative Services. The annual report must include at least all of the following:

(1) Meeting agendas and minutes.

(2) Training programs council members completed.

(3) The Council's priorities and activities, including participation in legislative matters.

(4) Correspondence with the Commissioner of the Department of Correction and the Department of Correction in general. The correspondence must be redacted to remove any information that is not deemed a public record under § 10002 of this title.

(5) The Council's goals, priorities, and planned activities for the next calendar year.

(i) The Council is a Department of Correction entity, but the Criminal Justice Council, through its Executive Director, shall provide reasonable and necessary staff support and materials to assist the Council in performing its duties under this section.

(60 Del. Laws, c. 251, § 14; 64 Del. Laws, c. 108, §§ 16, 17; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 379, § 1; 83 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 255, §§ 56, 57; 85 Del. Laws, c. 68, §§ 46, 47.)

§ 8905. Council on Correction [Effective Sept. 17, 2026].

(a) *Purpose. —*

The Council on Correction, referred throughout this section as "the Council," is established to serve in an advisory capacity to the Commissioner of the Department of Correction. The Council's purpose is to collect and evaluate the best available data to make recommendations to the Commissioner of the Department of Correction to further the following goals:

(1) Enhance the safe and orderly operation of Department of Correction facilities, for both employees and offenders.

(2) Enhance the efficiency of Department of Correction policies.

(3) Ensure system and offender accountability.

(4) Foster a constructive and respectful relationship between the Department of Correction and the public.

(b) The Council shall consider matters relating to the development and progress of the adult correctional system of this State, including all of the following:

(1) Correctional facilities.

(2) Services provided to an adult offender.

(3) The care and supervision of an individual released on probation or parole.

(4) Another matter that the Governor, the Commissioner of the Department of Correction, or a chief of a bureau or division within the Department of Correction may refer to the Council.

(c) The Council may study, research, plan, and advise the Governor, the Commissioner of the Department of Correction, or the chiefs of the bureaus or divisions within the Department of Correction on matters that the Council identifies as appropriate to enable the Department to function in the best manner.

(d) *Council membership. —*

(1) The Council is comprised of 7 members who are appointed by the Governor. The Council may submit names for the Governor to consider when making an appointment.

(2) Each member is appointed for a period of 3 years. Each term of office expires on the date specified in the appointment; however, a member remains eligible to participate in council proceedings until the Governor replaces that member. The Governor may appoint a member for a term of less than 3 years to ensure that members' terms expire on a staggered basis.

(3) The Council shall annually elect a chair and a vice chair from among its members.

(4) a. The Governor may remove a member for gross inefficiency, misfeasance, nonfeasance, or neglect of duty in office.

b. A member is deemed in neglect of duty if the member is absent from 3 consecutive, regular council meetings without good cause or attends less than 50% of council meetings in a calendar year.

c. The Governor may consider a member who is deemed in neglect of duty as having resigned, and may accept the member's resignation.

(5) A member does not receive compensation but may be reimbursed for actual and necessary expenses incurred in the performance of official duties.

(e) *Meetings and quorum. —*

(1) The Council shall meet at least 6 times per year.

(2) The Council shall conduct at least 1 meeting in each county per calendar year.

(3) The number of council members who must be present at a meeting to have quorum and conduct official business is the majority of appointed members. A member vacancy is not counted for quorum.

(f) The Council may adopt bylaws or other procedural rules to carry out its functions under this section.

(g) The Council must conduct its meetings and other business under Chapter 100 of this title (Freedom of Information Act).

(h) The Council shall submit an annual report no later than December 1 to the Governor, General Assembly, Commissioner of the Department of Correction, chiefs of the bureaus and divisions under the Department of Correction, Executive Director of the Criminal Justice Council, and Director and the Librarian of the Division of Legislative Services. The annual report must include at least all of the following:

(1) Meeting agendas and minutes.

(2) Training programs council members completed.

(3) The Council's priorities and activities, including participation in legislative matters.

(4) Correspondence with the Commissioner of the Department of Correction and the Department of Correction in general. The correspondence must be redacted to remove any information that is not deemed a public record under § 10002 of this title.

(5) The Council's goals, priorities, and planned activities for the next calendar year.

(i) [Expired.]

(60 Del. Laws, c. 251, § 14; 64 Del. Laws, c. 108, §§ 16, 17; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 379, § 1; 83 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 255, §§ 56, 57; 85 Del. Laws, c. 68, §§ 46, 47; 83 Del. Laws, c. 186, § 2.)

§ 8906. Exemptions from merit system.

All of the following positions set forth in this section shall specifically be exempt from Chapter 59 of this title, as well as any others allowed by Chapter 59 of this title:

(1) Commissioner of Correction.

(2) Deputy Commissioner of Correction.

(3) Chiefs as established by this chapter, as well as any hereafter established, by the Commissioner, with the approval of the Governor.

(60 Del. Laws, c. 251, § 14; 83 Del. Laws, c. 31, § 1.)

§ 8907. Assumption of functions.

The Department of Correction, through appropriate bureaus, agencies and offices, shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions which were the previous responsibilities of the Division of Adult Corrections immediately prior to July 1, 1975, and which are not otherwise specifically transferred to the Department by this chapter.

(60 Del. Laws, c. 251, § 14; 64 Del. Laws, c. 108, § 18.)

§ 8908. Appeals.

Any and all rights of appeal now existing by law with respect to any act or acts constituting the exercise of any function or functions transferred to the Department or to any bureau or subbureau thereof shall continue to exist with respect to such act or acts as hereafter

performed by the Department or by the bureau, subbureau or office to which such function is transferred, and each such appeal shall be perfected in the manner heretofore provided by law.

(60 Del. Laws, c. 251, § 14.)

§ 8909. Definitions and references in other laws.

(a) All definitions and references to any commission, board, department, authority or agency which appear in any other act or law shall, to the extent that the same are consistent with this chapter and in connection with a function transferred to the Department, be construed as referring and relating to the Department of Correction as created and established by this chapter.

(b) All definitions and references to any director, commissioner, executive secretary, commission, board or council member or other similar person which appear in any other act or law shall, to the extent that same are consistent with this chapter, and in connection with a function transferred to the Department, be construed as referring or relating to such person or persons and their powers, duties and functions as established and created by this chapter.

(60 Del. Laws, c. 251, § 14.)

§ 8910. Annual report.

The Commissioner of the Department of Correction shall make an annual report to the Governor and to the General Assembly which shall describe the Department's operations. The Commissioner shall also render such other reports as the Governor or the General Assembly may from time to time request, or as may be required by law.

(60 Del. Laws, c. 251, § 14.)

§ 8911. Budgeting and financing.

The Commissioner, in cooperation with the bureau chiefs, shall prepare a proposed budget for the operation of the Department to be submitted for a consideration of the Governor and the General Assembly. The Department shall be operated within the limitation of the annual appropriation, and any other funds appropriated by the General Assembly. Special funds may be used in accordance with the programs, grants and appropriations.

(60 Del. Laws, c. 251, § 14.)

§ 8912. Misnomer in gifts, grants, etc.

Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Department if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey to the Department or to any commission, board, department, authority, council or other agency of the Department to which, by this chapter, the powers, duties and functions have been transferred to the Department, the estate or interest therein expressed or described.

(60 Del. Laws, c. 251, § 14.)

§ 8913. Financial liability of committed person.

(a) In the event any person, juvenile or adult is committed to a prison or correctional institution, and in the event a court of this State has not ordered payment of the full cost of care, the Department may require such payments from such juvenile or adult while on work release or similar programs, as it may deem appropriate, provided that the total payment shall not exceed the actual cost of care while on the work release program.

(b) The Commissioner of the Department shall have the power to promulgate any rules and regulations not contrary to the laws of the State which the Commissioner deems necessary to carry out this section and such rules and regulations shall have the full force and effect of law.

(c) Any court of this State committing a person to the jurisdiction of the Department may, in its discretion, order said person, and such other persons liable for the payment of costs under this section over which the court has jurisdiction, to pay for the cost of care, treatment or both in such amounts as may be fixed by the Department under this chapter.

(d) The "cost of care, treatment or both" per diem for a facility shall be deemed to mean the total disbursements made by or on behalf of such facility during a fiscal year, divided by the number of inmate or patient-days during such fiscal year. Such cost shall be computed based on the experience of the previous fiscal year and the revised rate shall be charged beginning on the first day of the fourth month following the end of said fiscal year. In the event the facility has not been operational during the previous fiscal year, the "cost of care, treatment or both" shall be the amount determined by the Department within the guideline of available appropriations and anticipated inmate or patient-days. In the event a facility provides various services that have substantially different costs, and such different costs may be reasonably identified, the Department may determine the "cost of care, treatment or both" based upon the particular service provided.

(e) The Department, after full investigation of collectibility and/or reasons for nonpayment, shall proceed for the recovery of the moneys owed for such care, treatment or both in an action to be brought in any court of the State in the name of the Department, where such action is deemed justified. The Department of Justice of the State shall represent the Department in such cases and any costs to the State arising from such action shall be paid by the State Treasurer from moneys in the General Fund not otherwise appropriated.

(60 Del. Laws, c. 251, § 14; 70 Del. Laws, c. 186, § 1.)

§ 8914. Officers and employees.

Notwithstanding § 5920 of this title or any other section, the application by any person seeking employment in the Department shall be rejected if it indicates, on its face, that the applicant does not meet the minimum qualifications for the position sought. Applications shall also be rejected if the applicant has made false statements or misrepresentations on the application; is habituated to the intemperate use of alcoholic beverages or the use of harmful drugs which makes the applicant unable to perform duties required by the position; has a record of court convictions or infamous or other conduct which renders the applicant unsuitable for employment; or has been separated from any branch of the armed forces under conditions other than honorable.

(60 Del. Laws, c. 706, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8915. Delaware personal credential card.

(a) A Delaware personal credential card ("personal credential") is issued by the Commissioner and contains all of the following:

(1) The individual's name, date of birth, sex, height, weight, and eye color.

(2) A photograph of the individual.

(3) An expiration date that is 1 year from the date the personal credential is issued.

(4) A bar code.

(5) A statement regarding the validity of the card.

(b) (1) The Commissioner shall ensure that an individual who is being released from the custody of the Department of Correction following conviction and a term of incarceration of 6 months or more receives a personal credential as follows:

a. Before release from Level IV if held at a Level IV residential treatment facility after Level V.

b. Before release from Level V if held at a Level IV work release center after Level V.

c. Before release from Level V if not being held at Level IV custody.

(2) The Commissioner shall provide written instructions with the personal credential that explains how it can be used to obtain the identification documents in subsection (c) of this section without charge.

(c) An individual who presents a valid personal credential is exempt from the applicable fee to receive all of the following:

(1) One certified copy of a certificate of birth, if the individual was born in this State.

(2) One identification card or driver's license, issued under Title 21, if the individual is otherwise eligible.

(d) The Commissioner shall work with the Department of Health and Social Services and the Division of Motor Vehicles to adopt policies and procedures to implement this section.

(81 Del. Laws, c. 447, § 1.)

Subchapter II

Mandatory Screening for Use of Illegal Drugs

§ 8920. Purpose.

The purpose of this subchapter is to establish a mandatory drug testing program for certain Department of Correction employees who hold positions that are directly related to public safety and the security of our correctional institutions and probation operations.

(70 Del. Laws, c. 340, § 1.)

§ 8921. Definitions.

As used in this subchapter unless the context otherwise requires:

(1) "Applicant" means any person who is seeking employment with the Department for a security sensitive position.

(2) "Applicant-employee" means an employee of the State who is an applicant for a security sensitive position in the Department.

(3) "Department technical representative" means an employee of the Department designated by the Commissioner to ensure compliance with the requirements of this subchapter and whose duties include, but are not limited to, the following:

a. Scheduling of urine specimen collections;

b. Designation of collection sites;

c. Assuring the integrity of collection procedures and sites;

d. Assuring the integrity of testing and specimen retention procedures;

e. Reviewing the data and reports; and

f. Acting as the Commissioner's contact person for the testing for illegal drugs.

(4) "Employee" means a person with whom the State has an employer-employee relationship.

(5) "Incident triggered testing" means any incident involving death or serious physical injury to a Department employee, loss or significant damage to Department property, escape of an inmate or detentioner where the security sensitive employee was directly involved in the incident.

(6) “Random testing” means tests based upon an appropriate random sampling technique, with significant samples of Department employees in security sensitive positions being tested on a periodic basis with all such employees having a reasonably equal chance of being tested.

(7) “Reasonable suspicion” means when the Department, acting through its supervisory personnel, has reasonable suspicion that the appearance or conduct of Department employees in a security sensitive position is indicative of their having being impaired by an illegal drug.

(8) “Security sensitive position” means any of the following positions in the Department:

a. The Commissioner;

b. Bureau Chiefs;

c. Security positions;

d. Employees of the Department who are required or permitted to carry a firearm;

e. Department employees who have a significant degree of responsibility for the safety of others and whose impaired performance or undue influence of that Department employee could potentially result in death or injury to employees or others; or

f. Department employees as otherwise designated by the Department pursuant to its policies and procedures.

(70 Del. Laws, c. 340, § 1.)

§ 8922. Drug testing required.

(a) *Random testing.* — All Department employees in security sensitive positions shall be subject to random testing for the illegal use of drugs.

(b) *Pre-employment testing.* — The Department shall test all security sensitive applicants and applicant employees for the illegal use of drugs.

(c) *Incident triggered testing.* — All Department employees in security sensitive positions shall be subject to incident triggered testing.

(d) *Reasonable suspicion testing.* — The Department may, acting through its supervisory personnel, conduct a drug test based on a reasonable suspicion that the appearance or conduct of the Department employee in a security sensitive position is indicative of being impaired by an illegal drug. The questioned conduct or appearance should be witnessed and must be documented in writing by a supervisor where practicable.

(e) Nothing in this section shall be construed to limit the Department’s authority pursuant to any other statute, regulation, policy, procedure, contract or other source of authority to test any Department employee for drugs.

(70 Del. Laws, c. 340, § 1.)

§ 8923. Drugs to be screened.

(a) The illegal drugs that shall be screened include, but are not limited to, the following:

(1) Marijuana/cannabis;

(2) Cocaine;

(3) Opiates;

(4) Phencyclidine (“PCP”); and

(5) Amphetamines.

(b) The Department technical representative may submit to the Commissioner a written request for approval to screen for an illegal drug or controlled substance other than those listed under subsection (a) of this section. If the Commissioner approves the request, the Department technical representative shall notify all Department employees in security sensitive positions of the addition of that drug to the list of those to be screened.

(70 Del. Laws, c. 340, § 1.)

§ 8924. Arrest notification required.

Any security sensitive employee arrested for an alleged violation of Chapter 47 of Title 16 shall report the arrest to the Department on the employee’s next scheduled work day, or within 1 week, whichever is earlier. Failure to report the arrest shall result in disciplinary action up to and including dismissal.

(70 Del. Laws, c. 340, § 1.)

§ 8925. Policies and procedures.

The Department shall promulgate policies and procedures for the full implementation of the subchapter.

(70 Del. Laws, c. 340, § 1.)

Subchapter III

Department Employees

(83 Del. Laws, c. 185, § 1.)

§ 8926. Department Employee Education Assistance Fund.

(a) Any employee of the Department holding a position classified at paygrade 15 or below may avail themselves of the provisions of this section to prepay the tuition costs for higher education related to their position.

(b) The classes will be 100% prepaid by the Department upon application to the Human Resources Director of the Department prior to commencement of classes at a college or university within the State for classes related to corrections, public safety, criminal justice, psychology, or sociology or related fields. Related fields include any courses necessary to complete a degree program in criminal justice, corrections, public safety, psychology, or sociology. Department employees who work in the food service, mechanical, or building trades and maintenance area are eligible for prepayment for classes that relate to their field or trade. The employee must maintain a C average or better in the classes taken to remain eligible for this program.

(c) (1) The Department shall take the funds appropriated for this section in each fiscal year and allocate them as follows:

a. 40% for the fall semester.

b. 40% for the spring semester.

c. 20% for the summer semester.

(2) The Department shall establish a deadline date for applying for said funds. If there are more applications than funds for any semester, then the funds shall be prorated between the applications. If there are fewer funding applications than funds available, the Department shall roll excess funds over to the next semester.

(d) An employee who has received funding under this section but who is terminated from the Department for cause prior to completion of current vouchered courses or who otherwise fails to comply with any requirement of this section immediately becomes ineligible to receive education benefits under this section and shall repay the Department for all tuition and fee funding previously extended to the employee, including interest, on a pro rata basis from the time of termination or noncompliance. The Commissioner shall adopt appropriate procedures to determine the amount of repayment and the method of collection due by the employee under this subsection. If an employee voluntarily leaves the Department prior to completion of funded courses, the employee will not be required to repay previously funded tuition but will have to repay the current quarter or semester’s tuition.

(72 Del. Laws, c. 273, § 1; 73 Del. Laws, c. 102, §§ 1, 2; 73 Del. Laws, c. 175, §§ 1-6; 83 Del. Laws, c. 185, §§ 1, 2.)

Part VIII
Departments of Government

Chapter 90
Department of Services for Children, Youth and Their Families

§ 9001. Intent and purpose.

(a) The General Assembly finds and declares that parents have the primary responsibility for meeting the needs of their children and the State has an obligation to help them discharge this responsibility or to assume this responsibility when parents are unable to do so; while the State has a basic obligation to promote family stability and preserve the family as a unit, and protect and safeguard the well-being of children through the provision of a comprehensive program of social services and facilities for children and their families who require care, guidance, control, protection, treatment, rehabilitation or confinement.

(b) The General Assembly hereby declares that the purpose of this chapter and the policy of the State is to achieve the consolidation of services to children, youth and their families within the jurisdiction of a single agency in order to avoid fragmentation and duplication of services and to increase accountability for the delivery and administration of these services; to plan, develop, and administer a comprehensive and unified service delivery system to abused, neglected, dependent, delinquent and mentally ill or emotionally disturbed children and youth within a continuum of care, which shall include the involvement of their family, within the least restrictive environment possible but consistent with the child's health and safety; to emphasize preventive services to children, youth and their families, in order to avoid the costs to the State of individual and family instability; and to create and maintain a developmentally appropriate, comprehensive program that fully integrates transitional and independent living services from ages 14 to 23 and that will assist youth with their successful transition into adulthood.

(64 Del. Laws, c. 108, §§ 1, 14; 71 Del. Laws, c. 199, §§ 7-9; 79 Del. Laws, c. 185, § 2; 83 Del. Laws, c. 300, § 2.)

§ 9002. Department of Services for Children, Youth and Their Families reestablished.

There is hereby reestablished the Department of Services for Children, Youth and Their Families hereinafter referred to as the "Department."

(64 Del. Laws, c. 108, §§ 1, 14.)

§ 9003. Powers, duties, and functions.

(a) The Department of Services for Children, Youth and Their Families has the following powers, duties, and functions:

(1) To provide to children, youth, and their families a comprehensive and effective statewide program of services for children and youth who have been committed to the Department or placed in the care of the Department by the Court, referred to the Department by parents, agencies, or other individuals, or who have otherwise voluntarily applied to the Department for services.

(2) To provide services to children, youth, and their families to prevent children and youth from becoming abused, neglected, dependent, and delinquent, as defined under existing law, and to prevent mental illness and emotional disorders among children and youth.

(3) a. To provide for a variety of facilities and services to children, youth, and their families which includes the following:

1. Protective services.
2. Preplacement, preventive services, and reunification services.
3. Home-based services.
4. Mental health outpatient services.
5. Drug and alcohol outpatient services.
6. Residential and institutional facilities.
7. Probation, aftercare, and follow-up services.
8. Adoption and permanent placement services.
9. Evaluation, diagnostic, and treatment services.
10. Foster care services.
11. Independent and transitional living services.
12. A continuum of residential mental health services, which includes inpatient psychiatric hospitalization for all children requiring such care, mental health residential treatment centers, and specialized mental health treatment services in other group-care facilities and foster homes.

b. The Division of Family Services will provide family preservation services to those families whose children are at imminent risk of out-of-home placement when it has determined that out-of-home placement can be avoided; provided, however, that the Division's highest priority in cases of abuse and neglect where an investigation is required pursuant to § 906 of Title 16 is the health and safety

of the child and nothing herein will prevent the Division from removing a child from the child's home when it has determined that the child's safety and well-being may be jeopardized by remaining in the family home.

(4) To prepare and maintain a written case plan for each child under its supervision or custody, which must include a description of the child's needs, the care and treatment of the child, and any other services to be provided to the child and the child's family; each case plan must be designed to achieve any placement of the child outside of the child's home in the least restrictive setting available and in close proximity to the child's home, consistent with the best interests and special needs of the child.

(5) To conduct a written review at least every 6 months of the case plan for each child under its supervision or custody for the purpose of determining whether the plan is appropriate.

(6) To develop a central case management system which provides coordinated information on client progress, including the client's entry and exit from the system, assessment of the client's needs, development and review of the case plan, and evaluation and monitoring of the client's progress.

(7) To approve, license, and monitor foster homes to ensure appropriate care for children and youth in foster care.

(8) To supervise the provision of education in all facilities operated by the Department, with the Education Unit of the Department being considered a local education agency only for purposes of:

a. Any federal, state, or private loan forgiveness programs available to educators.

b. Any federal, state, or private competitive grant made available to, and awarded directly to, local education agencies, provided that any specific qualifying requirements are met.

c. Credits issued for youth who complete the requirements for credit-bearing courses provided through the Education Unit in the Department and credits for youth returning from placement by the Department.

(9) To monitor and evaluate all aspects of its service delivery system and document the need for or degree of compliance with standards, policies, and procedures adopted by the Department.

(10) To administer the Interstate Compact on Juveniles and the Interstate Compact on Child Placement.

(11) To establish, implement, and follow procedures and standards compatible with due process of law with respect to the removal of a child from the child's home, a change in the placement of a child who is under the supervision or custody of the Department, and any other actions by the Department that may affect the legal rights of a child and the child's family.

(12) To provide or contract with public and private agencies in this State and other states for facilities and services necessary to achieve the purposes of this chapter.

(13) To provide or contract for services designed to maintain or provide permanent homes for children who are in out-of-home care, through the provision of adoption services or, whenever feasible, reunification services for children and their families.

(14) To develop, administer, implement, and provide or contract a developmentally appropriate, comprehensive program that fully integrates transitional and independent living services such as financial stability, housing supports, medical, employment and training, education, and connection to resources and individuals, until age 23 and that will assist youth with their successful transition to adulthood, subject to appropriation.

(15) To develop and implement rules, regulations, standards, and policies governing the internal operation and administration of the Department and provision of services.

(16) To exercise the authority and power to administer protective, mental health, correctional, and probation services to children presently delegated by law to the Department of Health and Social Services, Division of Mental Health; Department of Correction, Bureau of Juvenile Correction; Family Court; and previously delegated by law to the Department of Health and Social Services, Division of Child Protective Services.

(17) To certify annually on January 31 to the Governor and the General Assembly that the mixing of adjudicated and nonadjudicated youths shall not take place in the Ferris School.

(18) Provide feminine hygiene products to youth at no cost in facilities maintained by the Department. For purposes of this paragraph, "feminine hygiene products" means tampons and sanitary napkins, for use in connection with the menstrual cycle.

(19) To exercise all other powers necessary and proper for the discharge of its duties.

(20) Shall devise and adopt a body-worn camera policy that shall meet or exceed the standards established by the Police Officer Standards and Training Commission by regulation.

(b) (1) For purposes of this subsection, "conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, as "sexual orientation" and "gender identity" are defined in § 710 of Title 19, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. For purposes of this subsection, "conversion therapy" does not mean any of the following:

a. Counseling that provides assistance to an individual who is seeking to undergo a gender transition or who is in the process of undergoing gender transition.

b. Counseling that provides an individual with acceptance, support, and understanding without seeking to change an individual's sexual orientation or gender identity.

c. Counseling that facilitates an individual's coping, social support, and identity exploration and development, including counseling in the form of sexual orientation-neutral interventions or gender identity-neutral interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual practices, without seeking to change an individual's sexual orientation or gender identity.

(2) The Department may not engage in conversion therapy with a child or recommend that a child receive conversion therapy.

(64 Del. Laws, c. 108, §§ 1, 14; 65 Del. Laws, c. 211, §§ 1, 2; 69 Del. Laws, c. 352, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 198, § 1; 71 Del. Laws, c. 199, § 10; 71 Del. Laws, c. 301, § 1; 73 Del. Laws, c. 310, § 19; 79 Del. Laws, c. 185, § 3; 80 Del. Laws, c. 64, § 1; 81 Del. Laws, c. 340, § 13; 81 Del. Laws, c. 436, § 2; 83 Del. Laws, c. 83, § 4; 83 Del. Laws, c. 280, § 8; 83 Del. Laws, c. 300, § 2; 84 Del. Laws, c. 149, § 12; 84 Del. Laws, c. 233, § 62.)

§ 9004. Secretary; Division Directors; Acting Secretary; Deputy Secretary.

(a) The administrator and head of the Department is the Secretary of the Department of Services for Children, Youth and Their Families ("Secretary"), who must be a person qualified by training and experience to perform the duties of this office.

(1) The Secretary is appointed, confirmed, and holds office as provided in § 10 of Article III of the Delaware Constitution.

(2) The Secretary is to receive an annual salary as determined by the General Assembly in the annual appropriations act.

(3) The Secretary must obtain and retain residency in this State as provided in § 10 of Article III of the Delaware Constitution.

(b) If the position of Secretary is vacant, the Governor, by appointment, shall have the power to fill the positions of Deputy Secretary and Division Directors as are vacant. The Deputy Secretary and Directors so appointed shall serve at the pleasure of the Governor and, upon the position of Secretary being filled, the Deputy Secretary and Directors may be removed from office by the Secretary with the written approval of the Governor.

(c) In the event of death, resignation, temporary incapacity, or removal of the Secretary and before the appointment of a successor, the Governor may appoint a person to serve as Acting Secretary. The Secretary may, during an absence from the State, appoint the Deputy Secretary or director of any division of the Department to serve as Acting Secretary during such absence. In either case the Acting Secretary shall have all the powers and perform all the duties and functions of the Secretary during an absence or incapacity or until a successor is duly qualified and appointed.

(64 Del. Laws, c. 108, §§ 1, 14; 69 Del. Laws, c. 352, §§ 2, 3; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 140, § 10; 82 Del. Laws, c. 89, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 455, § 15; 85 Del. Laws, c. 43, § 1.)

§ 9005. Powers, duties and functions of Secretary.

The Secretary shall:

(1) Supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees;

(2) Appoint and determine the salary, with the written approval of the Governor, of the following individuals who may be removed from office by the Secretary with the written approval of the Governor, and who shall have such powers, duties and functions in the administration and operation of the Department that may be assigned by the Secretary:

a. A director of the Division of Family Services who shall be known as the Director of Family Services;

b. A director of the Division of Prevention and Behavioral Health Services who shall be known as the Director of Prevention and Behavioral Health Services;

c. A director of the Division of Youth Rehabilitative Services who shall be known as the Director of Youth Rehabilitative Services;

d. A director of the Division of Management Services who shall be known as the Director of Management Services; and

e. A deputy secretary of the Department who shall be known as the Deputy Secretary of the Department of Services for Children, Youth and Their Families;

(3) Appoint the following administrators and any additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law:

a. An administrator of the Office of Case Management who shall be known as the Administrator of Case Management; and

b. An administrator of the Office of Prevention who shall be known as the Administrator of Prevention;

(4) Establish, consolidate or abolish such divisions, subdivisions and offices within the Department or transfer or combine the powers, duties and functions of the divisions, subdivisions and offices within the Department as the Secretary, with the written approval of the Governor, may deem necessary, providing that all powers, duties and functions required and assigned by law to the Department shall be provided for and maintained;

(5) Make and enter into any and all contracts, agreements or stipulations, and retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract consulting, research, technical and other services and facilities from public and private agencies in this State and other states, whenever the same shall be deemed by the Secretary to be necessary in the performance of the functions of the Department. All necessary legal services shall be provided pursuant to Chapter 25 of this title;

(6) Delegate any of the Secretary's powers, duties or functions to a division, except the power to remove employees of the Department or to determine their compensation;

(7) Establish and promulgate such rules and regulations governing the services and programs of the Department and such other rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the federal and state law;

(8) Maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department;

(9) Adopt an official seal or seals for the Department;

(10) Prepare a proposed budget for the operation of the Department to be submitted for the consideration of the Governor and the General Assembly as directed under this chapter;

(11) Coordinate the activities of the Department with those of other state departments and private agencies concerned with providing services for children and their families;

(12) Make such reports in such form and containing such information as the federal government may require in order to obtain federal aid and comply with such provisions as the federal government may find necessary to assure the correctness and verification of such reports;

(13) Devise and adopt a plan to provide for the use of weapons by specialized juvenile probation and parole officers. The plan shall require such officers to successfully complete a psychological evaluation and a course of instruction in weapons training and safety, to carry a firearm while at work in the field. Said course of instruction shall meet or exceed the standards established by the Police Officer Standards and Training Commission and any other training and education determined by the Department of Services for Children, Youth and Their Families;

(14) Have any and all other powers and duties as are necessary to administer the powers, duties and functions of the Department and implement the purposes of this chapter.

(64 Del. Laws, c. 108, §§ 1, 14; 69 Del. Laws, c. 352, §§ 4, 5; 72 Del. Laws, c. 224, § 1; 76 Del. Laws, c. 130, § 1; 77 Del. Laws, c. 327, § 210(a); 79 Del. Laws, c. 283, § 2; 82 Del. Laws, c. 89, § 2; 84 Del. Laws, c. 149, § 12.)

§ 9006. Major organizational units created.

The following Divisions and other major organizational units are hereby created within the Department of Services for Children, Youth and Their Families:

(1) The Division of Family Services which shall be responsible for the provision of child protective, placement, treatment, prevention, adoption and related services;

(2) The Division of Prevention and Behavioral Health Services which shall be responsible for the provision of prevention, outpatient and residential mental health, and drug and alcohol treatment services for children and youth;

(3) The Division of Youth Rehabilitative Services which shall be responsible for the provision of detention, institutional care, probation, aftercare and prevention services for children and youth;

(4) The Division of Management Services which shall be responsible for administering and coordinating fiscal affairs, record keeping, personnel, accounting and purchasing, and other general services for the Department as the Secretary may deem necessary for the proper, efficient and economical operation of the Department;

(5) The Office of Case Management which shall be responsible for monitoring case management among the divisions within the Department. This Office shall have the authority to assign case management responsibility to one of the service divisions whenever necessary;

(6) The Office of Prevention which shall have the responsibility for providing training, public education and consultation services aimed at preventing child abuse, dependency, neglect, juvenile delinquency, mental health disorders and drug and alcohol abuse among children and youth.

(64 Del. Laws, c. 108, §§ 1, 14; 69 Del. Laws, c. 352, §§ 6-11; 77 Del. Laws, c. 327, § 210(a).)

§ 9007. Exemptions from merit system.

All of the following positions are exempt from Chapter 59 of this title:

(1) Secretary of the Department of Services for Children, Youth and Their Families.

(2) Deputy Secretary of the Department of Services for Children, Youth and Their Families.

(3) Director of Family Services.

(4) Director of Prevention and Behavioral Health Services.

(5) Director of Youth Rehabilitative Services.

(6) Director of Management Services.

(7) Deputy Directors and private secretaries as provided in Chapter 59 of this title.

(64 Del. Laws, c. 108, §§ 1, 14; 69 Del. Laws, c. 352, § 12; 77 Del. Laws, c. 327, § 210(a); 82 Del. Laws, c. 89, § 3.)

§ 9008. Advisory Council for Children, Youth and Their Families [Repealed].

(64 Del. Laws, c. 108, § 14; 65 Del. Laws, c. 168, § 1; 67 Del. Laws, c. 398, § 1; 70 Del. Laws, c. 140, §§ 1, 2; 70 Del. Laws, c. 186, § 1; repealed by 78 Del. Laws, c. 229, § 1, eff. Apr. 19, 2012.)

§ 9009. Assumption of powers.

As of the effective date of this chapter, the Department shall have the power to perform and shall be responsible for the performance of all powers, duties and functions relating to the provision of child protective services, child mental health services, youth correctional services and youth probation services heretofore vested by law in the Department of Health and Social Services, Division of Mental Health and Division of Child Protective Services, the Department of Correction, Bureau of Juvenile Correction and Family Court. These powers, duties and functions shall include, but are not limited to, the following:

(1) The powers and duties of the Division of Child Protective Services, Department of Health and Social Services, prescribed in Chapter 9 of Title 16, subchapters I, II, III, IV, V of Chapter 3 of Title 31 and Chapter 27 of Title 31; and Chapters 9 and 11 of Title 13;

(2) The powers and duties of the Bureau of Juvenile Correction, Department of Correction, prescribed in Chapters 51, 52 and 53 of Title 31;

(3) The powers and duties of the Division of Mental Health, Department of Health and Social Services that pertain to the provision of mental health services to children and youth, as prescribed in Chapter 53 of Title 16 [repealed]; and

(4) The powers and duties of the Department of Services for Children, Youth and Their Families, prescribed in Chapter 90 of this title.

(64 Del. Laws, c. 108, §§ 1, 14; 67 Del. Laws, c. 398, § 2; 84 Del. Laws, c. 201, § 5.)

§ 9010. Existing rights of appeal preserved.

Any and all rights of appeal now existing by law with respect to any act or acts constituting the exercise of any function or functions transferred to the Department or to any division, subdivision or office thereof shall continue to exist with respect to such act or acts as hereafter performed by the Department or by the division, subdivision or office to which such functions is transferred and each such appeal shall be perfected in the manner heretofore provided by law.

(64 Del. Laws, c. 108, §§ 1, 14; 67 Del. Laws, c. 398, § 2.)

§ 9011. Transfer of functions to Department.

(a) All property, including all books, records, papers, maps, charts, plans, equipment and other materials owned by or in the possession of any agency of the State and used in connection with a function transferred by this chapter to the Department shall, on the effective date of this chapter, be delivered into the custody of the Department. All investigations, petitions, hearings, and legal proceedings pending before, or instituted by or against, any agency from which functions are transferred by this chapter and which are not concluded prior to the effective date of this chapter shall continue unabated and remain in full force and effect, notwithstanding the passage of this chapter and, where necessary, may be completed before, by or in the name of the Department. All orders, rules and regulations made by any agency from which functions are transferred by this chapter and which govern such functions, and which are in effect upon the effective date of this chapter, shall remain in full force and effect until revoked or modified in accordance with law by the Department. All contracts and obligations of any agency made or undertaken in the performance of a function transferred by this chapter to the Department and being in force on the effective date of this chapter, shall, notwithstanding this chapter, remain in full force and effect and be performed by the Department.

(b) (1) All facilities, institutions, resources, property and equipment of such facilities or institutions which are used for children and specifically Ferris School for Boys, Woods Haven-Kruse School for Girls, Bridge House, Stevenson House and Terry Children's Psychiatric Center, now under the administrative control of the Department of Health and Social Services and Department of Correction; and all authority, duties and responsibilities respecting such facilities and institutions, and their administration, control, conduct and operation which, prior to the effective date of this chapter, was vested in the Department of Health and Social Services and Department of Correction, or any other department, agency, bureau, division or office of the State, are hereby transferred to the Department of Services for Children, Youth and Their Families.

(2) The Department of Health and Social Services shall continue to provide the maintenance, utilities and other support services, as defined by the Budget Director, for the facilities known as the Governor Bacon Health Center Children's Village. All resources and equipment associated with these facilities, now under the administrative control of the Department of Health and Social Services, are hereby transferred to the Department of Services for Children, Youth and Their Families.

(c) All children who, on the effective date of this chapter, are under the supervision, care or protection or in the custody of the Department of Health and Social Services, Department of Services for Children, Youth and Their Families, Division of Child Protective Services, Division of Mental Health or the Department of Correction, Bureau of Juvenile Correction, or have been placed on probation under Family Court supervision shall be deemed to be under the supervision, care or protection, or in the custody of the Department of Services for Children, Youth and Their Families as of the effective date of this chapter.

(d) Employees of any commission, bureau, department, division or agency whose functions are consistent with this chapter and who have been transferred to the Department of Services for Children, Youth and Their Families by this chapter, shall continue and be deemed

to be the employees of the Department on the effective date of this chapter, and, where applicable, with all the benefits accrued as merit employees as of the effective date of this chapter.

(e) All youth probation counselors who are employed by the Family Court and any other individuals who are otherwise employed by the Family Court in connection with the provision of youth probation services and any authorized positions for the same shall be transferred to the Department and deemed to be employees of the Department on the effective date of this chapter, where applicable, with all the benefits accrued as merit employees as of the effective date of this chapter.

(f) All definitions and references to any commission, board, department, council, division or agency which appear in any other act or law shall, to the extent that they are consistent with this chapter and in connection with a function transferred by this chapter to the Department or to any subdivision thereof or to any council or office created by this chapter, be construed as referring and relating to the Department of Services for Children, Youth and Their Families as created and established by this chapter.

(g) All definitions and references to any director, commissioner, executive secretary, commission, board or council member or other similar person which appear in any other act or law shall, to the extent that same are consistent with this chapter, and in connection with a function transferred to the Department, be construed as referring or relating to such person or persons and their powers, duties and functions as established and created by this chapter.

(h) The Secretary of the Department and Division Directors who hold such position just prior to the effective date of this chapter shall be and continue to act in their respective capacities until death, resignation or removal. The purpose is to transfer all functions of the existing Department into the new Department.

(64 Del. Laws, c. 108, §§ 1, 14; 67 Del. Laws, c. 398, § 2; 70 Del. Laws, c. 186, § 1.)

§ 9012. Transfer of appropriated funds.

Notwithstanding any other provision of state law, any sums appropriated to any division, commission, department, council, agency or person affected by this chapter and any funds appropriated for the provision of child protective services, child mental health services, youth correctional services and youth probation services which, on the effective date of this chapter, are unencumbered, encumbered or unexpended and any authorized positions affected by this chapter shall be and are hereby appropriated and transferred to the Department of Services for Children, Youth and Their Families. The Budget Director and the Controller General are hereby authorized and directed to make such transfers of funds and positions as may be required to carry out this chapter.

(64 Del. Laws, c. 108, §§ 1, 14; 67 Del. Laws, c. 398, § 2.)

§ 9013. Annual report.

The Secretary of the Department shall make an annual report to the Governor and the General Assembly of the Department's operations and render such other reports as the Governor or General Assembly may request or as may be required by law.

(64 Del. Laws, c. 108, §§ 1, 14; 67 Del. Laws, c. 398, § 2.)

§ 9014. Misnomer of Department in donation.

Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Department if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey to the Department or to any commission, board, department, authority, council or agency, from which, by this chapter, the powers, duties and functions have been transferred to the Department, the estate or interest therein expressed or described.

(64 Del. Laws, c. 108, §§ 1, 14; 67 Del. Laws, c. 398, § 2.)

§ 9015. Budgeting and financing.

(a) The Secretary, in cooperation with the Department directors and office administrators, shall prepare a proposed budget for the operation of the Department to be submitted for the consideration of the Governor and the General Assembly. The Department must operate within the limitation of the annual appropriation and any other funds appropriated by the General Assembly.

(b) Each fiscal year, pursuant to established methodology, the Secretary and the Office of Management and Budget shall review projections on the number of child abuse and neglect cases for the next fiscal year. Based on these projections, the General Assembly shall fund, subject to a specific appropriation, funds and positions for the next fiscal year, beginning each July 1, to the Division of Family Services to provide:

(1) An adequate number of child protection investigation workers so that regional caseloads do not exceed 11 cases per fully functioning worker.

(2) An adequate number of child protection treatment workers so that regional caseloads do not exceed 12 cases per fully functioning worker.

(3) An adequate number of Family Service supervisors so that there is 1 supervisor for every 5 workers.

(4) An adequate number of training positions, but not less than 15, to ensure that fully trained staff are always available to fill vacancies.

(5)-(7) [Repealed.]

In the event that regional caseloads exceed the above set standards during any fiscal year, the Office of Management and Budget shall, to the extent moneys are available, authorize the use of casual seasonal positions as a temporary mechanism to ensure that caseloads remain within Delaware standards. Fully functioning workers are workers that are employed and working full-time, and do not include workers on extended medical leave, trainees who have not completed training, or workers with restricted caseloads.

(c) In order to ensure the standards set forth in subsection (b) of this section are maintained, the Secretary shall submit a quarterly report to the Governor, the Controller General, and the Director of the Office of Management and Budget, with copies to the Chairpersons of the House of Representatives Committee on Health and Human Development, the Senate Committee on Children, Youth and Their Families, and the Child Protection Accountability Commission that details the above information both statewide and on a regional basis.

(d) For the purpose of retaining and attracting experienced investigation and treatment workers in the Division of Family Services, the Division may competitively recruit for Family Crisis Therapists in their investigation and treatment units. Current Division employees who successfully apply for these positions shall have their position reclassified to Family Crisis Therapist. Such reclassifications or reclassifications of vacant positions to Family Crisis Therapist are effective upon the approval of the Secretary of the Department of Human Resources, the Director of the Office of Management and Budget, and the Controller General. The Division is authorized to transfer positions between budget units in order to adjust its complement to ensure the correct number of fully functioning employees are in each functional unit of the Division. The Division shall submit a quarterly report to the Secretary of the Department of Human Resources, the Director of the Office of Management and Budget, and the Controller General detailing any adjustments to the complement, the number of Family Crisis Therapists hired, and retention statistics.

(e) Special funds may be used in accordance with approved programs, grants, and appropriations.

(f) The Department is authorized to provide funding for youth who have attained the age of 18 but are less than 23 years of age, by payment of foster care supports specifically related to housing, by direct youth stipends and/or to other public or private agencies to provide transitional and independent living services to youth. The Department shall establish policies for eligibility for direct youth stipends that shall require youth accountability, financial literacy, and attainment of self-sufficiency benchmarks. Funds appropriated for the purpose of supporting youth who are eligible for independent living services must be used to support those youth.

(64 Del. Laws, c. 108, §§ 1, 14; 67 Del. Laws, c. 398, § 2; 71 Del. Laws, c. 475, § 1; 74 Del. Laws, c. 283, § 1; 75 Del. Laws, c. 88, §§ 20(6), 21(13), 26(2); 76 Del. Laws, c. 169, § 1; 79 Del. Laws, c. 185, § 4; 81 Del. Laws, c. 66, § 58; 83 Del. Laws, c. 280, § 8; 83 Del. Laws, c. 300, § 2; 84 Del. Laws, c. 43, § 1.)

§ 9016. Appointment of special investigators; powers and duties.

(a) The Secretary may appoint qualified persons to be special investigators for the Department. Such investigators shall hold office at the pleasure of the Secretary. Any person appointed pursuant to this section shall have a minimum of 10 years experience as a "police officer," as that term is defined in § 1911(a) of Title 11, significant investigatory experience while working as a police officer, shall be in good standing with the previous or present law-enforcement agency where such person is or was employed, and shall have such other qualifications deemed appropriate by the Secretary.

(b) Special investigators appointed under this section may conduct investigations of child abuse, neglect, or risk of maltreatment anywhere in this State as directed by the Secretary or the Secretary's designee and shall have the power to make arrests and serve writs anywhere in this State. Special investigators shall have statewide powers as enumerated under § 1911 of Title 11 and such other powers as conferred by law on police officers, constables and other law-enforcement personnel. Notwithstanding the above, special investigators under this section shall not have the authority to take custody of a child unless pursuant to an order from the Family Court or in conjunction with the law-enforcement agency charged with jurisdiction over the case. To the extent possible, special investigators under this section shall consult with the police agency of jurisdiction and the Secretary or Secretary's designee before making an arrest and shall do so in all cases after making any such arrest.

(c) Special investigators under this section shall have the authority to take custody of a child pursuant to an order from the Family Court or in conjunction with the law-enforcement agency charged with jurisdiction over the case. Special investigators may enter private property while taking custody of a child under this section. To the extent possible, special investigators under this section shall consult with the police agency of jurisdiction and the Secretary or Secretary's designee before making an arrest and shall do so in all cases after making any such arrest.

(d) The salary of special investigators shall be fixed by the Secretary within the appropriations made to the Department.

(e) Special investigators will assist in the training of other Division staff.

(71 Del. Laws, c. 199, § 11; 78 Del. Laws, c. 266, § 21; 82 Del. Laws, c. 89, § 4; 83 Del. Laws, c. 461, § 6.)

§ 9017. Confidential information.

(a) In the course of performing its functions as enumerated in this chapter, the Department shall be entitled to inspect and copy all records regarding any children in the care, supervision, protection or custody of the Department and their parents, guardians, caretakers or custodians which are maintained and controlled by the Department of Health and Social Services.

(b) The Department shall have the discretion to release information from its records to public and private agencies if it determines that such release will serve the best interest of children in its care.

(c) The Department shall cause to be submitted to the State Bureau of Identification (SBI) information as may be required to comply with federal laws and regulations relating to background checks for the purchase and transfer of firearms. The information must include only names and other nonclinical identifying information. The SBI shall transmit the information, as may be required by law, to the FBI for use in its National Instant Criminal Background Check System (NICS).

(d) In releasing the aforementioned records pursuant to this section, the Department and the Department of Health and Social Services and their employees shall have immunity from any civil or criminal liability.

(e) This section shall not be construed to override any confidentiality provisions provided under state or federal law which govern any records in the control of the Department of Health and Social Services, including but not limited to, the following statutes: §§ 157, 702, 1121(b)(9) and 5161(a)(7) of Title 16; and § 2802 of Title 31.

(64 Del. Laws, c. 108, §§ 1, 14; 67 Del. Laws, c. 398, § 2; 71 Del. Laws, c. 199, § 11; 78 Del. Laws, c. 137, § 14; 81 Del. Laws, c. 206, § 24; 83 Del. Laws, c. 330, § 7.)

§ 9018. Supremacy of chapter.

All other laws or parts of laws now in effect inconsistent with this chapter are hereby repealed, superseded, modified or amended so far as necessary to conform to and give full force and effect to this chapter.

(64 Del. Laws, c. 108, § 14; 67 Del. Laws, c. 398, § 2; 71 Del. Laws, c. 199, § 11.)

§ 9019. Liability for maintenance of children in care of Department; collection remedies.

(a) Any person liable for the support of a child under any law of this State shall be liable for the care, maintenance and support furnished to a child committed or admitted to any service provided by the Department of Services for Children, Youth and Their Families.

(b) The Department of Services for Children, Youth and Their Families may collect from any such person all moneys necessary to discharge and pay all liability of such child for the child's care, maintenance and support; provided, however, that such liability is based upon ability to pay and in accordance with § 7940 of this title.

(c) The Department of Services for Children, Youth and Their Families may also proceed for the recovery of the moneys necessary for care, maintenance and support in an action to be brought in any court of competent jurisdiction in the name of the Department.

(d) All fees collected under this section shall be deposited into the General Fund.

(65 Del. Laws, c. 211, § 3; 67 Del. Laws, c. 70, §§ 1-3; 67 Del. Laws, c. 398, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 138, § 11.)

§ 9020. Drug testing required.

(a) The Department is authorized and required to conduct drug testing as set forth in this section of any employee or prospective employee accepting a safety, security-sensitive, or child care position, as determined by policy and regulations adopted by the Department. The following apply to drug testing by the Department:

(1) *Preemployment testing. —*

The Department shall test an applicant for employment as a safety, security-sensitive, or child care employee for the use of a drug specified in subsection (b) of this section.

(2) *Random testing. —*

A safety, security-sensitive, or child care employee is subject to random testing for illegal use of a drug specified in subsection (b) of this section.

(3) Reasonable suspicion testing. —

The Department may conduct a drug test based on a reasonable suspicion that a safety, security-sensitive, or child care employee is impaired by a drug specified in subsection (b) of this section.

(b) (1) An individual employed by, or applicant offered employment with, the Department as a safety, security-sensitive, or child care employee shall submit to drug testing required under subsection (a) of this section and regulations adopted by the Department.

(2) The Department may adopt regulations to implement and enforce this section. The Department shall adopt regulations that require drug testing for the following drugs:

a. Marijuana or cannabis.

b. Cocaine.

c. Opiates.

d. Phencyclidine ("PCP").

e. Amphetamines.

f. Any other controlled substances or controlled prescription drugs specified by the Department in the regulations adopted under this section.

(c) *Conditional hire. —*

Notwithstanding paragraph (a)(1) of this section, the Department may hire an applicant on a conditional basis before receiving the results of the drug test required under paragraph (a)(1) of this section if the Department receives evidence confirming the applicant submitted to the required drug test. The final employment of an applicant conditionally hired under this subsection is contingent on the Department's receipt of satisfactory results of the required drug test.

(d) (1) The Department shall adopt policies and procedures for imposing sanctions on a safety, security-sensitive, or child care employee who wilfully refuses to submit to random or reasonable suspicion testing or whose drug test indicates that the employee has illegally used or consumed a drug specified in subsection (b) of this section.

(2) The sanctions imposed under paragraph (d)(1) of this section may include referral to the State's Employee Assistance Program, suspension, or termination.

(3) An employee may not be sanctioned when the employee has used or consumed the drug detected according to the directions and terms of a lawfully-obtained prescription for the drug.

(77 Del. Laws, c. 270, § 1; 70 Del. Laws, c. 186, § 1; 83 Del. Laws, c. 278, § 1.)

Part VIII
Departments of Government
Chapter 90A
Office of the Child Advocate

§ 9001A. Intent and purpose.

The General Assembly hereby declares that the welfare of the children of this State shall be safeguarded by the establishment of an Office of the Child Advocate, with a Child Advocate who shall also serve as Executive Director of the Child Protection Accountability Commission. The Child Advocate shall be responsible for effectuating the purposes of the Commission. The Advocate shall also coordinate efforts on behalf of the children; work with advocacy groups; promote system reform; recommend changes in law, procedure and policy necessary to enhance the protection of Delaware's children; and to implement and coordinate programs providing legal representation on behalf of a child, including the Court Appointed Special Advocate Program. In order to effectuate these goals, the Child Advocate shall be an attorney duly licensed to practice law in Delaware.

(72 Del. Laws, c. 167, § 2; 72 Del. Laws, c. 451, § 5; 80 Del. Laws, c. 417, § 3.)

§ 9002A. Definitions.

For the purposes of this chapter, unless the context indicates differently:

(1) "Abuse" or "abused child" is as defined in § 901 of Title 10.

(2) "Adult" means a person who has reached his or her eighteenth birthday;

(3) "Attorney" means an attorney authorized to practice law in the State, who is employed or contracted by the Office, or who volunteers for the Office, including Deputy Child Advocates and attorneys who work in conjunction with Court Appointed Special Advocate volunteers.

(4) "Best interests" as defined in § 722 of Title 13;

(5) "Child" or "children" means persons who have not reached their eighteenth birthday;

(6) "Child welfare proceeding" means any Family Court proceeding and subsequent appeal therefrom involving custody, visitation, guardianship, termination of parental rights, adoption and other related petitions that involve a dependent, neglected or abused child or a child at risk of same as determined by a Family Court Judge;

(7) "Commission" means the Child Protection Accountability Commission;

(8) "Court" means primarily the Family Court, but may mean any court of this State;

(9) "Court Appointed Special Advocate volunteer" or "CASA" means a volunteer authorized and appointed under § 9010A of this title, who is supervised by a coordinator and who works in conjunction with the child's attorney to accomplish the duties set forth in § 9007A(c) of this title.

(10) "Department" means the Department of Services for Children, Youth and Their Families of the State;

(11) "Dependency" or "dependent child" is as defined in § 901 of Title 10.

(12) "Division" means the Division of Family Services of the Department of Services for Children, Youth and Their Families;

(13) "Investigation Coordinator" is as defined in § 902 of Title 16.

(14) "Neglect" or "neglected child" is as defined in § 901 of Title 10.

(15) "Office" means the Office of the Child Advocate.

(16) "Permanency" means the safe, stable, custodial environment in which a child is raised and the life-long relationship that child establishes with a nurturing caregiver.

(72 Del. Laws, c. 167, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 451, § 6; 76 Del. Laws, c. 136, §§ 17-20; 80 Del. Laws, c. 219, § 2; 80 Del. Laws, c. 417, § 3.)

§ 9003A. Appointment and dismissal.

The Child Advocate shall be appointed by the Executive Committee of the Child Protection Accountability Commission and shall serve at its pleasure.

(72 Del. Laws, c. 167, § 2.)

§ 9004A. Appropriation for expenses.

The General Assembly may annually appropriate such sums as it may deem necessary for the payment of the salary of the Child Advocate, the assistants, and the staff, and for the payment of actual expenses incurred by the Office of Child Advocate.

(72 Del. Laws, c. 167, § 2.)

§ 9005A. Duties of the Child Advocate.

The Child Advocate shall perform the following duties:

(1) Take all possible actions, including programs of public education and legislative advocacy, to secure and ensure the legal, civil, and special rights of the children.

(2) Review periodically relevant policies and procedures with a view toward the rights of children.

(3) Refer any person making a complaint or report required by Chapter 9 of Title 16 to the Division of Family Services, and, if warranted, to an appropriate police agency. If a complaint or report includes an allegation of misconduct against a Department employee, the complaint or report must also be referred to the Secretary of the Department.

(4) Recommend changes in the procedures for investigating and overseeing the welfare of children.

(5) Make the public aware of the services of the Office and the Commission, its purpose, and how it can be contacted.

(6) Apply for and accept grants, gifts, and bequests of funds from other state, federal, and interstate agencies, as well as from private firms, individuals, and foundations, for the purpose of carrying out the Office's and the Commission's lawful responsibilities. The funds must be deposited with the State Treasurer in a restricted receipt account established to permit funds to be expended in accordance with the provision of the grant, gift, or bequest.

(7) Examine policies and procedures and evaluate the effectiveness of the child protection system, specifically the respective roles of the Division, the Attorney General's Office, the courts, the medical community, and law-enforcement agencies.

(8) Review and make recommendations concerning investigative procedures and emergency responses pursuant to this chapter.

(9) Develop and provide quality training to Division staff, Deputy Attorneys General, law-enforcement officers, the medical community, family court personnel, Court Appointed Special Advocate volunteers, educators, day care providers, and others on the various standards, criteria, and investigative technology used in these cases.

(10) Develop and administer programs to ensure the legal representation of children in this State, which includes the Court Appointed Special Advocate Program.

(11) Submit an annual report analyzing the work of the Office that may be included in the Commission's annual report, or submitted separately.

(12) Serve as the Executive Director of the Commission.

(13) Provide staff support to the Commission, including assisting the Commission, its committees, and panels in investigating and reviewing the deaths or near deaths of abused or neglected children and suspected human trafficking of children and in administering scholarship funds.

(14) Hire employees or contract for services as necessary to assist the Commission, its committees, and panels in investigating and reviewing the deaths or near deaths of abused or neglected children and suspected human trafficking of children and performing its other duties under subchapter III, Chapter 9 of Title 16, within the limitations of funds appropriated by the General Assembly or obtained from other sources.

(15) Hire the Investigation Coordinator and staff to assist the Investigation Coordinator in accomplishing the duties assigned in § 906 of Title 16, including contracts for services as necessary to accomplish its goals.

(16) Take whatever other actions are necessary to help the Commission accomplish its goals.

(17) Administer the Delaware Fostering Independence through Education Tuition Waiver Program under subchapter XVII of Chapter 34 of Title 14.

(72 Del. Laws, c. 167, § 2; 80 Del. Laws, c. 187, § 15; 80 Del. Laws, c. 219, § 2; 80 Del. Laws, c. 417, § 3; 81 Del. Laws, c. 143, § 6; 83 Del. Laws, c. 413, § 7; 84 Del. Laws, c. 509, § 5; 85 Del. Laws, c. 128, § 13.)

§ 9006A. Confidentiality.

(a) All records of the Office pertaining to the care and treatment of a child are confidential, including the identity of any person seeking assistance from the Office on behalf of a child. Information contained in those records may not be disclosed, except for good cause shown on order of a court, or if, in the judgment of the Commission, disclosure of identifying information to an appropriate governmental agency is in the best interests of the child.

(b) Anyone participating in good faith in seeking assistance from the Office on behalf of a child pursuant to this chapter shall have immunity from liability, civil or criminal, that might otherwise exist, and such immunity shall extend to participation in any judicial proceeding resulting from such a referral.

(c) All information and records received, prepared or maintained by the Office pertaining to the duties of the Investigation Coordinator and its staff are confidential as set forth in § 906 of Title 16. All information and records received, prepared, or maintained pertaining to the duties of the Investigation Coordinator, as well as all access provided to obtain such records, shall not be used to perform any other duties of the Office unless otherwise permitted by law.

(d) All information and records received, prepared, or maintained by the Office pertaining to the investigation and review of child abuse or neglect deaths or near deaths are confidential as set forth in § 934 of Title 16. All information and records received, prepared, or maintained pertaining to these duties may not be used to perform any other duties of the Office unless otherwise permitted by law.

(e) Disclosure of case-specific data and information to the Office of the Investigative Services for presentence investigations under § 4331 of Title 11 is authorized.

(72 Del. Laws, c. 167, § 2; 72 Del. Laws, c. 451, §§ 7, 8; 80 Del. Laws, c. 219, § 2; 80 Del. Laws, c. 417, § 3; 81 Del. Laws, c. 143, § 7; 84 Del. Laws, c. 250, § 3.)

§ 9007A. Legal representation of children.

(a) *Purpose.* — (1) The General Assembly has recognized the need to safeguard the welfare of abused, neglected and dependent children in this State. As such, it has charged the Office of the Child Advocate with ensuring legal representation in child welfare proceedings. To this end, the Office shall coordinate with the Family Court to implement and administer a program for representation of children. The Office may assist the other courts of this State as needed to coordinate legal representation of children.

(2) In determining whether to represent an abused, neglected or dependent child, or a child at risk of same, the Office may communicate with any child at issue and may have access to all information relating to that child and child's family held or maintained by the Department or the Family Court.

(3) This section shall be liberally construed so that these purposes may be realized.

(b) *Appointment.* — (1) In the event that the court determines that a child is in DSCYF Custody pursuant to Chapter 25 of Title 13, the court shall sign an order appointing an attorney to represent the child. If a child is otherwise in need of legal representation in a child welfare proceeding, the Office may file a motion with the court requesting appointment, which shall be granted if the court determines it is in the best interests of the child. The court may also issue an order appointing an attorney sua sponte under this statute subject to the resources of the Office. That order shall impose all the duties, rights and responsibilities set forth in this section. Upon request from the Office or any party, the court may also appoint a Court Appointed Special Advocate volunteer to work in conjunction with the child's attorney to accomplish the duties set forth in subsection (c) of this section. Upon entry of the order, the attorney and Court Appointed Special Advocate volunteer, if one is appointed, shall have the authority to review all documents and interview all pertinent persons having significant information relating to the child and the child's life circumstances.

(2) The appointment shall last until the attorney or Court Appointed Special Advocate volunteer is released from responsibility by order of the court, or until his or her commitment to the court ends.

(3) Upon appointment of an attorney, the child shall be a party to any child welfare proceeding in which the child is the subject, and shall possess all the procedural and substantive rights of a party including those set forth in § 732 of Title 13.

(4) Upon presentation of the order of appointment, any agency, hospital, school, organization, division or department of the State, doctor, nurse or other health-care provider, treatment facility, psychologist, psychiatrist, police department or mental health clinic shall permit the attorney or Court Appointed Special Advocate volunteer to inspect and copy any records relating to the child and parents, and guardian or petitioner where the court deems appropriate, involved in the case of appointment without consent of the child, parents, guardian or petitioner. Release of mental health and substance use records shall comply with applicable federal law requiring consent or a court order.

(c) *Duties and rights.* — The attorney's duty is to the child. The scope of the representation of the child is the child's best interests. The attorney and the Court Appointed Special Advocate volunteer, in addition to other Office employees, contractors and volunteers shall have the duty of confidentiality to the child unless disclosure is necessary to protect the child. As such, the attorney or Court Appointed Special Advocate volunteer shall:

(1) Represent the best interests of the child in all child welfare proceedings, and explain to the child, taking into account the child's ability to understand the proceedings, the duties of the attorney, the role of the Court Appointed Special Advocate volunteer, and the rights of the child set forth in § 2522 of Title 13, if the child is in DSCYF custody;

(2) Be trained by the Office of the Child Advocate or a course approved by the Office prior to representing any child before the court. The attorney or Court Appointed Special Advocate volunteer shall be required to participate in ongoing multidisciplinary training regarding child welfare.

(3) Be employed, contracted or an approved volunteer with the Office and shall be appointed by the court;

(4) Conduct an independent investigation of the circumstances of a case of appointment, which shall include but not be limited to interviews and/or observations of the child and relevant individuals, as well as a review of all relevant records and reports;

(5) Present evidence to the court in support of his or her position;

(6) Be provided with notice of every court proceeding and receive copies of every pleading;

(7) Participate in all depositions, negotiations, discovery, pretrial conferences, hearings and appeals;

(8) Have access to all records regarding the child and his or her family maintained by the Department;

(9) Monitor cases to which he or she is appointed to assure that the terms of the court's orders are fulfilled and permanency for the child is achieved through reunification, adoption, permanent guardianship, guardianship, placement with a fit and willing relative, or alternatively, by another planned permanent living arrangement so long as the child is at least 16 years of age;

(10) Receive reasonable notice from the Division of changes in placement, school or any other change of circumstances affecting the child;

(11) Receive reasonable notice from the Division of any founded complaint involving:

a. The child, where the child is the alleged victim;

b. The residence in which the child lives; and/or

c. The home-based daycare which the child attends;

(12) Request a hearing before the court when the plan on behalf of the child is not implemented, is not meeting the child's needs, or upon completion of a Division investigation;

(13) Request any appropriate relief from the court on behalf of the child;

(14) Appear, when appropriate, on behalf of a child before the Violent Crimes Compensation Board, to pursue a claim on behalf of the child, as set forth in Chapter 90 of Title 11; and

(15) Ascertain the wishes of the child, give appropriate weight to the child's wishes understanding his or her age and emotional development, and make the child's wishes known to the court. If the attorney concludes that the child's wishes conflict with his or her position or the position of the Court Appointed Special Advocate volunteer, if one is appointed, he or she will make the child's wishes known to the court, and notify the court of the conflict so the court can determine if a conflict exists. If the court determines a conflict exists, the court shall determine how to remedy the conflict such that the child's best interests and wishes are represented.

(d) Criminal investigations and/or prosecutions. Notwithstanding any provision of this chapter to the contrary, the Office of the Child Advocate shall in no way intervene in any pending criminal investigation or prosecution, and shall provide no legal representation or advice to any suspect, defendant or respondent in any open criminal investigation or prosecution.

(72 Del. Laws, c. 167, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 451, § 9; 73 Del. Laws, c. 277, §§ 1-4, 6; 80 Del. Laws, c. 417, § 3.)

§ 9008A. Indemnification from liability.

No attorney, director, investigator, social worker or other person employed or contracted by or volunteering for the Office of Child Advocate shall be subject to suit directly, derivatively or by way of contribution or indemnification for any civil damages under the laws of Delaware resulting from any act or omission performed during or in connection with the discharge of his or her duties with the Office within the scope of his or her employment or appointment, unless the act or omission was done with gross or wanton negligence, or maliciously, or in bad faith.

(72 Del. Laws, c. 167, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 451, § 10; 73 Del. Laws, c. 277, § 5.)

§ 9009A. Extended jurisdiction — Child abuse, dependency and neglect.

Notwithstanding any provision in this chapter to the contrary, the Office of the Child Advocate is authorized to provide representation under this chapter to youth for whom jurisdiction has been extended under § 929 of Title 10.

(77 Del. Laws, c. 385, § 3.)

§ 9010A. Court Appointed Special Advocate Program.

The Court Appointed Special Advocate Program shall provide legal representation to children through the Office of the Child Advocate, and shall be administered as follows:

(1) The Program shall include volunteers who have demonstrated an interest in children and their welfare and have participated in background checks, interviews and training courses conducted by the Office to determine his or her fitness to serve. Volunteers will serve at the pleasure of the Child Advocate, but may also be removed by court order. Volunteers shall participate in ongoing training as determined by the Office. Volunteers will be sworn in by the court upon completion of all requirements and shall not serve as a volunteer prior to being sworn.

(2) Volunteers shall be supervised by coordinators and a Program Director employed by the Office of the Child Advocate.

(3) The Child Advocate will establish the number, qualifications and responsibilities of the coordinators and the Program Director. The Program Director and coordinators shall be exempt from Chapter 59 of Title 29, and notwithstanding any provision of this Code to the contrary, the Program Director and coordinator positions shall not be covered by Chapter 13 of Title 19 and shall have no rights thereunder.

(4) Attorneys shall be hired or contracted by the Child Advocate to provide legal representation to children appointed under this section. Volunteers and coordinators will work in conjunction with the child's attorney to accomplish the duties set forth in § 9007A(c) of this title.

(5) The CASA shall be a party to any child welfare proceeding or any other proceeding in which the court has appointed the CASA.

(80 Del. Laws, c. 417, § 3; 70 Del. Laws, c. 186, § 1.)

§ 9011A. Driver education, driver's license, and motor vehicle insurance for an individual who is in or has experienced foster care in Delaware.

(a) The General Assembly finds that the costs of driver education, obtaining a driver's license, and motor vehicle insurance for an individual who is in or has experienced foster care in Delaware serve as an additional barrier to gaining independence and engaging in age-appropriate and developmentally appropriate activities, and limits opportunities for obtaining employment and completing educational goals. The General Assembly further finds that the completion of an approved driver education course is necessary to develop safe driving skills.

(b) For purposes of this section, "caregiver" means as defined in § 2502 of Title 13.

(c) The Office shall establish a program to assist with driver education, driver licensure, motor vehicle insurance, and associated costs and barriers to driving for an individual under paragraph (g)(1) of this section.

(d) The Office shall develop procedures for operating and administering the program established under subsection (c) of this section, including for all of the following:

(1) Determining eligibility for the program.

(2) Developing necessary forms, including for application and payment.

(3) Promoting awareness of the program.

(4) Providing technical assistance and supports to remove barriers that prevent an individual from driving.

(5) Providing incentives to encourage the greatest number of eligible individuals to participate in the program.

(6) Developing programs and providing supports to prepare an individual to assume financial responsibility for motor vehicle insurance and associated costs of driving after the individual is no longer eligible for the program.

(7) Providing for payments to be made to individuals and caregivers under the program.

(e) (1) The Office shall make payments under the program established under subsection (c) of this section in the order that it determines an individual eligible.

(2) If a caregiver adds an individual under paragraph (g)(1) of this section to the caregiver's motor vehicle insurance policy, the Office may not pay to the caregiver an amount that exceeds the increase in cost attributable to the addition of the individual to the policy.

(f) When an individual identified in paragraph (g)(1) of this section procures and maintains a valid auto insurance policy with its coverages identified in §§ 2118 and 2902 of Title 21, and § 3902 of Title 18 through participation in the program established under subsection (c) of this section, the policy is the source of that coverage when the individual is operating a motor vehicle. The individual's caregiver's coverages identified in §§ 2118 and 2902 of Title 21, and § 3902 of Title 18 may not be a source of coverage when the individual is operating a motor vehicle.

(g) (1) The following individuals are eligible to participate in the program:

a. An individual in Department custody under Chapter 25 of Title 13.

b. An individual who exited Department custody to adoption or guardianship at age 16 or later.

c. An individual who exited Department custody at age 18.

d. An individual who receives independent living services from the Department.

(2) An individual under paragraph (g)(1)b. or (g)(1)c. of this section may participate in the program for 1 year following the individual's exit from Department custody unless the individual is receiving independent living services from the Department.

(3) An individual under paragraph (g)(1)d. of this section may participate in the program for as long as the individual is receiving independent living services from the Department.

(h) The Office may adopt regulations to implement this section.

(i) The Office shall submit a report to the General Assembly, which may be included in the Office's annual report, containing all of the following information for the previous year:

(1) The number of individuals who participated in the program and the assistance provided.

(2) The total amount of funds disbursed to assist with driver education, driver licensure, motor vehicle insurance, and associated costs of and barriers to driving.

(3) Ongoing barriers to providing driver's licenses or motor vehicle insurance to individuals who are in or have experienced foster care in Delaware and progress toward overcoming those barriers.

(83 Del. Laws, c. 453, §§ 1, 11; 84 Del. Laws, c. 345, § 3.)

Part VIII
Departments of Government

Chapter 90B
Prothonotaries

Subchapter I
General Provisions

§ 9001B. Assumption of authority by State.

The offices of the Prothonotaries of New Castle County, Kent County and Sussex County, as heretofore established, shall hereafter be under the authority and jurisdiction of the State.

(66 Del. Laws, c. 185, § 14; 72 Del. Laws, c. 167, § 1.)

§ 9002B. Definitions.

As used in this subchapter, "state row offices" or "state row officers" means the Prothonotaries of New Castle County, Kent County and Sussex County.

(66 Del. Laws, c. 185, § 14; 72 Del. Laws, c. 167, § 1.)

§ 9003B. Location of offices.

The State shall provide and assign office space for the respective state row offices and, whenever occasion requires, may change such space and assign different space. The state row officers shall occupy, and their offices shall be located in, the space assigned to them from time to time by the State.

(66 Del. Laws, c. 185, § 14; 72 Del. Laws, c. 167, § 1.)

§ 9004B. Record books and supplies.

The State shall provide for the state row offices, the necessary record books, cases, seals and supplies for the use of the offices, for the preservation and security of the public records, the convenience of business and for public accommodation.

(66 Del. Laws, c. 185, § 14; 72 Del. Laws, c. 167, § 1.)

§ 9005B. Records.

The state row officers shall keep all records, books, papers and other things belonging to their offices, in their respective offices.

(66 Del. Laws, c. 185, § 14; 72 Del. Laws, c. 167, § 1.)

§ 9006B. Days open; duty to attend office; deputies.

(a) State row offices shall be open each day except legal holidays, Saturdays and Sundays.

(b) A state row officer shall not refuse or neglect to attend at the office for the transaction of business, as required in subsection (a) of this section.

(c) A deputy of any state row officer may attend for the performance of such services as required in subsection (a) of this section, as are strictly ministerial.

(66 Del. Laws, c. 185, § 14; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 167, § 1.)

§ 9007B. Disposition of fees.

All the fees, costs, allowances and other perquisites which are taxable and paid to any state row offices for any official service rendered by any such offices shall be for the sole use of the State and when received shall be paid to the State Treasurer.

(66 Del. Laws, c. 185, § 14; 72 Del. Laws, c. 167, § 1.)

§ 9008B. Duty to account for fees.

(a) Every state row officer in each of the counties shall collect all fees, costs and allowances by law taxable by or payable to such officer, without any deduction, abatement or remission, except fees, costs and allowances payable by the State to such officers and shall keep in a properly indexed record an itemized account showing the amount of each fee, item of cost and allowance by law taxable by or payable to such officer and the service for which the same was rendered or charged, the date of payment and the name of the person paying the same. On or before the fifteenth day of each month, every such officer shall file with the State Treasurer an account of all fees, costs and allowances received by the State Treasurer in the preceding month, which account shall be so itemized that it may be compared with the fees, costs and allowances as entered in the record.

(b) The correctness of the accounts so rendered shall be verified by the affidavit of the officer rendering the same. Each of the officers shall also, on or before the fifteenth day in each month, pay over to the State Treasurer all the fees, costs and allowances so received from any source, which shall be payable to the State Treasurer as provided in § 9007A of this title.

(66 Del. Laws, c. 185, § 14; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 167, § 1.)

§ 9009B. Fee records; inspection and examination.

The fee records mentioned in this chapter shall be a part of the records of the office for which it is kept and shall be at all times open to inspection and examination.

(66 Del. Laws, c. 185, § 14; 72 Del. Laws, c. 167, § 1.)

§ 9010B. Audit of fees.

The State Auditor shall, not less than biannually, audit, inspect and examine the books, accounts, papers, records and dockets of the several state row officers and ascertain the amount due to the State in fees.

(66 Del. Laws, c. 185, § 14; 72 Del. Laws, c. 167, § 1.)

§ 9011B. Liability for fees.

Each state row officer is made liable upon a respective official bond, for the payment to the State Treasurer of all the fees which the officer shall collect. All the official bonds to be entered into by the officers shall contain the following condition: “And if the said shall truly and without delay pay over to the State Treasurer all of the fees which it shall be his or her duty to collect and which are to be paid to the State Treasurer.” The State shall cause proceedings to be brought on any of the bonds for the breach of the foregoing condition for the recovery of the penalty therein.

(66 Del. Laws, c. 185, § 14; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 167, § 1.)

§ 9012B. Penalties for failure to collect and pay over fees.

(a) If any state row officer fails, neglects or refuses for 10 days to pay over all fees, costs, allowances and perquisites the officer receives and collects for use of the State, or fails to collect the fees required to be paid by law, or demands or receives from any person any fee or allowance greater than is provided by law, the officer shall be fined not more than $1,000 or imprisoned not more than 1 year, or both. Such officer shall also be liable in a civil action for the amount of such fees, costs, allowances and perquisites as the officer may have thus illegally withheld.

(b) Whenever any officer is convicted under this section, the officer’s conviction shall operate as a forfeiture of the office, and the officer shall be removed from office by the Governor within 10 days from the date of such conviction.

(66 Del. Laws, c. 185, § 14; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 167, § 1.)

§ 9013B. Bonds of state row officers.

(a) Every state row officer elected or appointed for any county shall, at the next term of the Superior Court in that county, after the officer’s election or appointment, before entering upon the duties of the office, become bound to the State with sufficient surety by a joint and several obligation in the penalty of $3,000 with condition “that if the above named who has been duly elected (or appointed) to be shall and do well and diligently execute the office of as aforesaid and duly and faithfully fulfill and perform all the trusts and duties to the said office appertaining, and truly and without delay deliver to the officer’s successor in office, the seal and all the books, records and papers belonging to said office safe and undefaced, and if the said shall truly and without delay pay over to the State Treasurer all the fees which it shall be the officer’s duty to collect and which are to be paid to the State Treasurer, then this obligation shall be void and of no effect, or else shall remain in full force and virtue.”

(b) The obligations required by this section shall be forthwith delivered to the recorder of deeds in and for the county in which such officer sits to be recorded and filed.

(66 Del. Laws, c. 185, § 14; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 167, § 1.)

§ 9014B. Cancellations of bonds.

The several bonds and recognizances of the several officers provided for in this subchapter shall be cancelled 3 years after the expiration of the terms of office of the several officers and shall after such time cease to be a lien on any property of any kind of the several officers or their respective bondspersons.

(66 Del. Laws, c. 185, § 14; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 167, § 1.)

§ 9015B. Satisfaction of bonds.

The bonds filed and recorded in the offices of the recorders of deeds in this State shall at the time designated in this subchapter be marked by the recorder “cancelled” and under the word “cancelled” the recorder shall sign the recorder’s name as recorder and shall affix the official seal of office. The bond filed and recorded in the offices of the Prothonotaries of the Superior Courts in this State shall at

the time designated in this subchapter be marked by the Prothonotary "cancelled" and under the word "cancelled" the Prothonotary shall sign the Prothonotary's name as Prothonotary and shall affix the official seal of office, and the original bonds shall be returned to the obligors, or if they are deceased, to their legal representatives.

(66 Del. Laws, c. 185, § 14; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 167, § 1.)

§ 9016B. Violation of bond requirements; penalty.

Whoever, being an officer within the provisions of this subchapter, neglects to comply with §§ 9013A-9015A of this title shall be fined not less than $500 nor more than $1,000, and shall, ipso facto, forfeit the office.

(66 Del. Laws, c. 185, § 14; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 167, § 1.)

§ 9017B. Mileage payments.

The authorized mileage rate for officers or employees of the several counties who receive mileage from the State shall be 20 cents per mile.

(66 Del. Laws, c. 185, § 14; 72 Del. Laws, c. 167, § 1.)

§ 9018B. Posting of fee lists.

Every state row officer who keeps a public office shall post in some convenient and conspicuous place therein a printed or written list of the fees prescribed in this chapter, as they relate to the officer.

(66 Del. Laws, c. 185, § 14; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 167, § 1.)

§ 9019B. Deputy Prothonotaries.

(a) The state row officers each may select and employ 1 deputy Prothonotary who shall serve at the pleasure of the appointing officeholder. The provisions of this section shall not authorize any elected officeholder to increase the number of employees in any of the state row offices.

(b) The compensation to be paid the deputy Prothonotary shall be set by the appointing officeholder.

(66 Del. Laws, c. 185, § 14; 72 Del. Laws, c. 167, § 1.)

§ 9020B. Jurisdiction.

The Superior Court shall have jurisdiction of offenses under this chapter.

(66 Del. Laws, c. 185, § 14; 72 Del. Laws, c. 167, § 1.)

Subchapter II

Deputies and Clerks

§ 9031B. Duties and responsibilities of officers appointing deputies and clerks.

All deputies and clerks shall be under the control of the officer by whom they are selected and employed, who may discharge any such deputy or clerk at any time, subject to the provisions of any applicable collective bargaining agreement or personal rules. The officer shall be responsible for all the official acts, neglects and defaults of all deputies and clerks the officer employs.

(66 Del. Laws, c. 185, § 14; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 167, § 1.)

§ 9032B. Powers and duties of chief deputies.

The chief deputy or, if there is no chief deputy, the deputy employed by each of the officers shall be possessed of all the authority of their respective offices, and in the absence or disability of the duty elected officer, the chief deputy of such officer shall perform all duties of the office, until the vacancy so created shall be filled as required by the Constitution of the State.

(66 Del. Laws, c. 185, § 14; 72 Del. Laws, c. 167, § 1.)

Part VIII
Departments of Government
Chapter 90C
Department of Technology and Information
Subchapter I
General Provisions

§ 9001C. Intent and purpose.

The General Assembly finds and declares that the way it manages information technology will play a strong role in determining the future success of the State. Information technology resources in state government are valuable strategic assets belonging to the citizens of Delaware and must be managed accordingly. The development and implementation of a single, common, statewide technology direction is fundamental to every aspect of state government including strengthening economic development, expanding education opportunities and providing the most efficient delivery of services to the citizens of Delaware. The General Assembly further finds and declares there is a critical role of information and information systems in the provision of life, health, safety, and other crucial services to the citizens of the State of Delaware and there is a need to mitigate the risk posed to these services due to ever-evolving cybersecurity threats.

(73 Del. Laws, c. 86, § 1; 74 Del. Laws, c. 128, § 11; 82 Del. Laws, c. 185, § 1.)

§ 9002C. Establishment of the Department of Technology and Information.

A Department of Technology and Information is established within the Executive Department, and shall have the powers, duties and functions vested in the Department by this chapter.

(73 Del. Laws, c. 86, § 1; 74 Del. Laws, c. 128, § 11; 82 Del. Laws, c. 185, § 1.)

§ 9003C. Definitions.

For the purposes of this chapter:

(1) “Agency” or “state agency” includes every board, department, bureau, commission, person or group of persons or other authority created and now existing or hereafter to be created to execute, supervise, control or administer governmental functions under the laws of this State or to perform such other duties as may be prescribed or to whom any moneys are appropriated under any budget appropriation act or supplemental appropriation act or any other act which authorizes and requires any department to collect or use any taxes, fees, licenses, permits or other receipts for services or otherwise for the performance of any function of or related to or supported in whole or in part by the laws of this State, or created to administer any laws providing for the collection of taxes, fees, permits, licenses or other forms of receipts from any sources whatsoever for the use of the State or any agency of the State. “Agency” or “state agency” does not include the legislative and judicial branches of state government, any non-executive branch agencies of the government, or any university, or local education agencies.

(2) “CIO” means Chief Information Officer of the State.

(3) “Department” means the Department of Technology and Information.

(4) “State” means State of Delaware.

(5) “Technology” means the following resources and initiatives used to acquire, transport, process, analyze, store and disseminate information or data electronically:

a. Data centers, infrastructure, hardware, technology project management, telecommunications and networking, software applications, service desk, information security, data management, and database administration; and

b. Digital government and online initiatives.

(73 Del. Laws, c. 86, § 1; 74 Del. Laws, c. 128, § 11; 82 Del. Laws, c. 185, § 1; 84 Del. Laws, c. 382, § 1.)

§ 9004C. General powers, duties and functions of the Department.

The Department, with the approval of the CIO, may enter into contracts with private entities to perform any of its enumerated duties that can be more efficiently performed in such manner. In addition, the Department of Technology and Information shall have the following powers, duties and functions:

(1) The powers and duties described in § 9001C of this title;

(2) Create, implement, and enforce statewide and agency technology solutions, policies, standards and guidelines, including as recommended by the CIO;

(3) Provide operations and production support to ensure the efficient and reliable operation of the State’s computer and telecommunications network;

(4) [Repealed.]

(5) Evaluate the performance of technology systems and equipment;

(6) Provide analytical and programming support to maintain and upgrade existing technology systems, applications and programs;

(7) Provide management of technology facilities;

(8) Research all facets of technology systems that may have been or will be installed or are proposed to be installed, and all matters pertaining thereto, including:

a. Potential technology solutions of or with private entities; and

b. Review of systems and equipment installed or to be installed or of changes or additions in or to equipment in any of the state agencies, regardless of size or of the method or source of funding;

(9) Develop and coordinate new technology initiatives and establish statewide information systems and technology priorities for purposes of budgetary funding reviews by the Director of the Office of Management and Budget;

(10) Promote cooperation between all state agencies, in order that work may be done by one agency for another agency and equipment and/or technical personnel in one agency may be made available to another agency, and promote such improvements as may be necessary in joint or cooperative technology operations. The Chief Information Officer is authorized to purchase, lease or rent technology and related equipment in the name of the Department of Technology and Information and to operate the equipment in providing services to any or all state agencies. When, in the opinion of the Chief Information Officer, better and more efficient technology services can be performed, the Department may enter into lease or purchase agreements in the acquiring or the use of any technology equipment and use such equipment in a centralized statewide approach. When the Department acts in a centralized statewide approach, the cost of the operation shall be prorated among the state agencies benefiting from those services provided thereby. The Chief Information Officer shall decide on the number of data centers, including the size of each, and shall be empowered to pick the site or sites for the centers and the controlling agency. Any consolidated or cooperative plan approved by the Chief Information Officer shall be given effect;

(11) The Department of Technology and Information shall maintain as a paramount consideration the successful internal organization and duties of all state agencies so that efficiency existing in the agencies shall not be adversely affected or impaired by the decisions that are made;

(12) Provide consulting services to all agencies including, but not limited to, information technology planning, program budget planning for information technology initiatives, expertise in systems development life cycle methods, and access to technical information on emerging technologies;

(13) [Repealed.]

(14) Perform policies and procedures as directed by the CIO;

(15) Develop an acceptable use policy for e-mail communications for every state executive branch agency;

(16) Develop, coordinate, publish and administer a comprehensive state technology plan which shall provide for the centralization and joint use of existing and future communications systems, technology, equipment and services by state agencies;

(17) Develop, coordinate, publish and administer standards, policies and procedures for identifying, justifying and documenting technology requirements of state agencies;

(18) Establish and promulgate standards, policies, guidelines and procedures concerning the development, implementation, acquisition, and use of the State's technology assets;

(19) Design, procure, install and maintain or, if appropriate, contract for the design, installation and maintenance of technology, equipment, and services for state agencies in accordance with the determinations directed by this subchapter;

(20) Perform periodic audits of the technology and activities of state agencies to ensure compliance with the policy and intent of this subchapter, and other applicable laws and regulations;

(21) Develop, coordinate, publish and administer policies and procedures for the submission of a statewide technology budget, which shall include all requirements of state agencies, including identification of business requirements by agency;

(22) Require that all state agencies having specific technology requirements related to business needs shall cooperate with and assist in the preparation of the statewide technology budget;

(23) Establish and coordinate a mechanism for a prorated chargeback process that aligns with the State's annual budget process with the approval of the Director of the Office of Management and Budget and Controller General. The chargeback rate will cover all centralized technology services statewide;

(24) Assign an agency "technology coordinator" to each state agency. It is the intent of this subsection that such technology coordinators will act as the primary points of contact for appropriate communications between the Department and the state agencies, the State General Assembly, the State Judiciary, the State Department of Elections, the State Board of Education, the Office of the State Public Defender, the State Attorney General, the State Treasurer, the Auditor of Accounts, other elective offices, and the school districts; and

(25) Perform such other duties in connection with the technology activities of the state government as may be directed by the Governor, or the General Assembly, or as may be required by existing or future state or federal statute.

(73 Del. Laws, c. 86, § 1; 74 Del. Laws, c. 128, § 11; 75 Del. Laws, c. 88, § 21(13); 76 Del. Laws, c. 227, § 1; 82 Del. Laws, c. 185, § 1; 84 Del. Laws, c. 382, § 2.)

§ 9005C. Communications powers, duties and functions.

[Transferred to § 9004C of this title by 82 Del. Laws, c. 185, § 1, effective August 5, 2019.]

(74 Del. Laws, c. 128, § 11; 75 Del. Laws, c. 88, § 21(13); 82 Del. Laws, c. 185, § 1.)

§ 9006C. Requirements for agency technology projects.

(a) Within guidelines established by the Department of Technology and Information, no new technology project may be initiated by any agency unless covered by a formal project plan approved by the Department and agency head. Such plan will be in the form prescribed by the Chief Information Officer, but shall include in any case:

(1) A statement of work to be done, existing work to be modified or displaced;

(2) Total cost of system development and conversion effort including, but not limited to, systems analysis and programming costs, process reengineering, establishment of master files, testing, documentation, special equipment costs and all other costs, including full overhead;

(3) Savings or added operating costs that will result after conversion;

(4) Other advantages or reasons that justify the work;

(5) Source of funding of the work, including ongoing costs and staffing resources;

(6) Conformance with formal (or abbreviated, where applicable) information systems planning methodologies;

(7) Consideration of shared applications and data elements/bases;

(8) Consistency with budget submissions and planning components thereof; and

(9) End user and staff training as needed.

(b) No project is to be undertaken which is beyond the scope of work funded by the General Fund or a special fund. This paragraph applies to all technology performed by the Department of Technology and Information, an agency, or an outside contractor, and also applies to new technology programs or systems purchased or otherwise acquired and placed in use.

(c) All projects are to be authorized by the Chief Information Officer and the concerned agency head, or their designees, before work is begun, except such relatively minor feasibility work required to prepare the project.

(d) Management control and policy direction over all aspects of computerized data requirements definition, data acquisition, data storage and dissemination, data retention and data retirement standards shall be the sole province of the Department of Technology and Information.

(e) The creation and maintenance of statewide data dictionary in which each element of data is defined, collection responsibilities are affixed, and data access by legitimate users clearly defined, shall likewise be the responsibility of the Department of Technology and Information.

(f) To those ends, no agency shall:

(1) Claim unreasonable proprietary ownership of public domain information needed by another agency in the performance of its lawful duties, except as specifically excluded by law; or

(2) Create a computerized database outside of guidelines established by the Department of Technology and Information.

(74 Del. Laws, c. 128, § 11; 75 Del. Laws, c. 88, § 21(13); 82 Del. Laws, c. 185, § 1.)

§ 9007C. Chief Information Officer.

(a) The administrator and head of the Department is this State's CIO.

(1) The CIO is appointed, confirmed, and holds office as provided in § 10 of Article III of the Delaware Constitution.

(2) The CIO is to receive an annual salary as determined by the General Assembly in the annual appropriations act.

(3) The CIO must obtain and retain residency in this State as provided in § 10 of Article III of the Delaware Constitution.

(b) In the event of a vacancy in the position of CIO, including the death, resignation, temporary incapacity, or removal of the CIO, and prior to the appointment of a successor, the Governor may appoint any qualified individual to serve as acting CIO.

(73 Del. Laws, c. 86, § 1; 74 Del. Laws, c. 128, § 11; 82 Del. Laws, c. 185, § 1; 84 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 455, § 16; 85 Del. Laws, c. 43, § 1.)

§ 9008C. Powers, duties, and functions of the CIO.

The following shall be the responsibilities and functions of the CIO:

(1) To act as the head administrator of the Department and to ensure that Department carries out all of its statutory duties.

(2) To act as the Governor's chief adviser on issues relating to technology.

(3) To serve as the Cabinet level executive for the Department of Technology and Information.

(4) To develop partnerships with state agencies in executing agreed upon technology strategies, plans, and projects by ensuring the timely delivery of quality technology solutions, products, and services on a cost effective basis, including setting and maintaining appropriate standards and managing relationships with, and the performance of, selected third-party technology vendors.

(5) To build, develop, motivate, and retain a high performing team of technology professionals that will enable the State to achieve its technology vision, strategies, and specific performance objectives.

(6) Supervise, direct, and account for the administration and operation of the Department of Technology and Information and its subsections, facilities, functions, and employees.

(7) Appoint personnel as may be necessary for the administration and operation of the Department of Technology and Information within such limitations as may be imposed by law.

(8) Establish, consolidate, or abolish such sections within the Department of Technology and Information or transfer or combine the powers, duties, and functions of the subsections within the Department of Technology and Information as the Chief Information Officer, with the approval of the Governor, may deem necessary, providing that all powers, duties, and functions required and assigned by law to the Department of Technology and Information shall be provided for and maintained.

(9) Make and enter into any and all contracts, agreements, or stipulations for equipment, facilities, and support services, and retain, employ, and contract for the services of private and public consultants, research and technical personnel and to procure by contract consulting, research, technical, and other services and facilities from public and private agencies in this State and other states, whenever the same shall be deemed by the Chief Information Officer to be necessary in the performance of the functions of the Department of Technology and Information; and necessary legal services shall be provided pursuant to Chapter 25 of this title.

(10) Delegate any of the Chief Information Officer's powers, duties, or functions to a manager, except the power to remove employees of the Department of Technology and Information or to determine their compensation.

(11) Establish and promulgate such rules and regulations governing the services and programs of the Department of Technology and Information and such other rules and regulations governing the administration and operation of the Department of Technology and Information as may be deemed necessary by the Chief Information Officer and which are not inconsistent with the federal and state law.

(12) Maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department of Technology and Information.

(13) Prepare a proposed budget for the operation of the Department of Technology and Information to be submitted for the consideration of the Director of the Office of Management and Budget, the Governor, and the General Assembly as directed under this chapter.

(14) Coordinate the activities of the Department of Technology and Information with those of other state agencies concerned with the services provided.

(15) Have any and all other powers and duties as are necessary to administer the powers, duties, and functions of the Department of Technology and Information and implement the purposes of this subchapter.

(73 Del. Laws, c. 86, § 1; 74 Del. Laws, c. 128, § 11; 75 Del. Laws, c. 88, § 21(13); 82 Del. Laws, c. 185, § 1; 84 Del. Laws, c. 514, § 58.)

§ 9009C. Budgeting and financing.

The Chief Information Officer, in compliance with § 9008C(13) of this title, in cooperation with the internal program managers and office administrators, shall prepare a proposed budget for the operation of the Department of Technology and Information to be submitted for the consideration of the Director of the Office of Management and Budget, the Governor and the General Assembly. The Department of Technology and Information shall be operated within the limitation of the annual appropriation and any other funds appropriated by the General Assembly.

(74 Del. Laws, c. 128, § 11; 75 Del. Laws, c. 88, § 21(13); 82 Del. Laws, c. 185, § 1.)

§ 9010C. Exemptions from the merit system.

(a) All employees of the Department, including the CIO, shall be exempt from Chapter 59 of this title.

(b) The CIO, with the advice of the Secretary of the Department of Human Resources, shall create a compensation plan. Implementation of said plan shall be contingent upon approval by the Director of the Office of Management and Budget and Controller General. Any proposed compensation plan within the Department of Technology and Information should be unique to information technology employees working at the Department and consider all factors including areas requiring specialized skill sets and other elements of providing a comprehensive technology service organization. Such a plan may include competency-based pay, pay-for-performance and other components necessary to recruit and retain highly qualified information technology professionals to the State.

(74 Del. Laws, c. 128, § 11; 75 Del. Laws, c. 88, §§ 21(13), 25(2); 81 Del. Laws, c. 66, § 59; 82 Del. Laws, c. 185, § 1.)

§ 9011C. State information security requirements

The Department of Technology and Information shall have the power to:

(1) Develop and implement a comprehensive information security program that applies personnel, process, and technology controls to protect the State's data, systems, and infrastructure, within the State's computing environment and on partner systems. All systems that connect to the State network shall comply with the State Information Security Program;

(2) Identify and address information security risks to each state agency, to third-party providers, and to key supply chain partners, including an assessment of the extent to which information resources, processes, or technologies are vulnerable to unauthorized access or harm, including the extent to which the entity's electronically stored information is vulnerable to unauthorized access, use, disclosure, disruption, modification, or destruction, and direct risk mitigation strategies, methods, and procedures to reduce those risks;

(3) Establish a central Security Operations Center (SOC) to direct statewide cyber defense and cyber threat mitigation. The SOC responsibilities shall include generating, collecting and analyzing security activity information to effectively identify and respond to cyber-attacks against the State;

(4) Implement technical compliance to state-owned technology as required by law. The Department may also implement technical compliance to state-owned technology that is recommended by private industry standards. The Department shall have the full cooperation of state agencies in identifying compliance requirements or industry standards; and

(5) Temporarily disrupt the exposure of an information system or information technology infrastructure that is owned, leased, outsourced, or shared by one or more state agencies in order to isolate the source of, or stop the spread of, an information security breach or other similar information security incident.

(82 Del. Laws, c. 185, § 1.)

§ 9012C. Information coordination [Repealed].

(73 Del. Laws, c. 86, § 1; 74 Del. Laws, c. 128, § 11; repealed by 82 Del. Laws, c. 185, § 1, effective Aug. 5, 2019.)

§ 9013C. Technology Investment Council [Repealed].

(73 Del. Laws, c. 217, § 1; 74 Del. Laws, c. 128, § 11; 77 Del. Laws, c. 105, §§ 2, 3; 82 Del. Laws, c. 185, § 1; 83 Del. Laws, c. 307, § 1; repealed by 84 Del. Laws, c. 382, § 3, effective Aug. 29, 2024.)

§ 9014C. Duties of the Technology Investment Council [Repealed].

(73 Del. Laws, c. 217, § 1; 74 Del. Laws, c. 12, § 2; 74 Del. Laws, c. 127, § 1; 74 Del. Laws, c. 128, § 11; 75 Del. Laws, c. 88, § 21(13); 82 Del. Laws, c. 185, § 1; 83 Del. Laws, c. 307, § 2; repealed by 84 Del. Laws, c. 382, § 4, effective Aug. 29, 2024.)

§ 9015C. Misnomer of Department.

Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Department if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey thereby to the Department or to any commission, board, department, authority, council or agency, to which, by this chapter, the powers, duties and functions have been transferred to the Department, the estate or interest therein expressed or described.

(73 Del. Laws, c. 86, § 1; 74 Del. Laws, c. 128, § 11; 82 Del. Laws, c. 185, § 1.)

§ 9016C. Supremacy.

All other laws or parts of laws now in effect inconsistent with this chapter are hereby repealed, superseded, modified or amended so far as necessary to conform to and give full force and effect to this chapter.

(73 Del. Laws, c. 86, § 1; 74 Del. Laws, c. 128, § 11; 82 Del. Laws, c. 185, § 1.)

§ 9016E. State agency technology procurement and management.

(a) The Department shall establish statewide technology standards for use in the procurement process. Further, if the Department has entered into a statewide contract for technology services or resources, then that contract is mandatory use for state agencies.

(b) The Department of Technology and Information shall have the full cooperation of state agencies in developing and implementing the sharing of data and information throughout the executive branch.

(c) The Department of Technology and Information shall enter into and develop service level agreements necessary to ensure that the state agencies have full access to secure, reliable, and efficient technology services.

(82 Del. Laws, c. 185, § 1.)

§ 9016F. Reallocation of technology personnel and equipment from executive branch agencies.

(a) All employees in executive branch agencies who are currently engaged in the exercise and performance of the powers, duties, and functions, as defined in this title and who are determined by the CIO to be necessary for the exercise and performance of the powers, duties, and functions as defined in this title are hereby reallocated to the Department. In addition, all executive branch agency employees who are determined by the CIO to have been engaged in providing necessary administrative, technical, or other support functions as defined in this title are hereby reallocated to the Department. In order to facilitate this reallocation, all executive branch agencies shall work in cooperation with the CIO, the Secretary of the Department of Human Resources, and the Director of the Office of Management and Budget to develop a detailed plan of implementation to reallocate and centralize all agency employees referenced in this section to the Department. This plan shall include but not be limited to any budgetary, operational, and regulatory changes necessary to implement such a centralization as well as service level agreements with state agencies to ensure continued operations.

(b) All technology equipment in executive branch agencies that is currently engaged in the exercise and performance of the powers, duties, and functions, as defined in this title and that is determined by the CIO to be necessary for the exercise and performance of the

powers, duties, and functions as defined in this title are hereby reallocated to the Department. In order to facilitate this reallocation, all executive branch agencies shall work in cooperation with the CIO and the Director of the Office of Management and Budget to develop a detailed plan of implementation to reallocate and centralize all executive branch agencies equipment referenced in this section to the Department. This plan shall include but not be limited to any budgetary, operational, and regulatory changes necessary to implement such a centralization as well as service level agreements with state agencies to ensure continued operations.

(82 Del. Laws, c. 185, § 1; 83 Del. Laws, c. 535, § 1.)

§ 9016G. Criminal background checks.

(a) The following individuals must submit to a criminal background check:

(1) Individuals who have received a conditional offer of employment with the Department.

(2) Any contractor or third party that requires access to Department systems, facilities, or data. For the purposes of this section, "third party" shall not include a "user" as defined by § 9017C of this title.

(b) Individuals submitting to a background check must provide fingerprints and other necessary information to the State Bureau of Identification so that the Department may obtain the following:

(1) A report of the individual's entire state criminal history record information from the State Bureau of Identification or a statement that the State Bureau of Identification Central Repository contains no such information relating to that individual.

(2) A report of the individual's entire federal criminal history record information from the Federal Bureau of Investigation or a statement that the Federal Bureau of Investigation's records contain no such information relating to that individual.

(c) The State Bureau of Identification shall forward all information obtained under subsection (b) of this section to the Department.

(d) The Department has the right to review every criminal background check obtained under this subchapter and make its own determination of the individual's qualification for employment or access to Department systems, facilities, or data. The Department may conditionally hire an employee, contractor, or volunteer, or grant access to a contractor or third party covered by this subchapter who has been fingerprinted pending the determination of the individual's qualification for employment or access to Department systems, facilities, or data. If the Department determines that an individual has a disqualifying criminal conviction, the individual may not continue employment or have access to Department systems, facilities, or data.

(e) If a current employee or a contractor actively engaged with the Department obtains a background check under this section, the State Bureau of Identification shall provide all of the following to the Department:

(1) Any subsequent state criminal history record information of the individual.

(2) Any subsequent criminal history record information of the individual available through the "Rap Back System" as defined under § 8502 of Title 11, if the Rap Back System is available.

(84 Del. Laws, c. 383, § 1.)

Subchapter II

Internet Privacy

§ 9017C. Definitions.

As used in this subchapter, the following terms shall have the following meanings:

(1) "Collect" shall mean to store information, including via cookie technology, for purposes of retrieval at a later time to initiate communication with or make determinations about the person who is the subject of such information.

(2) "The Department" shall mean the Department of Technology and Information.

(3) "Disclose" shall mean to reveal, release, transfer, disseminate or otherwise communicate information orally, in writing or by electronic or other means, other than to the person who is the subject of such information.

(4) "Internet" shall mean a system of linked computer networks, international in scope, that facilitate data transmission and exchange.

(5) "Personal information" shall include, but not be limited to, any information concerning a natural person which, because of name, number, symbol, mark or other identifier, can be used to identify that natural person.

(6) "State agency" shall have the same meaning as that assigned to it in § 5804(10) of this Title.

(7) "State agency website" shall mean an internet website operated by or for a state agency. Such term shall include those websites operated on behalf of state agencies by other public or private entities, but shall not include any portions of the internet outside the control of the state agency.

(8) "User" shall mean any natural person who uses the internet to access a state agency website.

(74 Del. Laws, c. 127, § 1.)

§ 9018C. Development and implementation of agency privacy policies.

(a) Each agency that maintains a state agency website shall develop a policy in conformity with the provisions of this subchapter. Each such policy shall include, but not be limited to, the following elements:

(1) A statement of any information, including personal information, the state agency website may collect with respect to the user and the use of the information;

(2) The circumstances under which information, including personal information, collected may be disclosed;

(3) Whether any information collected will be retained by the state agency, and, if so, the period of time that such information will be retained;

(4) The procedures by which a user may gain access to the collected information pertaining to that user;

(5) The means by which information is collected and whether such collection occurs actively or passively; and

(6) Whether the collection of information is voluntary or required, and the consequences, if any, of a refusal to provide the required information.

(b) The Department shall develop a model website privacy policy that can be utilized by state agencies to comply with this section. State agencies may modify or depart from this model policy, provided that the requirements of this subchapter are met.

(74 Del. Laws, c. 127, § 1.)

§ 9019C. Disclosure of agency privacy policies.

Each state agency shall post its internet privacy policy on its website. Such posting shall include a conspicuous and direct link to such privacy policy. The policy shall also be made available at no charge to other public and private entities.

(74 Del. Laws, c. 127, § 1.)

§ 9020C. Prohibition on disclosure of personal information.

No state agency shall disclose personal information concerning a user to any person, firm, partnership, corporation, limited liability company or other entity, including internal staff who do not need the information in the performance of their official duties, unless such user has consented to the disclosure of such personal information. For the purposes of this section, the voluntary disclosure of personal information to a state agency by a user through a state agency website, whether solicited or unsolicited, shall constitute consent to the disclosure of the information by the state agency for the specific purposes for which the user disclosed it to the state agency.

(74 Del. Laws, c. 127, § 1.)

§ 9021C. Exceptions.

Notwithstanding § 9020C of this title, a state agency may disclose personal information if the disclosure is:

(1) Necessary to perform the specific statutory duties of the state agency that collected or is collecting the personal information, or required by state or federal law or regulation;

(2) Made pursuant to a court order or by law; or

(3) If the information is used solely for statistical purposes and is in a form that cannot be used to identify any particular person.

(74 Del. Laws, c. 127, § 1.)

§ 9022C. Consistency with other code provisions.

Nothing in this subchapter shall abridge public access to information available or permitted by any other provisions of the Delaware Code. Nothing in this subchapter shall authorize the disclosure of information the disclosure of which is prohibited or restricted by any other provisions of the Delaware Code.

(74 Del. Laws, c. 127, § 1.)

Subchapter III

Cyber Security

(81 Del. Laws, c. 373, § 1.)

§ 9030C. Delaware Cyber Security Advisory Council

(a) There is hereby established a Delaware Cyber Security Advisory Council hereinafter referred to as the “DCSAC.” The DCSAC shall consist of 17 members to include the following:

(1) State Chief Information Officer, who shall serve as chair;

(2) State Chief Security Officer;

(3) Secretary of the Delaware Department of Safety and Homeland Security;

(4) Director of the Delaware Emergency Management Agency;

(5) Adjutant General of the Delaware National Guard;

(6) President of the League of Local Governments;

(7) President of the Delaware State Chamber of Commerce;

(8) President of the Delaware Association of School Administrators;

(9) Director of Consumer Protection of the Department of Justice;

(10) Chief Justice of the Supreme Court;

(11) President of the Delaware Healthcare Association;

(12) Four private sector representatives appointed by the Governor; and

(13) Two representatives of Higher Education appointed by the Governor.

(b) Members serving by virtue of position may appoint a designee to serve.

(c) Members appointed by the Governor shall serve at the pleasure of the Governor.

(d) The duties of the DCSAC are to do all of the following:

(1) Facilitate cross-industry collaboration to share best practices and mitigate cyber security risks related to critical infrastructure and protected systems;

(2) Develop recommendations for improving the overall cyber security posture across all sectors in Delaware;

(3) Develop recommendations for increasing information sharing between all sectors in Delaware;

(4) Recommend resources and possible methods to accomplish the recommendations identified in paragraph (d)(3) of this section;

(5) Provide recommendations to the Office of the Governor regarding the interoperability of equipment, technologies, and software infrastructure related to the cyberattacks and cybersecurity;

(6) Identify and participate in appropriate federal, multistate, or private sector programs and efforts that support or complement its cybersecurity mission;

(7) Liaise with the National Cybersecurity and Communications Integration Center within the United States Department of Homeland Security, other state and federal agencies, and other public and private sector entities on issues relating to cybersecurity.

(e) The DCSAC may establish a subcommittee.

(1) The purpose and scope of the subcommittee will be the exchange of information about cybersecurity vulnerabilities and response plans with entities who do not wish to be publicly identified.

(2) The Chair of the DCSAC will chair the subcommittee.

(3) The subcommittee will include at least 3 members of the DCSAC.

(4) The subcommittee will provide updates to the DCSAC as determined by DCSAC.

(5) The records of the subcommittee, including its summary information, findings, and recommendations, are not public records or subject to public inspection, except if shared with DCSAC.

(6) This subcommittee is not a public body subject to Chapter 100 of this title.

(f) The Delaware Department of Technology and Information shall provide staff and fiscal support to the DCSAC as part of the Department's ongoing responsibility.

(81 Del. Laws, c. 373, § 1.)

Subchapter IV

Delaware Artificial Intelligence (AI) Commission [Expires July 17, 2034, pursuant to 84 Del. Laws, c. 307, § 3]

(84 Del. Laws, c. 307, § 1.)

§ 9041C. Purpose [Expires July 17, 2034, pursuant to 84 Del. Laws, c. 307, § 3].

The Delaware AI Commission is created to do all of the following:

(1) Make recommendations to the General Assembly and to the Chief Information Officer of the Department on legislative and executive actions regarding AI in Delaware.

(2) Develop and recommend statewide processes, principles, and guidelines for executive, legislative, and judicial agencies to follow regarding use of AI.

(3) Encourage agencies to utilize AI to improve service delivery, where appropriate.

(4) Examine, develop, and recommend legislative, executive, and judicial actions that ensure the use of AI in Delaware keeps citizens safe and does not violate any individual's rights.

(5) Conduct an inventory of all generative AI usage in Delaware executive, legislative, and judicial agencies and identify high risk areas for the implementation of generative AI.

(84 Del. Laws, c. 307, § 1.)

§ 9042C. Definitions [Expires July 17, 2034, pursuant to 84 Del. Laws, c. 307, § 3].

As used in this subchapter:

(1) “Artificial Intelligence” or “AI” means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments.

(2) “Commission” means the Delaware AI Commission.

(3) “Generative AI” means the class of AI models that emulate the structure and characteristics of input data in order to generate derived synthetic content. This can include images, videos, audio, text, and other digital content.

(84 Del. Laws, c. 307, § 1; 85 Del. Laws, c. 17, § 1.)

§ 9043C. Commission membership; qualifications; term of office [Expires July 17, 2034, pursuant to 84 Del. Laws, c. 307, § 3].

(a) The Commission is composed of 23 voting members, as follows:

(1) Twelve members serving by virtue of position, or their designee, as follows:

a. The Chief Information Officer of the Department of Technology and Information.

b. The Attorney General.

c. The Secretary of the Department of Labor.

d. The Secretary of the Department of Education.

e. The Secretary of the Department of Transportation.

f. The Director of the Office of Management and Budget.

g. The Chief Justice of the Supreme Court.

h. The Secretary of State.

i. The Secretary of the Department of Health and Social Services.

j. The Secretary of the Department of Safety and Homeland Security.

k. The State Election Commissioner.

l. The Executive Director of the Government Efficiency and Accountability Review Board.

(2) Four members who are residents of the State and appointed by the President Pro Tempore of the Senate as follows:

a. One member of a higher education institution with specialization in AI.

b. One member representing private sector entities with experience in developing or implementing AI.

c. A member of the Senate from the Majority Caucus.

d. A member of the Senate from the Minority Caucus.

(3) Four members who are residents of the State and appointed by the Speaker of the House as follows:

a. One member of a higher education institution with specialization in AI.

b. One member representing private sector entities with experience in developing or implementing AI.

c. A member of the House of Representatives from the Majority Caucus.

d. A member of the House of Representatives from the Minority Caucus.

(4) Three members who are residents of the State and appointed by the Governor as follows:

a. One member of a higher education institution with specialization in AI.

b. One lawyer with expertise in U.S. and Delaware constitutional rights.

c. One member representing private sector entities with experience in developing or implementing AI.

(b) An appointed, voting member of the Commission serves for a term of up to 3 years and is eligible for reappointment.

(c) If an appointed, voting member of the Commission fails to attend 3 successive meetings of the Commission without just cause, that member’s position may be deemed vacant, and their appointing authority may appoint a replacement.

(d) Members of the Commission serve without compensation, except that the Commission may reimburse members for reasonable and necessary mileage and tolls incident to duties as members of the Commission.

(e) The Chair of the Commission shall appoint annually 1 nonvoting member who, at the time of appointment, is or will be in the next school year, a tenth, eleventh, or twelfth grade student in a public or private school in Delaware. Priority must be given to the selection of an individual who has demonstrated an interest in and commitment to the study of AI.

(84 Del. Laws, c. 307, § 1; 85 Del. Laws, c. 17, § 2.)

§ 9044C. Authority; staffing [Expires July 17, 2034, pursuant to 84 Del. Laws, c. 307, § 3].

(a) The Commission shall be placed within the Department and shall have such powers, duties, and functions as described in this subchapter and such other duties and functions as may be referred to it by the Governor, the Chief Information Officer of the Department, or the General Assembly.

(b) The Chief Information Officer of the Department shall provide staff support to the Commission.

(84 Del. Laws, c. 307, § 1.)

§ 9045C. Chair and vice chair; selection and duties [Expires July 17, 2034, pursuant to 84 Del. Laws, c. 307, § 3].

(a) The Commission shall elect a chair and vice chair at its first meeting and the chair and vice chair shall serve until a replacement is elected. If the chair becomes vacant, the vice chair shall fulfill the duties of the chair contained in subsection (b) of this section until a replacement is elected at its next meeting.

(b) The chair of the Commission shall do all of the following:

(1) Set a date, time, and place for the meetings of the Commission.

(2) Supervise the preparation and distribution of meeting notices, agendas, minutes, and other documents prepared by or on behalf of the Commission.

(84 Del. Laws, c. 307, § 1.)

§ 9046C. Quorum and conduct of business [Expires July 17, 2034, pursuant to 84 Del. Laws, c. 307, § 3].

(a) A majority of the membership of the Commission constitutes a quorum to conduct official business. Official action by the Commission, including making findings and recommendations, requires the approval of a majority of the members of the Commission present at a meeting with quorum.

(b) The Commission may adopt rules necessary for its operation.

(c) In carrying out the Commission's duties under this subchapter, the Commission shall consider any related plans and programs developed by other organizations with expertise in AI.

(84 Del. Laws, c. 307, § 1.)

§ 9047C. Annual report [Expires July 17, 2034, pursuant to 84 Del. Laws, c. 307, § 3].

On or before December 31, 2024, and on or before every December 31 thereafter, the Commission shall submit to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Director and Librarian of the Division of Legislative Services, for distribution to the members of the General Assembly, an annual report of the Commission's activities for the previous year and goals for the upcoming year. The report may also include proposals for legislation, administrative action, or other policy changes the Commission considers necessary to further the goals and purposes of this subchapter.

(84 Del. Laws, c. 307, § 1; 84 Del. Laws, c. 255, § 36.)

Part VIII
Departments of Government

Chapter 90D
Department of Human Resources

§ 9001D. Establishment of Department of Human Resources.

A Department of Human Resources, referred to in this chapter as "Department," is hereby established.

(81 Del. Laws, c. 66, § 1.)

§ 9002D. Secretary; appointment; salary; employees and assistants.

(a) The administrator and head of the Department is the Secretary of the Department of Human Resources ("Secretary").

(1) The Secretary is appointed, confirmed, and holds office as provided in § 10 of Article III of the Delaware Constitution.

(2) The Secretary is to be paid an annual salary as determined by the General Assembly in the annual appropriations act.

(3) The Secretary must obtain and retain residency in this State as provided in § 10 of Article III of the Delaware Constitution.

(b) The Secretary may employ such employees as may be required to carry out the duties of this office and may fix the salaries of such employees within the limitations of the funds appropriated therefor.

(c) In the event of a vacancy in the position of Secretary, including the death, resignation, temporary incapacity or removal of the incumbent, and prior to the appointment of a successor, the Governor may appoint any qualified individual to serve as acting Secretary.

(d) The Secretary may call upon any other state officer for such assistance as the Secretary may require and may employ such special help as it may require to carry out this chapter. The Secretary shall fix the compensation of such persons as may be employed to be paid out of such funds as the General Assembly may appropriate for that purpose.

(81 Del. Laws, c. 66, § 1; 84 Del. Laws, c. 278, § 1; 84 Del. Laws, c. 455, § 17; 85 Del. Laws, c. 43, § 1.)

§ 9003D. General powers and duties.

The Secretary of the Department of Human Resources shall have the following powers, duties and functions:

(1) To supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees.

(2) To supervise and direct all human resources and benefits employees in executive branch agencies subject to terms and conditions of negotiated service level agreements with executive branch agencies.

(3) To appoint and fix the salary, with the written approval of the Governor, of the following administrators, who may be removed from office by the Secretary with the written approval of the Governor and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary and shall be qualified by training and experience to perform the duties of the office:

a. A Deputy Secretary position in the Department.

b. A Director of Talent Management.

c. A Chief Diversity Officer.

d. A Director of Employee and Labor Relations.

e. A Director of Statewide Benefits and Insurance Coverage.

f. A Director of the Office of Women's Advancement and Advocacy.

g. A Director of Classification/Compensation and Talent Acquisition.

h. A Director of Training and Human Resource Solutions.

(4) To appoint such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law.

(5) To establish, consolidate or abolish such divisions, subdivisions and offices within the Department or transfer or combine the powers, duties and functions of the divisions and other groups within the Department, with the written approval of the Governor, as may be necessary, provided that all powers, duties and functions required by law shall be provided for and maintained.

(6) To make and enter into any and all contracts, agreements or stipulations, to retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract, consulting, research, technical and other services and facilities, whenever they shall be deemed by the Secretary necessary or desirable in the performance of the functions of the Department and whenever funds shall be available for such purpose, with the specific requirement that all necessary legal services be provided pursuant to Chapter 25 of this title.

(7) To approve and sign all collective bargaining agreements on behalf of the State.

(8) To delegate any of the Secretary's powers, duties or functions to an individual in paragraph (3) of this section, except the power to remove employees of the Department or to fix their compensation.

(9) To establish and to promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State.

(10) To maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department.

(11) To adopt an official seal or seals for the Department;

(12) To accept and to receive, in furtherance of the Department's function, funds, grants and services from the federal government or its agencies.

(13) To assume such other powers, duties and functions as the Governor may assign that are not otherwise inconsistent with the laws of this State.

(14) To prepare, in cooperation with the division directors, a proposed budget for the operation of the Department, to be submitted for the consideration of the Governor and the General Assembly. The Department shall be operated within the limitation of the annual appropriation and any other funds appropriated by the General Assembly, with the provision that special funds may be used in accordance with approved programs, grants and appropriations.

(81 Del. Laws, c. 66, § 1; 70 Del Laws, c. 186, § 1; 84 Del. Laws, c. 89, § 1.)

§ 9004D. Exemptions.

The following positions set forth in this section shall be exempt from Chapter 59 of this title:

(1) Secretary of the Department of Human Resources.

(2) Deputy Secretary.

(3) Director of Talent Management.

(4) Chief Diversity Officer.

(5) A Director of Employee and Labor Relations.

(6) A Director of Statewide Benefits and Insurance Coverage.

(7) Director of the Office of Women's Advancement and Advocacy.

(8) Director of Classification/Compensation and Talent Acquisition.

(9) Director of Training and Human Resource Solutions.

(81 Del. Laws, c. 66, § 1; 70 Del Laws, c. 186, § 1; 84 Del. Laws, c. 89, § 1.)

§ 9005D. Division of Talent Management.

(a) The Division of Talent Management of the Department of Human Resources is hereby established, having the powers, duties and functions as follows. Consistent with the right of public employees to organize under Chapter 13 of Title 19, the Director of Talent Management shall have the following responsibilities:

(1) Attend meetings of the Merit Employee Relations Board, act as liaison between the Board and the Department of Human Resources, and cooperate with the staff of the Board in administrative and technical activities.

(2) To assume the central leadership role for the Executive Branch over matters relating to development and maintenance of statewide Department of Human Resources policies and procedures.

(3) [Repealed.]

(4) Encourage the development of more effective personnel administration within the departments and agencies in the state service and make available for this purpose the assistance and facilities of the Merit Employee Relations Board.

(5) Investigate from time to time the operation and effect of Chapter 59 of this title, and of the rules made thereunder and to report findings and recommendations to the Merit Employee Relations Board.

(6) Perform any other lawful acts necessary or desirable to carry out the provisions of Chapter 59 of this title and the rules adopted thereunder.

(b) The Director of Talent Management shall assume such other powers, duties and functions as the Secretary of the Department of Human Resources may assign that are not otherwise inconsistent with the laws of this State.

(81 Del. Laws, c. 66, § 1; 84 Del. Laws, c. 89, § 1.)

§ 9006D. Division of Diversity, Equity and Inclusion.

(a) The Division of Diversity, Equity and Inclusion of the Department of Human Resources is hereby established having powers, duties and functions as follows:

(1) The Division shall assume all responsibilities and oversight previously assigned to the Governor's Council on Equal Employment Opportunity.

(2) The Chief Diversity Officer shall have the following responsibilities:

a. Guide efforts to define, assess, and cultivate access, diversity, equity, and inclusion throughout state government.

b. Provide analysis of various forms of institutional data to benchmark and promote accountability for the diversity mission of state agencies.

c. Promote and provide education to foster an awareness and understanding of the various laws, regulations, and policies regarding nondiscrimination.

d. Collaborate with state agencies to identify policies and practices supporting the recruitment and retention of employees from historically underrepresented groups.

e. Develop diversity metrics and processes to assess diversity, equity, and inclusion efforts.

(b) The Chief Diversity Officer shall assume such other powers, duties and functions as the Secretary of the Department of Human Resources may assign that are not otherwise inconsistent with the laws of this State.

(81 Del. Laws, c. 66, § 1; 84 Del. Laws, c. 89, § 1.)

§ 9007D. Division of Employee and Labor Relations.

(a) The Division of Employee and Labor Relations of the Department of Human Resources is hereby established having powers, duties and functions as follows. The Director of the Division of Employee and Labor Relations shall have the following responsibilities:

(1) To establish management practices that address workplace fairness and stability in accordance with Merit law and Merit Rules.

(2) To assume the central leadership role for the Executive Branch over all matters relating to collective bargaining, and any other personnel and labor relations matters affecting the Executive Branch and its departments and agencies, including negotiations with employee organizations, labor arbitration, Public Employment Relations Board, Department of Labor, Equal Employment Opportunity Commission and other administrative proceedings.

(3) To assume responsibility for any other agreement or arrangements made involving employee organizations that represent employees subject to executive branch authority.

(b) The Director of Employee and Labor Relations shall assume such other powers, duties and functions as the Secretary of the Department of Human Resources may assign that are not otherwise inconsistent with the laws of this State.

(81 Del. Laws, c. 66, § 1; 84 Del. Laws, c. 89, § 1.)

§ 9008D. Division of Statewide Benefits and Insurance Coverage.

(a) The Division of Statewide Benefits and Insurance Coverage of the Department of Human Resources is hereby established having powers, duties and functions as follows:

(1) With the exception of deferred compensation pursuant to Chapter 60A of this title and any other investment or retirement savings plan, the Director of Statewide Benefits and Insurance Coverage shall be responsible for the management and administration of all currently existing and future state employee benefits programs, including but not limited to group health, group life, flexible benefits, dental, vision, prescription, long-term care, disability, and supplemental benefits.

(2) Pursuant to § 6508 of Title 18.

(b) The Director of Statewide Benefits and Insurance Coverage shall assume such other powers, duties and functions as the Secretary of the Department of Human Resources may assign that are not otherwise inconsistent with the laws of this State.

(81 Del. Laws, c. 66, § 1; 84 Del. Laws, c. 89, § 1.)

§ 9009D. Office of Women’s Advancement and Advocacy.

(a) The Office of Women’s Advancement and Advocacy is hereby established as a unit of the Department of Human Resources with the purpose of promoting the equality and equity of women in all areas of society. For administrative and budgetary purposes only, the Director of the Office of Women’s Advancement and Advocacy shall report to the Secretary of Human Resources.

(b) The Office of Women’s Advancement and Advocacy shall advise the Secretary of the Department of Human Resources, the Governor and the General Assembly and shall:

(1) Foster and facilitate collaborations between the state agencies, the General Assembly, the Judiciary, individuals, organizations, businesses and institutions towards the elimination of gender-based bias and discriminatory policies and practices.

(2) Serve as a clearinghouse for providing information on the status of women to the public, state agencies, the General Assembly, the Judiciary, organizations, businesses, and institutions, and when necessary, to refer complaints and inquiries to the appropriate state departments or agencies or community organizations when necessary.

(3) Study, review and report on the status of women in the State. To accomplish this task, the Office of Women’s Advancement and Advocacy may conduct research projects and focus groups, and hold public hearings, forums and discussion groups as it deems necessary.

(4) Compile and analyze statistics and information and issue reports on issues affecting women in this State.

(5) Advise executive and legislative bodies on the effect of proposed legislation on women. This includes making recommendations on proposed legislation by providing reports, statistics and testimony.

(6) Provide suggestions and recommendations regarding the implementation of any previously enacted gender-based legislation or policy initiatives.

(7) Make specific legislative proposals relating to the removal of discriminatory laws and practices in the State and the advancement of women in the State; transmit such legislation, with any report or information thereon to the Governor, the Secretary of the Department of Human Resources and the General Assembly; and work toward the passage of such legislation.

(8) Contract for the production, distribution and marketing of educational and informative media materials, consistent with the purpose of the Office, such terms and conditions as deemed appropriate by the Department of Human Resources with all revenues from said contracts being deposited in an appropriate special fund for the purpose of reproducing, marketing and distributing copies of video and printed materials.

(9) Serve as a liaison between government and private interest groups concerned with issues affecting women;

(10) Perform such other functions and duties as imposed upon it by law or as are assigned to it by the Governor, the Secretary of the Department of Human Resources or the General Assembly.

(11) At the beginning of every General Assembly, submit a report to the Governor, Secretary of the Department of Human Resources and the General Assembly of the Office of Women's Advancement and Advocacy's activities and recommendations. Such activities shall include reports of the Commission for Women, Delaware Women's Hall of Fame Committee and the Delaware Women's Workforce Council.

(c) The Office of Women's Advancement and Advocacy may collaborate with the Division of Diversity, Equity and Inclusion or any other state agency for assistance, information or data that may be necessary to fulfill its responsibilities in subsection (b).

(d) *The Commission for Women.* — (1) The Commission for Women shall advise the Office of Women's Advancement and Advocacy on strategic planning, project development and programming.

(2) The Commission for Women shall meet at least quarterly.

(3) The Commission for Women shall consist of 18 members who shall be appointed as follows:

a. Four members appointed by the Speaker of the House of Representatives and shall serve at the pleasure of the Speaker.

b. Four members appointed by the President Pro Tempore of the Senate and shall serve at the pleasure of the President Pro Tempore.

c. Ten members appointed by the Governor representing all 3 counties and the City of Wilmington. Of the Governor's appointees, no more than 6 members shall be members of any 1 political party.

(4) Members of the Commission for Women appointed by the Governor shall serve for a term of 3 years. All members are eligible for reappointment. If any member fails to attend 4 successive meetings of the Commission for Women, that member's position may be deemed vacant and the appointing authority shall appoint a replacement.

(5) The Chairperson of the Commission for Women shall be appointed by the Governor from among the 18 members, and shall serve at the pleasure of the Governor. The Commission for Women may elect such officers as it deems necessary.

(6) Members of the Commission for Women shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Commission for Women in accordance with state law.

(7) The Commission for Women shall adopt such bylaws as it deems necessary.

(8) The Commission for Women has the authority to create subcommittees and councils as it deems necessary.

(9) The Commission for Women shall hold its first meeting within 120 days of the enactment of this legislation.

(e) [Repealed.]

(f) *Delaware Women's Hall of Fame Committee.* — The Office of Women's Advancement and Advocacy shall oversee this committee, which shall be responsible for fostering an understanding of and an appreciation for the many contributions of the women of Delaware to their home, community, State and nation and annually recognize and acknowledge the achievements of remarkable Delaware women through the Delaware Women's Hall of Fame.

(1) The Delaware Women's Hall of Fame Committee shall be comprised of 11 members who shall be appointed as follows:

a. Two members appointed by the Speaker of the House of Representatives and shall serve at the pleasure of the Speaker.

b. Two members appointed by the President Pro Tempore of the Senate and shall serve at the pleasure of the President Pro Tempore.

c. Seven members appointed by the Governor representing all 3 counties and the City of Wilmington. Of the Governor's appointees, no more than 5 members shall be members of any 1 political party.

(2) The Chairperson of the Delaware Women's Hall of Fame Committee shall be appointed by the Governor from among the 11 members, and shall serve at the pleasure of the Governor. The Delaware Women's Hall of Fame Committee may elect such officers as it deems necessary.

(3) Members of the Delaware Women's Hall of Fame Committee appointed by the Governor shall serve for a term of 3 years. All members are eligible for reappointment. If any member fails to attend 4 successive meetings of the Delaware Women's Hall of Fame Committee, that member's position may be deemed vacant and the appointing authority shall appoint a replacement.

(4) Members of the Delaware Women's Hall of Fame Committee shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Delaware Women's Hall of Fame in accordance with state law.

(5) Members of the Delaware Women's Hall of Fame Committee shall appoint an annual selection committee to select the inductees to the Delaware Women's Hall of Fame.

(g) [Repealed.]

(81 Del. Laws, c. 66, § 1; 70 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 89, § 1.)

§ 9010D. Division of Classification/Compensation and Talent Acquisition.

(a) The Division of Classification/Compensation and Talent Acquisition of the Department of Human Resources is hereby established having powers, duties and functions as follows:

(1) Responsible for the management and administration of classification and compensation programs and processes for merit and merit comparable employees.

(2) Establish and maintain a roster of all employees in the classified service as defined in § 5903 of this title, setting forth pertinent data as to each employee, including the class, title of the position held, salary or pay, and any change in class title, pay or status.

(3) Administers the State's recruitment system for all branches of government.

(4) Responsible for the management and administration of recruitment programs and processes for sourcing, recruiting and hiring diverse talent in the Executive Branch.

(b) The Director of Classification/Compensation and Talent Acquisition shall assume such other powers, duties and functions as the Secretary of the Department of Human Resources may assign that are not otherwise inconsistent with the laws of this State.

(84 Del. Laws, c. 89, § 1.)

§ 9011D. Division of Training and Human Resource Solutions.

(a) The Division of Training and Human Resource Solutions of the Department of Human Resources is hereby established having powers, duties, and functions as follows:

(1) To assume the central leadership role for the Executive Branch over matters relating to employee training common across agencies, including leadership training, and designate staff to administer training programs for state managers, supervisors and employees.

(2) Statewide training programs may be supported with funds generated from fees for agencies participating in programs provided by the Department of Human Resources. The Department of Human Resources may set charges to sustain or create training programs with the funds placed in an appropriated special fund account.

(3) The Division shall administer special training funds and associated programs for the benefit of state employees including the Blue Collar Training Program funds under § 3402(b)(2)b. of Title 19 to fund career training for state employees, and Chapter 60B of this title, First State Quality Improvement Fund.

(4) Establish and maintain statewide recognition programs pursuant to Chapter 59 of this title.

(5) Administer the Delaware Learning Center (DLC), the State's enterprise learning management system, and the DLC Support Portal across executive, legislative, and judicial branches.

(6) Leads DHR technology and special projects at the discretion of the Secretary of the Department of Human Resources in support of the centralized service delivery human resource services to the executive branch agencies.

(b) The Director of Training and Human Resource Solutions shall assume such other powers, duties and functions as the Secretary of the Department of Human Resources may assign that are not otherwise inconsistent with the laws of this State.

(84 Del. Laws, c. 89, § 1; 84 Del. Laws, c. 514, § 59.)

§ 9012D. Counsel; powers and duties.

Notwithstanding § 2507 of this title, the Department shall employ 1 counsel experienced in the field of labor and employment law, who may advise the Department on matters of labor and employment law and who shall assist the Department in developing standards, policies, programs and training materials that satisfy Delaware and federal law.

(84 Del. Laws, c. 89, § 1, effective June 30, 2023.)

§ 9013D. Functions prior to July 1, 2017.

The Department of Human Resources, through appropriate divisions, subdivisions and offices, shall have the power to perform and responsibility to perform all the powers, duties and functions that were vested in the Human Resource Management and the Benefits and Insurance Administration Sections of the Office of Management and Budget prior to July 1, 2017, and which are not otherwise specifically assigned to the Department of Human Resources by this chapter, excepting only those powers, duties and functions expressly vested in or retained by any other person, department, board, commission or agency.

(84 Del. Laws, c. 89, § 1, effective June 30, 2023.)

§ 9014D. Appeals.

Any and all rights of appeal now existing by law, with respect to any act or acts constituting the exercise of any function or functions transferred by this chapter to the Department of Human Resources or to any division or subdivision or office thereof, shall continue to exist with respect to such act or acts as hereafter performed by the Department of Human Resources or by the division, subdivision or office to which such function is transferred, and each such appeal shall be perfected in the manner heretofore provided by law.

(84 Del. Laws, c. 89, § 1, effective June 30, 2023.)

§ 9015D. Transfers and continuity.

(a) All books, records, papers, maps, charts, plans and other material including any equipment in the possession of any agency of the State and used in connection with a function transferred by this chapter to the Department of Human Resources shall, on July 1, 2017, be delivered into the custody of the said Department. All investigations, petitions, hearings and legal proceedings pending before or instituted by any agency from which functions are transferred by this chapter and not concluded prior to July 1, 2017, shall continue unabated and remain in full force and effect, notwithstanding the passage of this chapter and, where necessary, may be completed before, by or in the name of the Department. All orders, rules and regulations made by any agency from which functions are transferred by this chapter and which govern such functions, and which are in effect on July 1, 2017, shall remain in full force and effect until revoked or modified in accordance with law by the Department. All contracts and obligations of any agency made or undertaken in the performance of a function transferred to the Department by this chapter and being in force on July 1, 2017, shall, notwithstanding this chapter, remain in full force and effect and be performed by the Department.

(b) Employees of any agency whose functions are consistent with and have been transferred to the Department of Human Resources by this chapter shall continue and be deemed to be the employees of the said Department on July 1, 2017, and, where applicable, with all the benefits accrued as merit employees as of July 1, 2017.

(c) All definitions and references to any commission, board, department, council or agency which appear in any other act or law shall, to the extent that they are consistent with this chapter and in connection with a function transferred to the Department of Human Resources, be construed as referring and relating to the Department of Human Resources as created and established by this chapter.

(d) All definitions and references to any director, commissioner, executive secretary, commission, board or council member or other similar person which appear in any other act or law shall, to the extent that they are consistent with this chapter and in connection with a function transferred by this chapter to the Department of Human Resources, be construed as referring or relating to such person or persons and their powers, duties and functions as established and created by this chapter.

(81 Del. Laws, c. 66, § 1; 84 Del. Laws, c. 89, § 1.)

§ 9016D. Misnomer in donation.

Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the Department of Human Resources or any predecessor agency thereof if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey thereby the estate or interest therein expressed or described to the Department or to any commission, board, department, authority, council or agency, from which, by this chapter, the powers, duties and functions have been transferred to the Department.

(84 Del. Laws, c. 89, § 1, effective June 30, 2023.)

§ 9017D. Supremacy.

All other laws or parts of laws now in effect inconsistent with this chapter are repealed, superseded, modified or amended so far as necessary to conform to and give full force and effect to this chapter.

(84 Del. Laws, c. 89, § 1, effective June 30, 2023.)

Part VIII
Departments of Government

Chapter 90E
Office of Inspector General

(85 Del. Laws, c. 138, § 1.)

§ 9001E. Purpose.

In establishing the Office of Inspector General, the General Assembly finds as follows:

(1) The prevention of fraud, waste, mismanagement, corruption, and abuse of governmental resources is necessary for Delaware residents to have full confidence in their state government.

(2) An independent and nonpartisan Office of Inspector General is necessary to provide increased oversight, accountability, and transparency to the actions of Delaware government.

(3) The Office of Inspector General shall protect the public interest and enhance public trust by conducting investigations and holding agencies and individuals accountable to all of the following, as applicable:

a. Oath of office.

b. Code of conduct.

c. State law.

d. Other ethical and legal standards.

(4) The Office of Inspector General will work collaboratively with other investigative and law-enforcement agencies for the purposes of efficiency, coordination, and avoiding duplication of work.

(85 Del. Laws, c. 138, § 1.)

§ 9002E. Definitions.

For purposes of this chapter:

(1) “Business relationship” means that any of the following apply to the relationship between a state agency and an individual or entity:

a. A financial interest, contract, or purchase.

b. A license or permit requiring the exercise of judgment or discretion by a state agency.

(2) “Inspector General” means the Office of Inspector General (“Office”), the individual appointed as the Inspector General, and the staff of the Office of Inspector General.

(3) “Public office” means as defined in § 8002 of Title 15.

(4) “Records” means all records, accounts, reports, documents, correspondence, data, information, property, and any other physical or electronic material used by or belonging to a state agency or relating to a business relationship with a state agency.

(5) a. “State agency” means any office, department, board, commission, committee, school district, and all public bodies created by the Delaware Constitution or by an act of the General Assembly.

b. “State agency” includes the General Assembly, in regard to the General Assembly’s management of governmental resources and routine administrative operations, such as requirements related to employment practices and procurement.

c. “State agency” does not include any of the following:

1. A county or municipality.

2. A court.

3. The General Assembly, in regard to the General Assembly’s legislative functions or disciplinary authority governed by the Delaware Constitution and the rules of proceedings adopted under § 9 of Article II of the Delaware Constitution.

(85 Del. Laws, c. 138, § 1.)

§ 9003E. Inspector General; establishment.

(a) The Office of Inspector General is established as an independent and nonpartisan agency to investigate the management and operation of state agencies to determine whether there has been fraud, waste, mismanagement, corruption, or any other abuse of governmental resources that harms the public interest.

(b) The General Assembly shall make adequate appropriations to the Office of Inspector General to enable effective operation and independence.

(c) (1) The Inspector General shall be nominated, appointed, and confirmed under § 9010E of this title and shall direct and supervise the work of the Office of Inspector General.

(2) The following individuals may not be nominated for Inspector General until 3 years after the last day of the individual's employment in any of the following disqualifying positions:

a. A statewide public office.

b. A member of the General Assembly.

c. A Cabinet Secretary, or individual of equivalent rank within the executive branch.

d. A division director, or individual of equivalent rank within the executive branch, except that this paragraph (c)(2)d. does not apply to a Deputy Attorney General.

(d) (1) The Inspector General shall hire a Deputy Inspector General and qualified staff with education or experience in relevant areas such as investigations, evidence collection, audits, compliance with laws and other requirements, or other forms of oversight, enforcement, or government evaluation.

(2) The Inspector General may hire a staff attorney.

(3) Within 3 years of hire, investigative staff employed by the Office of Inspector General shall become certified by the Association of Inspectors General in at least 1 of the following fields:

a. Investigation.

b. Auditing.

c. Evaluation.

(e) (1) The Inspector General may contract for services of technical experts, including legal counsel.

(2) Notwithstanding paragraph (e)(1) of this section, the Inspector General may only contract for an audit if the Auditor of Accounts refuses to perform or contract for a requested audit.

(85 Del. Laws, c. 138, § 1.)

§ 9004E. Inspector General; term, compensation.

(a) (1) The Inspector General shall serve a term of 5 years and is eligible for reappointment.

(2) a. At least 6 months before the end of a term, the Inspector General shall provide notice to the Secretary of State stating whether or not the Inspector General is seeking reappointment.

b. Before resigning during a term, the Inspector General shall provide written notice to the Governor, Secretary of State, President Pro Tempore of the Senate, and Speaker of the House of Representatives.

(b) (1) Under § 5 of Article XV of the Delaware Constitution, an individual serves as Inspector General until the process under § 9010E of this title is completed and the Senate confirms the individual's reappointment or confirms a new individual as Inspector General.

(2) Under § 4 of Article XV of the Delaware Constitution, the amount of the Inspector General's salary may not be reduced during the Inspector General's term of office.

(c) The Inspector General may only be removed from office as follows:

(1) Mandatory removal by the Governor upon conviction of misbehavior in office or any infamous crime under § 6 of Article XV of the Delaware Constitution.

(2) For cause, by violating the State Employees', Officers' and Officials' Code of Conduct, subchapter I of Chapter 58 of this title.

(3) The Inspector General's removal under paragraph (c)(2) of this section must be initiated by a recommendation from the Governor and approved by a # vote of the members elected to each house of the General Assembly.

(d) The Inspector General must resign from this position before becoming a candidate for public office. The Inspector General is deemed to have resigned from this position, creating a vacancy effective the date that any of the following occur:

(1) The individual files to be a candidate for public office.

(2) A candidate committee is formed on behalf of the individual.

(3) The individual announces their candidacy for public office.

(e) If both the position of the Inspector General and the Deputy Inspector General are vacant, the Governor may appoint a qualified individual to serve as acting Inspector General until the appointment of an Inspector General under § 9010E of this title.

(85 Del. Laws, c. 138, § 1.)

§ 9005E. Powers and duties.

(a) The Inspector General shall do all of the following:

(1) Investigate the management and operation of state agencies to determine if there has been fraud, waste, mismanagement, corruption, or any other abuse of governmental resources that harms the public interest, whether through acts or omissions, including all of the following:

a. Business relationships.

b. Retaliation against whistleblowers.

(2) Establish priorities for the Office.

(3) Maintain a statewide toll-free telephone number, collect telephone number, website, e-mail address, and mailing address for the receipt of complaints and inquiries.

(4) Establish procedures to receive, investigate, and resolve complaints, including recommending whether disciplinary action or further investigation by appropriate federal, state, or local agencies is warranted and taking further action as appropriate.

(5) Pursue civil actions on behalf of this State for violations of laws or policies identified through investigations.

(6) Adopt and comply with rules, policies, and procedures necessary to implement this chapter.

(b) The Inspector General shall work collaboratively, including through memoranda of understanding, with all of the following for the purposes of efficiency, coordination, and avoiding duplication of work:

(1) The Attorney General.

(2) The Auditor of Accounts.

(3) The State Public Integrity Commission.

(4) Other investigative or law-enforcement agencies.

(85 Del. Laws, c. 138, § 1.)

§ 9006E. Investigative procedures.

(a) (1) The Inspector General may initiate an investigation or may act on receipt of a complaint. Complaints may be made by any individual or entity.

(2) The Inspector General may not investigate complaints from employees that relate to their employment relationship with the state agency, unless the complaint is directly related to fraud, waste, mismanagement, corruption, or any other abuse of governmental resources that harms the public interest under § 9005E(a)(1) of this title.

(b) (1) The Inspector General may decline to investigate a complaint as provided by the rules adopted under this chapter.

(2) If the Inspector General does not investigate a complaint, the Inspector General shall notify the complainant of the decision not to investigate the complaint and the reason for that decision.

(c) The Inspector General may refer a complainant, and others, to appropriate resources, agencies, or departments.

(d) The Inspector General may not levy a fee for the submission or investigation of a complaint.

(e) The Inspector General must remain neutral and impartial and may not act as an advocate for the complainant or for the state agency.

(f) The Inspector General shall adhere to professional standards for initiating and conducting investigations, such as the Principles and Standards for Offices of Inspectors General promulgated by the Association of Inspectors General.

(g) (1) At the conclusion of the investigation of each complaint, the Inspector General shall issue a public decision, including recommendations, on the merits of the complaint.

(2) If the complaint is about an employee of an agency or contractor and the investigation found no evidence of wrongdoing, the public decision may not contain the name of the individual investigated without the written permission of that individual.

(3) a. Before announcing a decision, the Inspector General shall do all of the following:

1. Consult with the state agency, and, as appropriate, the state employee or contractor thereof, regarding the decision.

2. Provide an opportunity for each person contacted under this paragraph (g)(3)a. to respond to the decision.

b. Paragraph (g)(3)a. of this section does not allow a person consulted by the Inspector General before an announcement to hinder, prevent, or delay the Inspector General's announcement of a decision.

(4) The public decision must not contain information that is confidential under § 9008E of this title, unless any of the following apply:

a. The information is necessary to support the decision and any recommendations resulting from an investigation.

b. If wrongful acts or omissions are found, the Inspector General shall describe the acts or omissions and identify in the decision the individuals who committed those acts or omissions.

(5) The Inspector General must provide the basis for a recommendation that a state agency do any of the following:

a. Consider the matter further.

b. Modify or cancel an action.

c. Alter a rule, practice, or decision.

d. Explain in detail the administrative action in question.

e. Rectify an omission.

(6) The Inspector General must communicate the decision as follows:

a. To the complainant.

b. To the state agency investigated, and as appropriate, the employee or contractor investigated.

c. On the Inspector General's website.

(7) If the investigation finds that there has been or continues to be a significant problem regarding fraud, waste, mismanagement, corruption, or any other abuse of governmental resources that harms the public interest, the Inspector General must communicate the decision to the Department of Justice and the other recipients of the annual report under § 9009E(a) of this title.

(h) If requested by the Inspector General, the state agency must, within the time specified, inform the Inspector General about any action taken on a recommendation or the reasons for not following a recommendation.

(i) If the Inspector General believes, based on the investigation, that there has been or continues to be evidence of a crime, the Inspector General must report the finding to the Department of Justice and any other appropriate law-enforcement agency.

(j) If the Department of Justice does not file a civil action to address the problem reported under paragraph (g)(7) of this section, the Inspector General may pursue a civil action for a violation of law or policy.

(85 Del. Laws, c. 138, § 1.)

§ 9007E. Access to state agencies and records.

(a) The Inspector General must have reasonable access to a state agency's records as necessary to conduct a full investigation of a complaint, including all of the following:

(1) Access to records in possession of a grantee or contractor.

(2) The opportunity to interview an employee or any other individual who may have knowledge relating to the complaint under investigation.

(b) The Inspector General has the right, with or without notice, to inspect and copy all relevant information, records, or documents under subsection (a) of this section that the Inspector General considers necessary in an investigation of a complaint under this chapter. The state agency must assist the Inspector General in obtaining the necessary releases for those documents which are specifically restricted or privileged.

(c) Following notification by the Inspector General in a written demand for access to the state agency's records, the state agency must provide the Inspector General with access to the requested documentation not later than 5 business days after the Inspector General's written request for the records.

(d) The Inspector General may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to a matter under investigation by the Inspector General. If a person refuses to obey a subpoena issued by the Inspector General, the Inspector General may petition a court of competent jurisdiction for an order requiring that person to appear before the Inspector General to give testimony, produce evidence, or both, relating to the matter under investigation.

(e) The Inspector General shall have the authority to administer or take from any person an oath, affirmation, or affidavit, whenever necessary to perform the Inspector General's duties.

(85 Del. Laws, c. 138, § 1.)

§ 9008E. Confidentiality.

(a) All investigative records, including communications that include the investigative record, are confidential and are exempt from public disclosure under the Freedom of Information Act, Chapter 100 of this title.

(b) (1) The Inspector General shall treat all matters under investigation as confidential and may not further disclose or disseminate information except as necessary to act under subsection (d) of this section.

(2) The Inspector General shall maintain as confidential the identity of all of the following:

a. A person who files a complaint.

b. A person who provides information regarding an investigation.

c. An employee whose conduct was in compliance with an agency or contractor's policies and procedures at the time of the conduct, if the employee was not responsible for establishing that policy or procedure.

(c) If the Inspector General receives information that is confidential or privileged under other law, the Inspector General shall maintain the confidentiality of the information and may not further disclose or disseminate the information except as necessary to act under subsection (d) of this section.

(d) The Inspector General may reveal information obtained in the course of an investigation to the extent the Inspector General reasonably believes necessary to do any of the following:

(1) Prevent reasonably certain death or substantial bodily harm.

(2) Prevent the commission of a crime.

(3) Report an alleged commission of a crime to the appropriate law-enforcement agency.

(4) Perform the duties of the Inspector General, including to do any of the following:

a. Collaborate with agencies under § 9005E(b) of this title.

b. Contract for services of technical experts under § 9003E(e) of this title.

c. Support the decision and any recommendations resulting from an investigation under § 9006E of this title.

d. File a civil action under § 9006E(j) of this title.

(5) Comply with a court order or subpoena.

(e) The Inspector General shall establish confidentiality rules and procedures for all information maintained by the Office.

(85 Del. Laws, c. 138, § 1.)

§ 9009E. Report.

(a) No later than March 1, the Inspector General shall produce an annual report, published on the Inspector General's website, and submitted to the Governor, Attorney General, and members of the General Assembly, with copies to the Director and the Librarian of the Division of Research of Legislative Services, and the Delaware Public Archives.

(b) The annual report must contain all of the following regarding the Inspector General's work during the prior year:

(1) The number of complaints received, the number of investigations started, and the number of investigations completed.

(2) A description of significant investigations completed.

(3) Any outstanding or unresolved concerns or recommendations.

(85 Del. Laws, c. 138, § 1.)

§ 9010E. Inspector General; selection panel; confirmation.

(a) (1) The Secretary of State shall convene the selection panel as follows:

a. At least 90 days before the Inspector General's current term is expiring.

b. As soon as practicable when the position of Inspector General becomes vacant during a term or if the Inspector General submits notice of resignation.

(2) The selection panel shall submit the names of 3 individuals to the Governor for consideration for appointment as Inspector General based on each individual's demonstrated integrity, leadership, and experience in governmental oversight and investigations.

(3) The Secretary of State shall provide reasonable and necessary support staff and materials for the selection panel.

(b) The selection panel is comprised of the following members, or a designee selected by a member serving by virtue of position:

(1) The Attorney General, who serves as chair.

(2) A State Representative from the majority caucus, appointed by the Speaker of the House of Representatives.

(3) A State Senator from the majority caucus, appointed by the President Pro Tempore of the Senate.

(4) A State Representative from the minority caucus, appointed by the House Minority Leader.

(5) A State Senator from the minority caucus, appointed by the Senate Minority Leader.

(6) The Secretary of State.

(7) The President of the Delaware State Bar Association.

(8) The President of the Delaware Association of Chiefs of Police.

(9) The President of the Delaware State Conference of Branches of the NAACP.

(10) The President of the League of Women Voters of Delaware.

(11) The President of the Delaware Coalition for Open Government.

(12) Three members of the public with experience related to open government, 1 member appointed by the President Pro Tempore of the Senate, 1 member appointed by the Speaker of the House of Representatives, and 1 member appointed by the Governor.

(c) (1) A quorum of the selection panel is a majority of its members.

(2) Official action by the selection panel requires the approval of a quorum of the selection panel.

(3) The selection panel may adopt rules necessary for its operation.

(4) The chair of the selection panel may invite individuals with relevant expertise to participate in selection panel discussions.

(5) A member of the selection panel with the ability to designate another individual to attend a selection panel meeting must provide the designation in writing to the chair. An individual attending a meeting for a member as a designee has the same duties and rights as the member.

(6) The selection panel is a public body under the Freedom of Information Act, Chapter 100 of this title.

(d) The Governor shall select 1 nominee from the 3 names provided by the selection panel to be appointed Inspector General and submit the nominee to the Senate for confirmation by the majority of the members elected to the Senate.

(85 Del. Laws, c. 138, § 2.)

Part IX
State Planning and Property Acquisition

Chapter 91
State Planning

Subchapter I
Delaware Planning Act

§ 9101. Cabinet Committee on State Planning Issues.

(a) The Cabinet Committee on State Planning Issues ("Committee") is established and shall serve in an advisory capacity to the Governor. It shall be comprised of the following members or their respective designees:

(1) The Secretary of the Department of Natural Resources and Environmental Control.

(2) The Secretary of the Department of Transportation.

(3) The Secretary of the Department of Agriculture.

(4) [Repealed.]

(5) The Director of the Delaware State Housing Authority.

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

(7) Such others as the Governor may designate.

(b) The Governor shall designate 1 member to serve as Chairperson of the Committee.

(c) The Committee shall consider matters relating to the orderly growth and development of the State, including all of the following:

(1) Recommendations for the most desirable general pattern of land use within the State, in light of the best available information concerning topography, climate, soil and underground conditions, water courses and bodies of water and other natural or environmental factors, as well as in light of the best available information concerning the present and prospective economic bases of the State, trends of industrial, population or other developments, the habits and standards of life of the people of the State and the relation of land use within the State to land use within adjoining areas;

(2) The major circulation pattern recommended for the State, including major routes and terminals of transportation and communication facilities, whether used for movement of people and goods within the State or for movement from and to adjoining areas;

(3) Recommendations concerning the need for and the proposed general location of major public and private works and facilities, such as utilities, flood control works, water reservoirs and pollution control facilities, military or defense installations and other governmentally financed or owned facilities;

(4) Recommendations on land use planning actions that are subject to review and comment pursuant to Chapter 92 of this title;

(5) Preparing the Strategies for State Policies and Spending document and maps, which shall serve as the primary policy guide that summarizes the State's land use goals, policies and strategies and directs state spending into investment levels that support the most efficient use of state resources, be they physical, fiscal, or natural, except that county and municipal governments shall retain their existing autonomy with respect to the land use designations set forth in their proposed and/or adopted comprehensive plans. The Strategies for State Policies and Spending shall be updated at least every 5 years, provided that the Governor may extend the deadline at the Governor's discretion; and

(6) Performing such other duties and responsibilities with respect to the Downtown Development Corridors and Districts Act as set forth in Chapter 19 of Title 22.

(d) The Committee shall submit a report on its activities to the Governor and the General Assembly by October 15 of each year, together with the recommendations for legislative and administrative changes it deems desirable.

(e) The Committee's proceedings shall be conducted in accordance with Chapter 100 of this title.

(f) The Committee shall be assisted by staff designated by each participating agency, and shall work in cooperation with all federal, State, and local agencies of government and with private organizations and individuals to obtain all necessary and relevant information for its assignments.

(g) There is hereby established the Office of State Planning Coordination within the Office of the Budget. The administrator and head of the Office of State Planning Coordination shall be the State Planning Coordinator who shall be qualified by training or experience to perform the duties of the office. The Office of State Planning Coordination shall assist in statewide planning matters, and it shall function as an advisory, consultative, and coordinating office.

(1) The Office of State Planning Coordination shall provide staffing assistance to the Committee.

(2) The State Planning Coordinator shall serve as the secretary to the Committee.

(3) The Office of State Planning Coordination shall collect and coordinate the comments of state agencies regarding land use planning actions pursuant to Chapter 92 of this title. In carrying out this function, the Office of State Planning Coordination shall, to the maximum

extent possible, reconcile differing opinions and conclusions among agency comments with the objective of providing consistent, timely and useful information to the local government. The Office of State Planning Coordination shall be authorized to represent and speak for the State on land use matters subject to Chapter 92 of this title.

(4) [Repealed.]

(h) The Office of State Planning Coordination shall render local planning technical assistance. The Office of State Planning Coordination may serve as the lead agency to engage other state agencies, local governments, and other governmental and nongovernmental organizations for the purposes of coordinating planning activities, promoting liaison between various state agencies and local governments, building capacity through training and sharing of digital and other information, developing infrastructure plans and master plans, addressing specific growth and design issues, and such other actions as are appropriate to achieve the purposes of this chapter. The Office of State Planning Coordination shall develop and promote cooperation and coordination among state agencies and local governments to ensure effective and efficient planning and infrastructure investment. The Office of State Planning Coordination may make grants available to county and municipal governments to assist them in achieving any of the objectives outlined in this section, provided that funded activities and deliverables are in compliance and in harmony with the Strategies for State Policies and Spending. The Office of State Planning Coordination shall further have such authority and responsibility with respect to the Downtown Development Corridors and Districts Act as set forth in Chapter 19 of Title 22.

(63 Del. Laws, c. 191, § 2; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 522, §§ 1, 2; 71 Del. Laws, c. 485, § 1; 73 Del. Laws, c. 43, § 2; 73 Del. Laws, c. 186, § 12; 74 Del. Laws, c. 128, § 8; 76 Del. Laws, c. 103, § 1; 78 Del. Laws, c. 92, §§ 29-31; 79 Del. Laws, c. 240, §§ 2-4; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 30; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 514, § 60; 85 Del. Laws, c. 200, § 15.)

§ 9102. Governor's Advisory Council on Planning Coordination [Repealed].

(63 Del. Laws, c. 191, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 490, §§ 1-4; 73 Del. Laws, c. 43, § 1; 73 Del. Laws, c. 333, §§ 1, 2; 76 Del. Laws, c. 2, § 5; repealed by 78 Del. Laws, c. 92, § 32, eff. July 5, 2011.)

§ 9103. Comprehensive Plan Review and Certification Process.

(a) The comprehensive plan review and certification process is intended to compare planning goals and development policies among levels of government for the purpose of attaining compatibility and consistency among the interests of state, county and municipal governments. Plan review and certification are necessary to properly address potential burdens on the state government for future infrastructure and public services caused by local land use actions.

(b) Comprehensive plans and amendments or revisions thereto are subject to the provisions of § 9203 of this title. The Office of State Planning Coordination, in addition to soliciting state agency comments as provided therein, shall, within the 20-working-day review period provided in § 9204(d) of this title, also conduct a review and comparison of the proposed county or municipal comprehensive plan or amendment or revision with state goals, policies and strategies. The Office of State Planning Coordination shall prepare a report:

(1) Documenting the degree to which the county or municipal comprehensive plan has incorporated the State's goals, policies, and strategies;

(2) Including a detailed list of findings, recommendations and objections, including adverse fiscal impacts;

(3) Identifying improvements, revisions or other actions desired to address and resolve inconsistencies;

(4) Setting forth a timetable and process for negotiations with the county or municipality for achieving consistency.

The state review shall include an assessment of the potential fiscal impacts of the proposed county or municipal comprehensive plan as they relate to state-funded infrastructure and services, including but not limited to transportation, water and sewer systems, public schools, affordable housing, and public safety. The State's review shall be based on such statewide land development goals, policies and criteria as may have been adopted by the Governor or Cabinet Committee on State Planning Issues, or as set forth in state law or regulation, or in provisions of the State's most recent capital budgets.

(c) Proposed comprehensive plans or amendments or revisions thereto will be shared with other potentially impacted jurisdictions and the Office of State Planning Coordination will provide for such review and comment, pursuant to the provisions of § 9204 of this title. Other jurisdictions desiring to comment on any inconsistencies with a county or municipal comprehensive plan shall do so by an official action of said government setting forth the nature of any inconsistencies, concerns, issues, conflicts, agreement and recommended revisions.

(d) Should the Office of State Planning Coordination make objection to any proposed comprehensive plan or amendments or revisions thereto, then the Office of State Planning Coordination shall immediately enter into negotiation with the county or municipality in an attempt to solicit agreement and resolution. Any agreements reached during these negotiations shall be incorporated into the public record and considered by the governing body prior to final action on the comprehensive plan. If the Office of State Planning Coordination and the county or municipality fail to reach agreement after a period of 45 days, the Office of State Planning Coordination shall report the extent of agreement and areas of continued disagreement to the Cabinet Committee on State Planning Issues for dispute resolution.

(e) For municipal comprehensive plans, the Office of State Planning Coordination shall submit a final comprehensive plan report and recommendation to the Governor or designee for certification. The Governor may designate the State Planning Coordinator as the

designee, and may prescribe any policies and procedures deemed necessary to allow municipal plans to be certified by the Office of State Planning Coordination provided that the plan, amendment, update or revision thereto is found to be consistent with state goals, policies and strategies, and not in conflict with plans of other jurisdictions. If there is a finding that such a plan, amendment, revision or update is inconsistent or if there is a dispute, the report and the plan are to be forwarded to the Cabinet Committee for State Planning Issues and shall follow the same process as for the certification of county plans. For county comprehensive plans, the Office of State Planning Coordination shall submit a final comprehensive plan report and recommendation to the Cabinet Committee on State Planning Issues. The Cabinet Committee shall consider the report submitted by the Office of State Planning Coordination, appropriate state land development goals and strategies, comments submitted by any impacted jurisdiction and such other information as it may determine to be appropriate and in the public interest. The Cabinet Committee may, in its discretion, conduct a public hearing on the proposed comprehensive plan or amendment or revision thereto, except that no hearing shall be held if the proposed plan, amendment, update or revision thereto is found to be consistent with the state goals, policies and strategies, and not in conflict with plans of other jurisdictions. Within 45 days of the receipt of the report from the Office of State Planning Coordination, the Cabinet Committee shall issue its findings and recommendations, and shall submit the proposed plan to the Governor or designee for certification. The State Planning Coordinator may not be the designee for the review and certification of county plans.

(f) Within 20 days of receipt of the findings and recommendations from the Cabinet Committee, the Governor shall certify the comprehensive plan or return the comprehensive plan to the municipality or county for revision. The municipality or county shall have the right to accept or reject any or all of the recommendations. The final decision on the adoption of the comprehensive plan is that of the municipality or county.

(73 Del. Laws, c. 186, § 11; 74 Del. Laws, c. 186, §§ 18, 19; 78 Del. Laws, c. 92, §§ 33-35.)

Subchapter II
Development Of State Impact Fees

§ 9121. Findings.

The General Assembly finds that an equitable program for planning and financing public facilities needed to serve new growth and development is necessary in order to promote and accommodate orderly growth and development and to protect the public health, safety and general welfare of the citizens of the State. It is the intent of this subchapter to:

(1) Ensure that adequate public facilities are available to serve new growth and development;

(2) Promote orderly growth and development by establishing uniform standards by which municipalities and counties may require that new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development;

(3) Establish standards for the determination of impact fees for state facilities and services; and

(4) Ensure that new growth and development is required to pay no more than its proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development exactions.

(73 Del. Laws, c. 185, § 1.)

§ 9122. Definitions.

For purposes of this subchapter, the following definitions shall apply:

(1) “Community” means those areas designated as communities in the Strategies for State Policies and Spending adopted by the Governor’s Cabinet Committee on State Planning Issues on December 23, 1999;

(2) “Developing area” means an area designated as a developing area in the Strategies for State Policies and Spending adopted by the Governor’s Cabinet Committee on State Planning Issues on December 23, 1999;

(3) “Development” means any construction or expansion of a building, structure or use, any change in use of a building or structure, or any change in the use of land, any of which creates additional demand and need for public facilities;

(4) “Environmentally sensitive developing area” means an area designated as an environmentally sensitive developing area in the Strategies for State Policies and Spending adopted by the Governor’s Cabinet Committee on State Planning Issues on December 23, 1999;

(5) “Impact fee” means a payment of money imposed upon development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development;

(6) “Proportionate share” means that portion of the cost of system improvements that is reasonably related to the service demands and needs of the project;

(7) “Rural area” means an area designated as a rural area in the Strategies for State Policies and Spending adopted by the Governor’s Cabinet Committee on State Planning Issues on December 23, 1999;

(8) “State public facilities” means:

a. Roads, streets and bridges, including rights of way, traffic signals, landscaping and any local components of state or federal highways;

b. Transit facilities;

c. State-provided police service;

d. State-provided emergency services; and

e. Schools.

(9) "System improvement costs" means costs incurred to provide additional state public facilities capacity needed to serve new growth and development for planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or facility expansions;

(10) "System improvements" means capital improvements that are public facilities and are designed to provide service to the community at large.

(73 Del. Laws, c. 185, § 1; 78 Del. Laws, c. 92, § 36.)

§ 9123. Development of impact fees.

(a) In addition to its responsibilities set forth above in [former] § 9102 of this title [now repealed], the Cabinet Committee on State Planning Issues shall develop a schedule of impact fees for development throughout the State. The Cabinet Committee on State Planning Issues may engage a qualified consultant to assist in development of a fee structure that accurately represents the incremental costs to the State of providing infrastructure and services in areas where minimal investment is planned by the State.

(b) The schedule of impact fees shall include proposed impact fees for development with respect to each of the state public facilities identified in § 9122(8) of this title.

(c) The schedule of impact fees shall include recommended fee levels for development in environmentally sensitive developing areas, secondary developing areas, and rural areas. The schedule of impact fees shall not recommend impact fees for communities or developing areas.

(d) The schedule of impact fees developed by the Advisory Council shall be submitted to the Joint Bond Bill Committee of the General Assembly on or before May 1, 2002. The schedule of impact fees shall be accepted, rejected or modified by the Joint Bond Bill Committee and thereafter approved by the General Assembly by appropriate legislation.

(e) Impact fees developed pursuant to this section shall not exceed the proportionate share of the cost of system improvements, as defined in this subchapter.

(73 Del. Laws, c. 185, § 1; 73 Del. Laws, c. 224, § 9; 78 Del. Laws, c. 92, § 37.)

§ 9124. County impact fees.

(a) County governments may develop and establish impact fees for services for which the county will bear increased costs of development. These areas may include but are not limited to:

(1) Water and sewer construction;

(2) Libraries;

(3) Fire-house construction; and

(4) Emergency services.

(b) [Repealed.]

(73 Del. Laws, c. 185, § 1; 76 Del. Laws, c. 21, § 1.)

§ 9125. Farm residences.

No impact fees adopted pursuant to this subchapter shall be imposed on a primary residence constructed on a parcel of land zoned as farmland and actively devoted to farming, provided that the individuals living in the residence use it as their primary residence, and either:

(1) Are actively farming the land; or

(2) Are relatives of the owners of the parcel of land.

(73 Del. Laws, c. 185, § 1.)

Subchapter III

Advanced Real Property Acquisition Fund

§§ 9130-9135. [Repealed].

Subchapter IV

Geospatial Data Coordination

§ 9141. Findings.

The General Assembly finds that the coordination of the use and sharing of data and information among all levels of government is essential to the efficient and smooth provision of government services to the people of the State. It is the intent of this subchapter to:

(1) Ensure that geospatial data are maintained and published in such a manner that they are readily available to all appropriate data users to support state and local government functions;

(2) Promote the use and sharing of geospatial data and of geographic information system software and tools by state agencies and local governments;

(3) Establish standards for the appropriate publication of geospatial data and metadata; and

(4) Provide for a coordinated community of geospatial data providers and geospatial data users in Delaware.

(76 Del. Laws, c. 103, § 2.)

§ 9142. Definitions.

For purposes of this subchapter, the following definitions shall apply:

(1) “Delaware Geospatial Information Clearinghouse” means a web-enabled, electronic resource for the collection, organization, storage, and dissemination of metadata and other information to assist in the sharing of geospatial data and information.

(2) “Geographic Information System” and “GIS” both mean a system for capturing, storing, analyzing and managing data and associated attributes which are spatially referenced to the earth.

(3) “Geospatial” means data and/or information that identify the geographic location and characteristics of natural or constructed features and boundaries on the earth. This information may be derived from, among other things, remote sensing, mapping, and surveying technologies.

(4) “Metadata” means data about the content, quality, condition, and other characteristics of data.

(76 Del. Laws, c. 103, § 2.)

§ 9143. Delaware Geographic Data Committee.

(a) An Executive Council of the Delaware Geographic Data Committee is established to oversee coordination of the use and sharing of geospatial data and information in Delaware. It shall be comprised of the following members:

(1) The Director of the Office of Management and Budget;

(2) The Secretary of the Department of Technology and Information;

(3) The Secretary of the Department of Safety and Homeland Security;

(4) The Secretary of the Department of Transportation;

(5) The Secretary of the Department of Natural Resources and Environmental Control;

(6) The County Executive of New Castle County;

(7) The County Administrator of Kent County;

(8) The County Administrator of Sussex County;

(9) The Director of the Delaware Geological Survey;

(10) A federal Geospatial Liaison to be named by the f federal Geographic Data Committee; and

(11) Three representatives chosen annually from among the membership of the Delaware Geographic Data Committee by the membership of that Committee:

a. One representing the academic community,

b. One representing Delaware municipal governments, and

c. One representing the Committee as a whole.

(b) A staff member of the Office of Management and Budget shall be assigned the role of State Geospatial Data Coordinator and shall serve as nonvoting Chair of the Executive Council of the Delaware Geographic Data Committee.

(c) The Executive Council of the Delaware Geographic Data Committee shall meet on an as-needed basis, at the call of the Chair. Meetings shall be subject to all relevant open-meetings laws and regulations. Council members may, in writing, assign a proxy for specific meetings if they are unable to attend.

(d) The Executive Council of the Delaware Geographic Data Committee shall be assigned the following duties, including, but not limited to:

(1) Representing the State to all levels of government (including the federal government), the private sector, and academia in all matters pertaining to geospatial data and related technologies;

(2) Ensuring the availability of basic geospatial data to provide an up-to-date, comprehensive, digital base-map for the State;

(3) Seeking funding sources to support the creation and maintenance of geospatial data for the State;

(4) Promulgation of geospatial data standards to govern all creation, use and sharing of geospatial and related data in the State;

(5) Establishment of minimum metadata specifications for publication under § 9144(2) of this title;

(6) Oversight of statewide data collection and maintenance projects;

(7) Oversight of the Delaware Data Mapping and Integration Laboratory (DataMIL); and

(8) Oversight of the Delaware Geospatial Information Clearinghouse.

(e) The Executive Council of the Delaware Geographic Data Committee shall rely on the expertise and consensus of the full membership of the Delaware Geographic Data Committee, whenever possible, in carrying out these duties.

(f) The Executive Council of the Delaware Geographic Data Committee may, as needed and appropriate, create subcommittees, task forces, or working groups from among the membership of the full Delaware Geographic Data Committee to explore specific issues or opportunities or to provide concentrated subject matter expertise.

(g) A Delaware Geographic Data Committee is established to serve as an open users' group of those working with geospatial data in Delaware and shall serve to make regular recommendations to the Executive Council of the Delaware Geographic Data Committee on actions and policies relating to the use and sharing of geospatial data in Delaware, as outlined in this section.

(1) Membership in the Delaware Geographic Data Committee shall be open to all parties meeting criteria as established in the by laws of the Committee.

(2) The Geospatial Data Coordinator shall serve as Chair of the Delaware Geographic Data Committee.

(3) The Delaware Geographic Data Committee shall meet on a regular basis to discuss issues of interest to committee members. Meetings shall be subject to all relevant open-meetings laws and regulations.

(4) The Executive Council of the Delaware Geographic Data Committee shall adopt bylaws for the Committee, by January 10, 2008, to govern the Committee. Such bylaws shall include, at a minimum, the factors outlined within this section.

(76 Del. Laws, c. 103, § 2.)

§ 9144. Publication of geospatial data and information in Delaware.

All geospatial data and information created by or for any state, county or local agency, or by or for any other organizations receiving state funds in whole or in part for the development of such data, shall be subject to the following conditions:

(1) All geospatial data and information shall be considered to be in the public domain, except as provided for in all applicable federal, state and local laws and statutes including the information security and data classification standards promulgated by the Delaware Department of Technology and Information.

(2) Metadata for all geospatial data and information shall be published on the Delaware Geospatial Information Clearinghouse, maintained by the University of Delaware, or on any clearinghouse system that may be approved the by the Executive Council of the Delaware Geographic Data Committee to replace that Clearinghouse in the future.

a. All metadata shall meet at least the minimum metadata specifications approved by the Executive Council of the Delaware Geographic Data Committee.

b. Metadata shall be published for data projects at all stages of development including planning for data acquisition, data collection and creation, publication as draft and final publication.

c. Restrictions placed on geospatial data and information pursuant to paragraph (1) of this section shall not apply to metadata for those data sets.

(3) Agencies or entities responsible for the creation of any geospatial data and information in or representing Delaware shall make all efforts to provide full and practical access to such geospatial data and information.

(76 Del. Laws, c. 103, § 2.)

Subchapter V

Delaware Population Consortium

(82 Del. Laws, c. 14, § 1.)

§ 9151. Findings; purpose.

The efficient and effective planning for capital projects and services that benefit Delaware's citizens must rely upon the best technical information available in order to anticipate demographic and population trends. The Delaware Population Consortium is created to do all of the following:

(1) Create a single set of population projections for the State because it would be detrimental to have different entities developing competing sets of projections for their own purposes.

(2) Create a single set of population projections with a long-term horizon of 30 years to be beneficial for long-term capital planning.

(3) Use a single methodology that can be refined over time.

(4) Establish a regular annual release date for the population projections to provide consistent and predictable information for entities that rely upon the projections.

(5) Conduct ongoing review of the population projections.

(6) Create population projections that cover a consistent set of geographic areas including the State, each county, and each incorporated municipality.

(82 Del. Laws, c. 14, § 1.)

§ 9152. Delaware Population Consortium.

(a) The Delaware Population Consortium ("Consortium") shall annually prepare, review, and revise a comprehensive set of population projections for the State, each county, and each incorporated municipality.

(b) The projections must provide as much detail as feasible within given methodological and financial constraints.

(c) All state agencies, counties, municipalities, and school districts must use the Consortium's projections for planning and policy purposes. If a population estimate is not available for a given year, state agencies, counties, municipalities, and school districts must use either the most recent Consortium projections or the most recent population estimates prepared by the United States Census Bureau, whichever contains the higher population estimate.

(d) The Consortium shall make its projections, and other related demographic information it prepares, available to the public.

(e) The Consortium shall act in an advisory capacity to the state census statistical area committees.

(f) The Consortium shall act as the advisory board for the Delaware Census State Data Center.

(g) The Consortium may perform such other functions and create supplementary materials which are deemed appropriate by Consortium members, including the following:

(1) Create seasonal population projections estimates for resort areas.

(2) Serve as a focus group for population projection estimates at other levels, including planning districts and traffic analysis zones.

(h) The Consortium must be governed by a set of by-laws drafted by the membership and approved by # of the voting members. The by-laws must include all of the following:

(1) The election and terms of officers.

(2) The powers and duties of each officer.

(3) The procedures governing meetings of the Consortium.

(i) The voting members of the Consortium are the following:

(1) A representative from the Office of State Planning Coordination, appointed by the State Planning Coordinator.

(2) A representative from the New Castle County Government, appointed by the County Executive.

(3) A representative from the Kent County Government, appointed by the County Administrator.

(4) A representative from the Sussex County Government, appointed by the County Administrator.

(5) Representatives from each of the federally-designated metropolitan planning organizations ("MPO") functioning in Delaware, appointed by the Executive Director of each MPO.

(6) Representatives from each incorporated municipality over 20,000 persons, appointed by the Mayor or highest elected official in each jurisdiction.

(7) A representative from the Department of Labor, appointed by the Secretary of the Department.

(8) A representative from the Department of Education, appointed by the Secretary of the Department.

(9) A representative from the Department of Transportation, appointed by the Secretary of Department.

(10) A representative from the Department of Health and Social Services, appointed by the Secretary of the Department.

(11) A representative from the Delaware State Housing Authority, appointed by the Director.

(12) A representative from the Department of Safety and Homeland Security, appointed by the Secretary of the Department.

(13) A representative from the Delaware League of Local Governments, appointed by the President of the Delaware League of Local Governments.

(14) A representative from the Sussex County Association of Towns, appointed by the President of the Sussex County Association of Towns.

(j) To ensure and encourage open dialogue, information sharing, and enhancement and refinement of the accuracy of the population projections, other interested persons may participate in the Consortium as nonvoting members.

(k) Quorum of the Consortium is a majority of the voting members.

(*l*) Meetings of the Consortium must be conducted under the requirements of the Freedom of Information Act, Chapter 100 of this title.

(82 Del. Laws, c. 14, § 1.)

Part IX
State Planning and Property Acquisition
Chapter 92
Land Use Planning
Subchapter I
Findings, Purpose and Definitions

§ 9201. Findings; purpose.

(a) Some land use decisions are far-reaching, complex determinations involving the commitment of finite resources by many levels of government and private investment. Such decisions must be coordinated so as to achieve efficient, effective and timely use of finite resources.

(b) The resource investment, both public and private, in land use decisions is long-term and therefore a process which provides a certain and stable climate for decision-making is necessary to foster rational investment of these resources.

(c) A method of achieving consistency and coordination between the levels of government, and between government and private enterprise, is essential to achieve these goals.

(d) Economic activity should be enhanced by coordinating and simplifying the various state regulatory and review processes required prior to development. It is declared, therefore, that a process for streamlining such processes be established.

(74 Del. Laws, c. 186, § 1.)

§ 9202. Definitions.

For the purpose of this chapter:

(1) “Applicant” means any person who must apply to a local jurisdiction for approval to proceed with a project which requires a local jurisdiction to take a land use planning action.

(2) “Comprehensive development plan” means a municipal or county comprehensive land use plan, master plan or comprehensive plan as provided in Titles 9, 22 or this title.

(3) “Economic development project” means a development project creating full-time jobs, that is consistent with an adopted local government comprehensive plan and local land development and zoning ordinances, and the economic development project is located at least partially in Investment Levels 1 or 2 as set forth under the Strategies for State Policies and Spending, promulgated under § 9101 of this title.

(4) “Final decision” means any legislative, administrative or quasi-judicial action that establishes the final determination of a local jurisdiction concerning any land use planning action.

(5) “Local jurisdiction” means the County of New Castle, the County of Kent, the County of Sussex, municipalities within the State or any other political subdivision of the State, or any instrumentality of any political subdivision of the State.

(6) “Local land use planning action” means any action involving:

a. The adoption or amendment of a Comprehensive Development Plan;

b. The zoning or re-zoning of land;

c. The subdivision or partioning of 1 parcel of land into 2 or more parcels of land or the combining of 2 or more parcels of land into 1 or more new parcels of land if required by local subdivision review ordinances; or

d. The review or approval of 1 or more parcels of land for development if required by local site plan review ordinances.

(7) “Person” means any individual, partnership, firm, association, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, local jurisdiction, any interstate body or any other legal entity.

(8) “Rezoning” means any modification of zoning classification of property based upon local zoning codes adopted as provided in Title 9 or 22.

(9) “Site plan” means a plan, to scale, showing uses, structures and any other improvements for a parcel as required by a local jurisdiction’s land use regulations.

(10) “Subdivision” means the division of land into 2 or more lots.

(74 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 47, § 1.)

Subchapter II
Pre-application Reviews

§ 9203. Local land use planning actions subject to review process.

(a) All projects meeting any 1 of the following criteria shall undergo a pre-application meeting and review process as set forth in this chapter:

(1) Major residential subdivisions with internal road networks and more than 50 units, excluding previously recorded residential subdivisions of any size which have not been sunsetted.

(2) Any nonresidential subdivision involving structures or buildings with a total floor area exceeding 50,000 square feet, excluding any previously approved and recorded nonresidential subdivision regardless of floor area size, or any site plan review involving structures or buildings with a total floor area exceeding 50,000 square feet, excluding any previously approved and recorded nonresidential site plan review regardless of floor area size. Notwithstanding this paragraph (a)(2), economic development projects are exempt from the pre-application meeting and review process, unless required by a local jurisdiction, through a memorandum of understanding between a local jurisdiction and the Office of State Planning Coordination or by ordinance.

(3) Rezonings, conditional uses, site plan reviews and/or subdivisions, within environmentally sensitive areas, as identified within any local jurisdiction's comprehensive plan as certified under § 9103 of this title.

(4) Annexations inconsistent with the local jurisdiction's comprehensive plan as certified under § 9103 of this title.

(5) Applications for rezoning if not in compliance with the local jurisdiction's comprehensive plan as certified under § 9103 of this title.

(6) Any other project which is required to be referred to the State for pre-application review by local jurisdiction regulations.

(7) Any local land use regulation, ordinance or requirement referred to the Office of State Planning Coordination by a local jurisdiction for the purpose of providing the jurisdiction with advisory comments. The land use regulations, ordinances or requirements that are to be referred to the Office of State Planning Coordination may be specified in a jurisdiction's Memorandum of Understanding.

(8) County and municipal comprehensive plans as required by Titles 9 and 22.

(b) Any applicant may voluntarily request to participate in the pre-application review process and shall make such requests in writing to the Office of State Planning Coordination.

(74 Del. Laws, c. 186, § 1; 84 Del. Laws, c. 47, § 1.)

§ 9204. Pre-application review process.

(a) Pre-application reviews shall be conducted and concluded, unless otherwise provided for herein, prior to the formal submission of any document required by the first step under any local jurisdiction's land use review regulation, including, but not limited to, a "preliminary" or "sketch" subdivision or site plan, or a written request for a re-zoning, conditional use, or annexation by an applicant to the local jurisdiction. The applicant may elect to initiate the pre-application review process simultaneously with the formal submission or application to any local jurisdiction with an approved Memorandum of Understanding as provided for in § 9205(c) of this title. The applicant is responsible for complying with any and all local regulations and is strongly encouraged to meet with local officials prior to initiating the pre-application review process. The applicant shall be responsible for requesting a pre-application review under this chapter.

(b) The Office of State Planning Coordination shall develop an application and procedures for review and shall be responsible for scheduling and coordinating all pre-application review meetings. Meeting dates shall be designated for 1 or more days certain each month and held in accordance with procedures outlined by the Office of State Planning Coordination. Projects shall be heard at a pre-application meeting within 45 calendar days of receipt of a request by the Office of State Planning Coordination. The Office of State Planning Coordination shall give public notice of all pre-application review meetings by following the requirements of § 10004(e) of this title.

(c) Within 20 business days following the date of the pre-application meeting with the applicant, the Office of State Planning Coordination shall furnish to the applicant and the local jurisdiction a written compilation of all comments received at the meeting. Failure of Office of State Planning Coordination to meet the 20-business-day requirement will result in the State forfeiting the opportunity to comment on the local land use planning action. The length of review may be extended by mutual consent of the Office of State Planning Coordination and the applicant. The local jurisdiction shall be notified immediately of any mutually acceptable delays.

(d) Following the pre-application review process and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.

(74 Del. Laws, c. 186, § 1.)

§ 9205. State agency authorities, roles and responsibilities.

(a) All state agencies shall participate in the pre-application review process if requested by the Office of State Planning Coordination and shall provide such assistance and advice as requested by the Office of State Planning Coordination.

(b) In special circumstances, the Office of State Planning Coordination may waive the pre-application requirements of this chapter. Where such waiver is granted, the Office of State Planning Coordination shall provide a written explanation of the causes for the waiver to the relevant local jurisdiction and the applicant. These circumstances may include, but are not limited to, local governments that impose a more stringent review of projects enumerated in § 9203(a) of this title than required by this chapter, or for projects which will provide an extraordinary benefit to the State and the local jurisdiction through economic development, job creation, educational opportunities, public services or facilities, agricultural preservation or protection and enhancement of the natural environment.

(c) In order to more effectively coordinate with the local land-use process, the Office of State Planning Coordination shall, through a memorandum of understanding agreed to by both parties, exempt the local jurisdiction from the provisions of this chapter or modify

the pre-application review process specified herein when the local jurisdiction has a Certified Comprehensive Plan and imposes a more stringent review of projects enumerated in § 9203(a) of this title than required by this chapter.

(d) The Office of State Planning Coordination shall coordinate, where possible, the other state review processes including but not limited to the transportation agreements specified in Title 9, and other state land use review and permitting processes.

(74 Del. Laws, c. 186, § 1.)

§ 9206. Local jurisdiction authorities, roles and responsibilities.

(a) Nothing in this subchapter shall be construed to deny local jurisdictions their final decision-making authority over proposed local land use planning actions.

(b) The local jurisdiction shall, in accordance with this chapter, make its final decision and notify the Office of State Planning Coordination of such decision as soon as possible.

(74 Del. Laws, c. 186, § 1.)

Part IX
State Planning and Property Acquisition
Chapter 93
Uniform Relocation Assistance

§ 9301. Definitions.

As used in this chapter:

(1) The term "agency" means any department, agency or instrumentality of the State or of a political subdivision of the State, any department, agency or instrumentality of 2 or more states, or 2 or more political subdivisions of the State, or states, and any person who has the authority to acquire property by eminent domain under state law.

(2) The term "business" means any lawful activity, except a farm operation, conducted primarily:

a. For the purchase, sale, lease and rental of personal and/or real property, and/or for the manufacture, processing and/or marketing of products, commodities or any other personal property;

b. For the sale of service to the public;

c. By a lawful nonprofit organization; or

d. Solely for the purposes of § 9302 of this title for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of above activities are conducted.

(3) The term "comparable replacement dwelling" means any dwelling that is:

a. Decent, safe and sanitary;

b. Adequate in size to accommodate the occupants;

c. Within the financial means of the displaced person;

d. Functionally equivalent to the displacement dwelling;

e. In an area not subject to unreasonably adverse environmental conditions;

f. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment;

g. On a site that is typical in size for residential development; and

h. Currently available on the open market to the displaced person.

(4) "Criteria established by the agency" as used in this chapter, shall mean those criteria established and approved pursuant to the relevant provisions of 49 C.F.R. Part 24, as amended.

(5) a. The term "displaced person" means: any person who moves from real property, or moves personal property from real property:

1. As a direct result of a written notice of intent to acquire, the initiation of negotiations or the acquisition of such real property in whole or in part for a program or project undertaken by an agency; or

2. As a direct result of rehabilitation, demolition or such other displacing activity as the agency may prescribe, under a program or project undertaken by an agency in any case in which the agency determines that such displacement is permanent; and

3. As a direct result of a written notice of intent to acquire, the acquisition, rehabilitation or demolition of, in whole or part, other real property on which the person conducts a business or farm operation, for a program or project undertaken by an agency; however, eligibility for such person under this paragraph applies only for purposes of obtaining moving expenses and relocation assistance advisory services under §§ 9302(a) and (b) and 9306 of this title.

b. The term "displaced person" does not include:

1. A person who has been determined, according to criteria established by the agency, either to be unlawfully occupying the displacement dwelling, to have been evicted for lawful cause prior to the initiation of negotiations for the property, or to have occupied such dwelling for the purpose of obtaining assistance under this chapter;

2. In any case in which the agency acquires property for a program or project, any person (other than a person who was an occupant of such property at the time it was acquired) who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project;

3. In any case where such action is of voluntary nature where the agency would not seek to purchase such real property through eminent domain proceedings.

(6) The term "farm operation" means any activity conducted solely or primarily for the production of 1 or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(7) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State, together with the credit instruments, if any, secured thereby.

(8) The term "person" means any individual, family, partnership, corporation or association.

(9) In the event a term in this chapter is undefined, but which term is defined in 49 C.F.R. Part 24, as amended, the definition contained therein shall apply.

(29 Del. C. 1953, § 9101; 58 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 8, § 1.)

§ 9302. Moving and related expenses.

(a) Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person on or after May 27, 1972, the agency shall make a payment to any displaced person upon proper application as approved by the agency for:

(1) Actual reasonable expenses in moving the person, the person's family, business, farm operation or other personal property;

(2) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property as determined by the agency;

(3) Actual reasonable expenses in searching for a replacement business or farm; and

(4) Actual expenses necessary to reestablish a displaced farm, nonprofit organization or small business at its new site, in accordance with criteria established by the agency, but not to exceed $10,000. Notwithstanding the limitations of the preceding sentence, state agency payments under this paragraph shall use the same criteria and shall be authorized to pay in excess of the $10,000 payment permitted by the preceding sentence under said criteria, but shall not use or attempt to obtain reimbursement from federal funds to the extent of the excess. In any event, total payments under this paragraph shall not exceed $22,500.

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a fixed expense allowance payment in an amount to be determined according to criteria established by the agency.

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the agency, except that such payment shall be not less than $1,000 nor more than $20,000. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection.

(d) In addition to all other payments authorized under this chapter, a person displaced by any program or project may receive reimbursement for miscellaneous expenses incurred within 30 days of relocation, which expenses are directly attributable to such relocation and which expenses have in fact been paid and for which a proper receipt can be shown. In no event, however, shall such miscellaneous payments as authorized by this subsection exceed 1% of the appraised residential fair market value of the residence acquired, as determined by such agency. Payments authorized by this subsection shall not be allowed if provided for by any other section of this chapter.

(29 Del. C. 1953, § 9102; 58 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 8, §§ 2, 3; 68 Del. Laws, c. 405, § 58; 70 Del. Laws, c. 186, § 1.)

§ 9303. Replacement housing for homeowners.

(a) In addition to payments otherwise authorized by this chapter, the displacing agency shall according to established criteria make an additional payment, not in excess of $22,500, to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(1) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.

(2) The amount, if any, which will compensate such displaced person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling.

(3) Reasonable expenses incurred by such displaced person for evidence of title, recording fees and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(b) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe and sanitary replacement dwelling within 1 year after the date on which such person receives final payment from the agency for the acquired dwelling or the date on which the obligation of the agency under § 9307 of this title is met, whichever is later, except that the agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within 1 year of such date.

(29 Del. C. 1953, § 9103; 58 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 8, § 4.)

§ 9304. Replacement housing for tenants and certain others.

(a) In addition to amounts otherwise authorized by this chapter, an agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under § 9303 of this title which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days immediately prior to:

(1) The initiation of negotiations for acquisition of such dwelling and has rented or purchased and occupied a decent, safe and sanitary replacement dwelling within 1 year of moving from the displacement dwelling; or

(2) In any case in which displacement is not a direct result of acquisition, such other event as the agency shall prescribe.

Such payment shall be made in accordance with criteria established by the agency not to exceed $5,250 and shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling. At the discretion of the agency, a payment under this subsection may be made in periodic installments.

(b) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe and sanitary replacement dwelling. Any such person may, at the discretion of the agency, be eligible under this subsection for the maximum payment allowed under subsection (a) of this section, except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under § 9303(a) of this title had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations.

(c) The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

(29 Del. C. 1953, § 9104; 58 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 8, § 5.)

§ 9305. Maximum federal participation.

In determining the amounts to be paid under §§ 9302, 9303 and 9304 of this title, the agency shall provide payments which will assure maximum federal participation in federally assisted projects or programs.

(29 Del. C. 1953, § 9105; 58 Del. Laws, c. 413, § 2.)

§ 9306. Relocation assistance advisory services.

(a) Programs or projects undertaken by an agency shall be planned in a manner that:

(1) Recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses and farm operations; and

(2) Provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

(b) An agency shall ensure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency may make available to such person such advisory services.

(c) Each relocation assistance advisory program required by subsection (b) of this section shall include such measures, facilities or services as may be necessary or appropriate in order to:

(1) Determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

(2) Provide current and continuing information on the availability, sales prices and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

(3) Assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

(4) Supply:

a. Information concerning federal, state and local programs which may be of assistance to displaced persons; and

b. Technical assistance to such persons in applying for assistance under such programs;

(5) Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation; and

(6) The agency shall coordinate relocation activities performed by such agency with other federal, state or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

(d) Notwithstanding § 9301(5)b. of this title, in any case in which an agency acquires property for a program or project, any person who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the agency.

(29 Del. C. 1953, § 9106; 58 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 8, § 6.)

§ 9307. Assurance of availability of housing.

(a) If a program or project undertaken by an agency cannot proceed on a timely basis because comparable replacement dwellings are not available, and the agency determines that such dwellings cannot otherwise be made available, the head of the agency may take such

action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The agency may use this section to exceed the maximum amounts which may be paid under §§ 9303 and 9304 of this title on a case-by-case basis for good cause as determined in accordance with such regulations as the agency shall issue.

(b) No person shall be required to move from a dwelling on account of any program or project undertaken by an agency unless the agency is satisfied that comparable replacement housing is available to such person.

(c) The agency shall assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of:

(1) A major disaster as defined in § 102(2) of the Federal Disaster Relief Act of 1974 [42 U.S.C. § 5122];

(2) A national emergency declared by the President or a state of emergency declared by the Governor; or

(3) Any other emergency which requires the person to move immediately from the dwelling because continued occupancy of such dwelling by such person constitutes a substantial danger to the health or safety of such person.

(29 Del. C. 1953, § 9107; 58 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 8, § 7.)

§ 9308. Authority of the agency; rules and regulations.

(a) The Governor may, by proclamation or execution order, designate an agency or agencies to establish rules and regulations as may be necessary under this chapter. In lieu of such proclamation or executive order, each agency concerned shall adopt such rules and regulations to assure:

(1) That the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable and as uniform as practicable;

(2) That a displaced person who makes proper application for a payment authorized for such person by this chapter shall be paid promptly after a move or, in hardship cases, paid in advance; and

(3) That any person aggrieved by a determination as to eligibility for a payment authorized by this chapter or the amount of payment may have the application reviewed by the head of the agency.

(b) The agency may prescribe such other regulations and procedures as it deems necessary or appropriate to carry out this chapter.

(c) If a project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, the agency may take action as necessary or appropriate to provide such housing by use of funds authorized for such project.

(d) In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any project or program, the agency may take actions as necessary or appropriate to utilize federal loans for planning and preliminary expenses for additional housing as provided under 42 U.S.C. § 4635.

(29 Del. C. 1953, § 9108; 58 Del. Laws, c. 413, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 31.)

§ 9309. Administration.

In order to prevent unnecessary expense and duplication of functions and to promote uniform and effective administration of relocation assistance programs for displaced persons, the agency may enter into contracts with any individual, firm, association or corporation for services in connection with those programs or may carry out its functions under this chapter through any federal agency or any department or instrumentality of the State or its political subdivisions having an established organization for conducting relocation assistance programs.

(29 Del. C. 1953, § 9109; 58 Del. Laws, c. 413, § 2.)

§ 9310. Fund availability.

(a) Funds appropriated or otherwise available to any agency or unit of local government for the acquisition of real property or any interest therein for a particular program or project shall also be available to carry out the provisions of this chapter as applied to that program or project.

(b) No payment or assistance under this chapter or under Chapter 95 of this title shall be required to be made to any person or included as a program or project cost under this section, if such person receives a payment required by federal, state or local law which is determined by the agency to have substantially the same purpose and effect as such payment under this chapter or under Chapter 95 of this title.

(29 Del. C. 1953, § 9110; 58 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 8, § 8.)

§ 9311. State participation in cost of local relocation payments and services.

If a unit of local government or political subdivision of this State acquires real property, and state financial assistance is available to pay the cost, in whole or part, of the acquisition of that real property, or of the improvement for which the property is acquired, the cost to the unit of local government or political subdivision of providing the payments and services prescribed by this chapter shall be included as part of the costs of the project for which state financial assistance is available and the unit of local government or political subdivision shall be eligible for state financial assistance for relocation payments and services in the same manner and to the same extent as other project costs.

(29 Del. C. 1953, § 9111; 58 Del. Laws, c. 413, § 2.)

§ 9312. Displacement by building code enforcement or rehabilitation; demolition programs.

A person who moves or discontinues a business, or moves other personal property or moves from such person's dwelling as a direct result of any project or program which receives federal financial assistance under Title I of the Housing Act of 1949 [42 U.S.C. § 1441 et seq.], as amended, or as a result of carrying out a comprehensive city demonstration program under Title I of the Demonstration Cities and Metropolitan Development Act of 1966 [42 U.S.C. § 3301 et seq.] shall, for the purposes of this chapter, be deemed to have been displaced as the result of the acquisition of real property.

(29 Del. C. 1953, § 9112; 58 Del. Laws, c. 436; 70 Del. Laws, c. 186, § 1.)

§ 9313. Payments not income or resources.

No payment received by a displaced person under this chapter shall be considered as income or resources for the purpose of determining the eligibility or extent of eligibility of any person for assistance under state law or for the purposes of the Delaware state income or corporation income tax. Such payments shall not be considered as income or resources to any recipient of public assistance under Title 31, and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled.

(29 Del. C. 1953, § 9113; 58 Del. Laws, c. 413, § 2.)

§ 9314. Eminent domain.

Nothing contained in this chapter shall be construed as creating in any condemnation proceeding brought under the power of eminent domain any element of damages not in existence on May 27, 1972, and the payments authorized by this chapter are to be in addition to the just compensation established in such proceedings, but only to the extent they are not otherwise included in the condemnation award.

(29 Del. C. 1953, § 9114; 58 Del. Laws, c. 413, § 2.)

Part IX
State Planning and Property Acquisition

Chapter 94
Real Property Disposition

§ 9401. Purpose of chapter.

This chapter is designed to provide a formal review procedure for the disposition of real property no longer needed by the State for public purposes.

(64 Del. Laws, c. 96, § 1.)

§ 9402. Definitions.

(a) "Director" shall mean the Director of the Office of Management and Budget.

(b) "Office" shall mean the Office of Management and Budget.

(c) "Real property" shall mean real property, either improved or unimproved, owned by the State, but shall not include property which has been acquired by the Department of Transportation pursuant to Title 17 of this Code, in connection with proposed highway construction projects.

(d) "Surplus real property" shall mean real property no longer needed by the State for a public purpose.

(64 Del. Laws, c. 96, § 1; 67 Del. Laws, c. 29, § 1; 75 Del. Laws, c. 88, § 16(5).)

§ 9403. Prerequisites to disposition.

No real property shall be sold, leased, transferred or otherwise conveyed until a review of the proposed conveyance is completed in accordance with this chapter and the property is deemed to be surplus real property.

For purposes of this chapter the granting of an easement shall not be considered a conveyance of real property. The determination to grant an easement shall be at the discretion of the Director of the Office of Management and Budget.

(64 Del. Laws, c. 96, § 1; 72 Del. Laws, c. 313, § 1; 75 Del. Laws, c. 88, § 16(5).)

§ 9404. Commission on State Surplus Real Property.

(a) A Commission on State Surplus Real Property is established and shall report in an advisory capacity to the Governor and to the General Assembly. It shall be comprised of the following members:

(1) The Speaker of the House of Representatives;

(2) The President Pro Tempore of the Senate;

(3) The Director of the Division of Small Business;

(4) The Secretary of the Department of Transportation;

(5) The Director of the Office of Management and Budget.

(b) The Governor shall designate 1 member to serve as Chairperson of the Commission.

(c) The Commission shall be assisted by staff designated by the Director of the Office of Management and Budget and shall work in cooperation with all state and local agencies of government and with private organizations or individuals to secure all necessary and relevant information for its assignments.

(64 Del. Laws, c. 96, § 1; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 16(5); 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 32.)

§ 9405. Annual review of proprietary state real property; report of surplus; conditions of sale or other disposition; annual report.

(a) On or before December 31 of each year each state agency shall make a review of all proprietary state real property over which it has jurisdiction to determine what, if any, property is in excess of its reasonably foreseeable needs and report thereon in writing to the Surplus Real Property Commission.

(b) Jurisdiction of all real property reported as surplus shall be transferred to the Commission, when requested by the Chairperson thereof, for sale, lease or disposition under this section or as may be otherwise authorized by law.

(c) The Commission shall report to the Governor and to the General Assembly annually any real property declared surplus and make recommendations as to disposition of the property by sale or otherwise.

(d) Whenever any real property is reported as surplus pursuant to this section, the Commission shall determine whether or not the use of the real property is needed by any other state agency. If the Commission determines that the property is needed by any other state agency it shall transfer jurisdiction of the property to such other state agency upon such terms and conditions as it may deem to be for the best interests of the State.

(e) If the Commission determines that use of the real property is not needed by any other state agency, it may recommend that the surplus property be retained by the State or that it be offered to a political subdivision of the State or to an interested private organization for an amount not less than 30% of the fair market value nor more than 75% of the fair market value. Any such recommended transfer shall be subject to the following conditions:

(1) The property shall be used for a public purpose;

(2) The property shall be developed or used according to plan within a time period not to exceed 5 years;

(3) The deed or other instrument of transfer shall provide that the property shall revert to the State if the property is not developed within the stated period of time or if the property ceases to be used for public purposes;

(4) The Commission may recommend additional terms and conditions as it determines to be in the best interest of the State.

(f) If the Commission determines that the use of state surplus real property is not needed by any other state agency or by any other local governmental agency or by a private organization pursuant to subsection (e) of this section it may recommend that the surplus property be retained by the State or that the surplus property be sold to the highest bidder after advertising. Sales of state surplus property pursuant to this section shall be at fair market value or for such other price as may be approved in writing by the Commission.

(g) The Commission shall report to the Governor and to the General Assembly annually, with respect to any surplus real property approved and recommended for sale or other disposition under this section, giving the following information:

(1) A description or other precise identification of the surplus property;

(2) The name of the agency which reported the excess property and the date of said report;

(3) The present status or use of the property;

(4) An accurate appraisal of the fair market value of the surplus property;

(5) An estimate of the amount of state funds, if any, expended in acquiring, preserving, improving, restoring or reclaiming the property;

(6) A description of whether the property is needed by any other state agency or local governmental agency and, if not, a description of alternative highest and best uses of the property which the Commission deems to be in the best interest of the State.

(64 Del. Laws, c. 96, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 313, § 2.)

§ 9406. State parks and open spaces.

Notwithstanding any provision of this chapter to the contrary, no state park, or any part thereof, open space as defined in § 7504 of Title 7 or other area acquired primarily for recreational use, shall be rezoned, neither shall there be a change in the use of any such lands requiring a variance or subdivision approval, except upon 45 days prior notice to all elected members of the General Assembly in whose district such lands, or any part thereof, lie.

(72 Del. Laws, c. 156, § 4.)

Part IX
State Planning and Property Acquisition
Chapter 95
Real Property Acquisition

§ 9501. Declaration of policy and definitions.

(a) This chapter shall be applicable to the acquisition of real property by state and local land acquisition programs or projects in which federal, state or local funds are used.

(b) The term "agency" means any department, agency or instrumentality of the State or of a political subdivision of the State, any department, agency or instrumentality of 2 or more states, or 2 or more political subdivisions of the State, or states, and any person who has the authority to acquire property by eminent domain under state law.

(29 Del. C. 1953, § 9201; 58 Del. Laws, c. 413, § 3; 67 Del. Laws, c. 8, § 9.)

§ 9501A. Acquisition by eminent domain.

(a) The policy of the provisions of this chapter pertaining to eminent domain is to ensure that eminent domain is used for a limited, defined public use. Public use does not include the generation of public revenues, increase in tax base, tax revenues, employment or economic health, through private land owners or economic development.

(b) Notwithstanding any other provision of law, neither this State nor any political subdivision thereof nor any other condemning agency, including an agency as defined in § 9501(b) of this title, shall use eminent domain other than for a public use, as defined in subsection (c) of this section.

(c) The term "public use" shall only mean:

(1) The possession, occupation, or utilization of land by the general public or by public agencies;

(2) The use of land for the creation or functioning of public utilities, electric cooperatives, or common carriers, or

(3) Where the exercise of eminent domain:

a. 1. Removes a "blighted area" as defined at § 4501(3) of Title 31, or a "slum area", as defined at § 4501(23) of Title 31;

2. Removes a structure that is beyond repair or unfit for human habitation or use; or

3. Is used to acquire abandoned real property; and

b. Eliminates a direct threat to public health and safety caused by or related to the real property in its current condition.

(d) Whenever real property is condemned and will be used, including owned, occupied or developed by a private party, the State or agency thereof or a political subdivision must establish by clear and convincing evidence that the use of eminent domain complies with the definition of "public use" in subsection (c) of this section.

(e) No written notice or correspondence shall be sent to property owners from the State, an agency or a political subdivision communicating to the property owner that the real property is subject to eminent domain without the State, an agency, or a political subdivision first notifying the property owner in writing of the public use as defined in subsection (c) of this section and as required by § 9505(15) of this title.

(77 Del. Laws, c. 12, § 1.)

§ 9501B. Transportation and eminent domain.

The provisions of § 9501A of this title shall not apply to the acquisition of property or property rights by the Department of Transportation for any transportation facility, project, or program as defined in Titles 2, 9, 14, 17, and this title, if the primary purpose of each parcel being required is to maintain or improve the State's transportation network, as sworn to by the Secretary of the Department or the Secretary's authorized designee.

(77 Del. Laws, c. 12, § 5; 70 Del. Laws, c. 186, § 1.)

§ 9501C. Natural resources and eminent domain.

The provisions of § 9501A of this title shall not apply to the acquisition of property or property rights by the Department of Natural Resources and Environmental Control, any tax ditch, and any tax lagoon, for any acquisition authorized in Title 7, if the primary purpose of such acquisition is to maintain, protect or improve the State's natural resources, as sworn to by the Secretary of the Department or the Secretary's authorized designee.

(77 Del. Laws, c. 12, § 6; 70 Del. Laws, c. 186, § 1.)

§ 9502. Expenses incidental to transfer of title.

The agency acquiring real property for such use shall, as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner, to the extent the agency deems fair and reasonable, for expenses necessarily incurred for:

(1) Recording fees, transfer taxes and similar expenses incidental to conveying such real property to the State;

(2) Penalty costs for prepayment for any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The prorata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the State or the effective date of possession of such real property by the State, whichever is the earlier.

(29 Del. C. 1953, § 9202; 58 Del. Laws, c. 413, § 3; 70 Del. Laws, c. 186, § 1.)

§ 9503. Litigation expenses.

Where a condemnation proceeding is instituted by the agency to acquire real property for such use and the final judgment is that the real property cannot be acquired by condemnation or the proceeding is abandoned, the owner of any right, title or interest in such real property shall be paid such sum as will, in the opinion of the court, reimburse such owner for reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings. The awards of such sums will be paid by the agency.

(29 Del. C. 1953, § 9203; 58 Del. Laws, c. 413, § 3; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 216, § 2.)

§ 9504. Inverse condemnation proceedings.

Where an inverse condemnation proceeding is instituted by the owner of any right, title or interest in real property because of use of the owner's property in any program or project, the court, rendering a judgment for the plaintiff in such proceeding and awarding compensation for the taking of property, or the Department of Justice effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will, in the opinion of the court or the Department of Justice, reimburse such plaintiff for reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of such proceedings.

(29 Del. C. 1953, § 9204; 58 Del. Laws, c. 413, § 3; 70 Del. Laws, c. 186, § 1.)

§ 9505. Real property acquisition policies.

The agency shall comply with the following policies:

(1) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during an inspection of the property except that the agency may with the owner's permission, eliminate the appraisal in cases involving acquisition by donation. The agency shall provide the owner with a copy of the agency's approved appraisal prior to initiation of negotiations for acquisition of the property.

(3) Before the initiation of negotiations for real property, an amount shall be established which it is reasonably believed is just compensation therefor, and such amount shall be offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of real property. Any decrease or increase of the fair market value of real property prior to the date of valuation caused by any program or project for which such property is acquired or by the likelihood that the property would be acquired for such program or project, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of, and summary of the basis for, the amount established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or deposited with the court, in accordance with Chapter 61 of Title 10, for the benefit of the owner in an amount not less than the approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding of such property.

(5) Any program or project shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move the person's business or farm operation without at least 90 days' written notice from the date by which such move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the time for negotiations or condemnation be advanced, the deposit of funds in court for the use of the owner be deferred nor any other coercive action be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of power of eminent domain, formal condemnation proceedings shall be instituted. The agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property.

(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the agency concerned shall offer to acquire that uneconomic remnant. For the purpose of this chapter, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and the agency concerned has determined the parcel has little or no value or utility to the owner.

(10) A person whose real property is being acquired in accordance with this chapter may, after the person has been fully informed of the right to receive just compensation for such property, donate such property, any part thereof, any interest therein or any compensation paid therefor, to an agency, as such person shall determine.

(11) The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(12) Purchase of title insurance in the acquisition of property by the Department of Transportation shall only be authorized upon written request of the Secretary of the Department with unanimous written approval of the co-chairs of the Joint Finance Committee, the Controller General and the Director of the Office of Management and Budget.

(13) a. When state funds are transferred into nonstate-controlled escrow accounts in anticipation of property acquisitions by the Department of Transportation, the Department shall pursue the most cost-effective and timely means of effectuating said transfer of funds. Methods of funds transfer shall include, but not be limited to, the electronic transfer of funds.

b. Any funds escrowed for such purposes shall be subject to routine audit by the State Auditor.

(14) For a real property acquisition necessitated by a highway project, an appraisal is unnecessary if the Department of Transportation determines that the valuation of the property to be acquired is uncomplicated and the market value is estimated at $50,000 or less, based on a review of available data. If an appraisal is determined to be unnecessary, the Department of Transportation shall prepare a waiver of valuation. The Department of Transportation may seek from the federal agency funding the project, approval on a case-by-case basis to increase the waiver amount on any valuation over $10,000 and up to a maximum of $25,000, or the amount currently approved by the federal agency, provided that the Department of Transportation offers the property owner the option of having an appraisal prepared. In all cases in which the estimated market value of a property to be acquired is over $10,000, the property owner must be given the option of having an appraisal prepared.

(15) Notwithstanding any other provision of law to the contrary, the acquisition of real property through the exercise of eminent domain by any agency shall be undertaken, and the property used, only for the purposes of a recognized public use, as defined in § 9501A of this title, at least 6 months in advance of the institution of condemnation proceedings:

a. In a certified planning document;

b. At a public hearing held specifically to address the acquisition; or

c. In a published report of the acquiring agency.

This paragraph shall not apply to the obtaining of right-of-ways or easements by an agency for public utilities, such as sewer, water, or electric.

(29 Del. C. 1953, § 9205; 58 Del. Laws, c. 413, § 3; 67 Del. Laws, c. 8, §§ 10-12; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 226, §§ 1, 2; 74 Del. Laws, c. 297, § 2; 75 Del. Laws, c. 88, § 21(13); 75 Del. Laws, c. 216, § 1; 77 Del. Laws, c. 12, § 2.)

§ 9506. Buildings, structures and improvements.

(a) Where any interest in real property is acquired, an equal interest in all buildings, structures or other improvements located upon the real property so acquired and which is required to be removed from such real property or which is determined to be adversely affected by the use to which such real property will be put shall be acquired.

(b) For the purpose of determining the just compensation to be paid for any building, structure or other improvement required to be acquired as above set forth, such building, structure or other improvement shall be deemed to be a part of the real property to be acquired, notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure or improvement at the expiration of the tenant's term, and the fair market value which such building, structure or improvement contributes to the fair market value of the property to be acquired, or the fair market value of such building, structure or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(c) Payment for such buildings, structures or improvements as set forth above shall not result in duplication of any payments otherwise authorized by the laws of this State. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer and release all right, title and interest in and to such improvements. Nothing with regard to the above-mentioned acquisition of buildings, structures or other improvements shall be construed to deprive the tenant of any right to reject payment and to obtain payment for such property interests in accordance with other laws of this State.

(29 Del. C. 1953, § 9206; 58 Del. Laws, c. 413, § 3; 70 Del. Laws, c. 186, § 1.)

Part IX
State Planning and Property Acquisition

Chapter 96
State Employee Benefits Committee

§ 9601. Title.

This chapter shall be known as the "State Employee Benefits Consolidation Act."

(72 Del. Laws, c. 204, § 1; 84 Del. Laws, c. 4, § 1.)

§ 9602. State Employee Benefits Committee.

(a) (1) The State Employee Benefits Committee ("Committee") is comprised of the following voting members, or a designee selected by the member serving by virtue of position:

a. The Lieutenant Governor.

b. The Insurance Commissioner.

c. The Chief Justice of the Supreme Court.

d. The State Treasurer.

e. The Director of the Office of Management and Budget, who serves as chair.

f. The Secretary of the Department of Human Resources.

g. The Secretary of the Department of Health and Social Services.

h. Two residents of this State who are eligible pensioners under § 5201 of this title, 1 member appointed by the President Pro Tempore of the Senate and 1 member appointed by the Speaker of the House of Representatives.

i. Two members, 1 member appointed by the President Pro Tempore of the Senate and 1 member appointed by the Speaker of the House of Representatives, from among the following persons:

1. The President of the Delaware State Education Association or designee.

2. The Executive Director of the American Federation of State, County and Municipal Employees or designee.

3. The President of the Correctional Officers Association of Delaware or designee.

4. The President of the Delaware State Troopers Association or designee.

(2) The Controller General is a nonvoting member of the Committee and may designate the Deputy Controller General to attend meetings of the Committee or a subcommittee.

(3) a. Except as provided under paragraph (a)(3)b. of this section, the appointment term for a member of the Committee is for 2 years.

b. For the initial 2 members appointed under paragraph (a)(1)i. of this section, 1 member must be appointed for a 1-year term and 1 member must be appointed for a 2-year term.

(4) Beginning at the first meeting after January 1, 2025, the Committee shall annually elect a vice-chair. A member is eligible to serve as vice-chair of the Committee if all of the following apply:

a. The member is a voting member of the Committee.

b. The member does not serve as a cabinet secretary or as the equivalent rank within the executive branch.

(b) The Committee has the following powers, duties, and functions:

(1) With the exception of deferred compensation pursuant to Chapter 60A of this title, and any other investment or retirement savings plan, control and management of all employee benefit coverages including health-care insurance and blood bank, pursuant to Chapters 51 and 52 of this title; state employees group life insurance pursuant to Chapter 32 of Title 18; and all other currently existing and future employee benefits coverages, including but not limited to all forms of flexible benefits, dental, vision, prescription, long-term care and disability coverages.

(2) Selection of all carriers or third-party administrators necessary to provide coverages to State employees and eligible pensioners.

(3) Authority to contract on an insured or self insured basis.

(4) Authority to adopt rules and regulations for the general administration of the employee benefit coverages.

(5) Authority to make and enter into any and all contracts with any agency of the State, or any outside agency, for the purpose of assisting in the general administration of this section.

(c) All members of the Committee and all legal, actuarial and administrative personnel shall be entitled to reimbursement for those travel and other expenses made necessary by their official duties that are approved by the Director of Statewide Benefits.

(d) The Committee shall hold regular meetings at least once every 6 months. Meetings of the Committee and subcommittees are open to the public and must be in accordance with Chapter 100 of this title.

(1) a. A quorum of the Committee is a majority of its voting members. If the Committee is holding a virtual meeting, the chair or vice-chair must attend the meeting at the anchor location.

b. A quorum of a subcommittee is a majority of its voting members.

1. The chair of a subcommittee must be a voting member of the Committee.

2. If a subcommittee is holding a virtual meeting, the chair or vice-chair must attend the meeting at the anchor location.

(2) a. Appointed members may not attend Committee meetings through a designee.

b. Except for meetings of the Retiree Healthcare Benefits Advisory Subcommittee under § 9604(a) of this title, appointed members may attend subcommittee meetings through a designee.

c. A member of the Committee with the ability to designate another individual to attend a meeting must provide the designation in writing to the chair. An individual attending a meeting for a member as a designee has the same duties and rights as the member.

(3) a. Official action by the Committee requires the approval of a quorum of the Committee.

b. Official action by a subcommittee, including making findings and recommendations, requires the approval of a quorum of the subcommittee.

(4) For purposes of approving a request for proposals to select a carrier or third-party administrator for the health care insurance plan for State employees or eligible pensioners, all of the following apply:

a. The Committee must approve the request for proposals by a vote of the Committee during a public meeting under § 10004 of this title.

b. The Committee must provide the meaningful opportunity for public comment required under § 10004(a)(2) of this title before the vote under paragraph (d)(4)a. of this section.

c. The draft request for proposals prepared for the meeting under this paragraph (d)(4) is a public record under § 10002 of this title and must be included with the notice and agenda under § 10004(e)(2) of this title.

(72 Del. Laws, c. 204, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, §§ 21(13), 39, 40; 75 Del. Laws, c. 227, § 10; 77 Del. Laws, c. 177, § 1; 79 Del. Laws, c. 195, § 1; 81 Del. Laws, c. 66, § 60; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 4, § 1; 84 Del. Laws, c. 282, § 1.)

§ 9603. Duties of the Secretary of the Department of Human Resources.

(a) The duties of the Secretary of the Department of Human Resources under this chapter shall include all of the following:

(1) The placement of all insurance with such carriers as the Committee deems appropriate.

(2) The operation of the self-insurance fund, when and if a self-insurance fund shall be established by the Committee for the operation of a self-insurance program.

(3) Centralized responsibility for the operation of the State employee benefits program vested in a single agency with an adequate staff of legal, actuarial and administrative personnel.

(4) The establishment and operation of an open bid procedure to be maintained for purchasing new employee benefits coverage from carriers and renewing existing contracts with such carriers which will permit the free forces of market competition to operate to the benefit of the state employee benefits coverage programs.

(5) The maintenance in a safe and secure place of all policies with commercial insurers and all records necessary and pertinent thereto.

(6) The maintenance in a safe and secure place of all records, accounts, claims files, statistical studies and other such records and documents necessary and proper in the administration of any self-insured program, when and if the Committee deems it necessary and proper to utilize same.

(7) Prompt notification to insurance carriers or third party administrators of the names and other necessary data related to the employees and pensioners covered by State employee benefits programs and of all changes and additions thereto, and payment of such obligations as are incurred pursuant to this section, including the cost of premium or subscription charges for insurance coverage upon the written request of any State employee or pensioner from the funds appropriated therefore and, in the event such appropriated funds are inadequate, pay such additional sums as may be required from those moneys in the General Fund not otherwise appropriated.

(8) a. Communication to State employees of all State employee benefits coverages, any additions or changes of benefits affecting State employees, and all information communicated under paragraph (a)(8)b. of this section.

b. Communication to eligible pensioners, as defined in § 5201 of this title, of all of the following:

1. All benefits coverages available to eligible pensioners.

2. Any additions or changes in benefits coverages affecting eligible pensioners.

3. Any proposed additions or changes in benefits coverages affecting eligible pensioners.

(9) Authority to act as agent of the State to enter into a contract or contracts with the carrier or carriers for benefits programs for State employees and pensioners.

(10) Prompt notification of the health-care insurance carrier or third party administrator of the names and other necessary data related to the employees and pensioners covered by the State employees' health insurance program and of all changes and shall pay such

obligations as are incurred pursuant to this section, including the cost of premium or subscription charges for health-care insurance coverage upon the written request of any state employee or pensioner from the funds appropriated therefore and, in the event such appropriated funds are inadequate, pay such addition sums as may be required from those moneys in the General Fund not otherwise appropriated.

(b) The Controller General's Office must provide comprehensive biannual public reports on the work of the Committee to the General Assembly by May 30 and November 30 of each year.

(72 Del. Laws, c. 204, § 1; 75 Del. Laws, c. 88, § 20(6); 81 Del. Laws, c. 66, § 61; 84 Del. Laws, c. 4, § 1; 84 Del. Laws, c. 282, § 2.)

§ 9604. Retiree Healthcare Benefits Advisory Subcommittee.

(a) There is hereby established a Retiree Healthcare Benefits Advisory Subcommittee ("Subcommittee"). The Subcommittee shall be comprised of the Lieutenant Governor, the Insurance Commissioner, the Director of the Office of Management and Budget, the Secretary of Finance, the Secretary of the Department of Human Resources, 1 member of each caucus of the Delaware House of Representatives appointed by the Speaker of the House, and 1 member of each caucus of the Delaware State Senate appointed by the President Pro Tempore. In addition, the Governor shall appoint 1 retired state employee from each County and 1 representative of a union of state employees, the Speaker of the House shall appoint 1 representative of a union of state employees, and the President Pro Tempore of the Senate shall appoint 1 representative of a union of state employees. The Lieutenant Governor shall serve as Chair, and the members of the majority caucus from the House of Representatives and the Senate shall serve as Co-Vice Chairs of the Subcommittee. Appointed members may not attend Subcommittee meetings through a designee. The Delaware Department of Justice shall provide legal support and the Department of Human Resources shall provide administrative support to the Subcommittee. Additional support shall be provided by the State Office of Pensions and Department of Finance as may be requested by the Chairs.

(b) The General Assembly recognizes the importance and urgency of addressing Delaware retiree healthcare benefits. Thus, the Subcommittee shall have the following powers, duties and functions:

(1) Conduct public meetings and receive public comment about current and future Delaware retiree healthcare benefits, including the previously proposed Medicare Advantage Plan for Delaware retirees, while taking into consideration the previous work of the State Employee Benefits Committee and the Retirement Benefit Study Committee.

(2) In the course of its work, consider how reporting and analyses regarding Medicare Advantage Plans nationwide relate to the terms of the previously proposed Medicare Advantage Plan for Delaware retirees;

(3) Study, review, and evaluate the fiscal and other implications of the extension of the existing Medicare Supplement plan to January 1, 2024.

(4) Evaluate options for continuing to provide strong Delaware retiree healthcare benefits in a fiscally sustainable way, including options to maintain their current coverage similar to residents in other states that offer a choice to buy into a Medicare Supplement plan.

(5) By May 1, 2023, issue findings and recommendations to the Governor and the General Assembly about the foregoing as they relate to the Fiscal Year 2024 Delaware budget.

(84 Del. Laws, c. 4, § 1.)

Part X
General Regulations for State Agencies
Chapter 100
Freedom of Information Act

§ 10001. Declaration of policy.

It is vital in a democratic society that public business be performed in an open and public manner so that our citizens shall have the opportunity to observe the performance of public officials and to monitor the decisions that are made by such officials in formulating and executing public policy; and further, it is vital that citizens have easy access to public records in order that the society remain free and democratic. Toward these ends, and to further the accountability of government to the citizens of this State, this chapter is adopted, and shall be construed.

(60 Del. Laws, c. 641, § 1; 65 Del. Laws, c. 191, § 1.)

§ 10002. Definitions.

(a) "Agenda" shall include but is not limited to a general statement of the major issues expected to be discussed at a public meeting, as well as a statement of intent to hold an executive session and the specific ground or grounds therefor under § 10004(b) of this title.

(b) "Anchor location" means the physical location within the geographic jurisdiction of the public body that is open to the public and at which 1 or more members of a public body attend a virtual meeting.

(c) "Caucus" means members of the House of Representatives or Senate, of the same political party, who assemble to discuss matters of public business.

(d) "Disability" means as defined in § 4502 of Title 6.

(e) "Electronic" means as defined in § 12A-102 of Title 6.

(f) "FOIA" means the Freedom of Information Act under this chapter.

(g) "FOIA coordinator" shall mean the person designated by the Cabinet Secretary, school district superintendent, local government head, Chair, or equivalent executive officer of the public body to receive and process FOIA requests.

(h) "FOIA request" or "request" means a request to inspect or copy public records pursuant to § 10003 of this title.

(i) "FOIA Request Form" means the form promulgated by the Office of the Attorney General upon which requests for public records may be made.

(j) "Meeting" means the formal or informal gathering of a quorum of the members of any public body for the purpose of discussing or taking action on public business.

(k) "Public body" means, unless specifically excluded, any regulatory, administrative, advisory, executive, appointive or legislative body of the State, or of any political subdivision of the State, including, but not limited to, any board, bureau, commission, department, agency, committee, ad hoc committee, special committee, temporary committee, advisory board and committee, subcommittee, legislative committee, association, group, panel, council or any other entity or body established by an act of the General Assembly of the State, or established by any body established by the General Assembly of the State, or appointed by any body or public official of the State or otherwise empowered by any state governmental entity, which:

(1) Is supported in whole or in part by any public funds; or

(2) Expends or disburses any public funds, including grants, gifts or other similar disbursals and distributions; or

(3) Is impliedly or specifically charged by any other public official, body, or agency to advise or to make reports, investigations or recommendations.

"Public body" shall not include any caucus of the House of Representatives or Senate of the State. "Public body" shall include any authority created under Chapter 14 of Title 16.

(*l*) "Public body," "public record" and "meeting" shall not include activities of the University of Delaware and Delaware State University, except that the Board of Trustees of both universities shall be "public bodies," university documents relating to the expenditure of public funds shall be "public records," and each meeting of the full Board of Trustees of either institution shall be a "meeting." Additionally, any university request for proposal, request for quotation, or other such document soliciting competitive bids for any contract, agreement, capital improvement, capital acquisition or other expenditure proposed to involve any amount or percentage of public funds by or on behalf of the university shall indicate on the request for proposal or other such document that it relates to the expenditure of public funds.

(m) "Public business" means any matter over which the public body has supervision, control, jurisdiction or advisory power.

(n) "Public funds" are those funds derived from the State or any political subdivision of the State.

(o) "Public record" is information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced. For purposes of this chapter, the following records shall not be deemed public:

(1) Any personnel, medical or pupil file, the disclosure of which would constitute an invasion of personal privacy, under this legislation or under any State or federal law as it relates to personal privacy;

(2) Trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature;

(3) Investigatory files compiled for civil or criminal law-enforcement purposes including pending investigative files, pretrial and presentence investigations and child custody and adoption files where there is no criminal complaint at issue;

(4) Criminal files and criminal records, the disclosure of which would constitute an invasion of personal privacy. Any person may, upon proof of identity, obtain a copy of the person's personal criminal record. All other criminal records and files are closed to public scrutiny. Agencies holding such criminal records may delete any information, before release, which would disclose the names of witnesses, intelligence personnel and aides or any other information of a privileged and confidential nature;

(5) Intelligence files compiled for law-enforcement purposes, the disclosure of which could constitute an endangerment to the local, state or national welfare and security;

(6) Any records specifically exempted from public disclosure by statute or common law;

(7) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor;

(8) Any records involving labor negotiations or collective bargaining;

(9) Any records pertaining to pending or potential litigation which are not records of any court;

(10) Subject to § 10004(f) of this title with respect to release of minutes of executive sessions, any record of discussions held in executive session pursuant to § 10004(b) and (c) of this title;

(11) Any records which disclose the identity or address of any person holding a permit to carry a concealed deadly weapon; provided, however, all records relating to such permits shall be available to all bona fide law-enforcement officers;

(12) Any records of a public library which contain the identity of a user and the books, documents, films, recordings or other property of the library which a patron has used;

(13) Any records in the possession of the Department of Correction where disclosure is sought by an inmate in the Department's custody;

(14) Investigative files compiled or maintained by the Victims' Compensation Assistance Program;

(15) Any photographs, video recordings or audio recordings of a postmortem examination in the possession of the Division of Forensic Science;

(16) Emails received or sent by members of the Delaware General Assembly or their staff;

(17) a. The following records, which, if copied or inspected, could jeopardize the security of any structure owned by the State or any of its political subdivisions, or could facilitate the planning of a terrorist attack, or could endanger the life or physical safety of an individual:

1. Response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures or specific security procedures.

2. Building plans, blueprints, schematic drawings, diagrams, operational manuals or other records of mass transit facilities, bridges, tunnels, emergency response facilities or structures, buildings where hazardous materials are used or stored, arenas, stadiums, waste and water systems, electric transmission lines and substations, high-pressure natural gas pipelines and compressor stations, and telecommunications networks facilities and switching equipment, the disclosure of which would reveal the building's or structure's internal layout, specific location, life, safety and support systems, structural elements, surveillance techniques, alarm or security systems or technologies, operational and transportation plans or protocols, or personnel deployments. Records that disclose the substances being used or stored on a given piece of property are public records; however, records which disclose the specific location on that property of the substances being used or stored may be disclosed only if the chief administrative officer of the agency from which the record is requested determines that disclosure will not jeopardize the security of any structure owned by the State or any of its political subdivisions, or will not facilitate the planning of a terrorist attack, or will not endanger the life or physical safety of an individual.

3. Records of any building or structure operated by the State or any of its political subdivisions, the disclosure of which would reveal the building's or structure's life, safety and support systems, surveillance techniques, alarm or security systems or technologies, operational and evacuation plans or protocols, or personnel deployments.

4. Records prepared to prevent or respond to emergency situations identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features or capabilities of individual medical facilities, storage facilities, or laboratories established, maintained or regulated by the State or any of its political subdivisions.

5. Those portions of records assembled, prepared or maintained to prevent, mitigate or respond to criminal acts, the public disclosure of which would have a substantial likelihood of threatening public safety. The only items that are protected from disclosure by this paragraph are:

A. Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments or to the response or deployment plans; and

B. Records not subject to public disclosure under federal law that are shared by federal or international agencies and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for criminal acts against United States citizens or targets.

6. Nothing in this subsection shall be deemed to prohibit the disclosure of information necessary to comply with the requirements of Chapter 8 of Title 26, the Underground Utility Damage Prevention and Safety Act.

7. Information technology (IT) infrastructure details, source code, logical and physical design of IT systems and interfaces, detailed hardware and software inventories, network architecture and schematics, vulnerability reports, and any other information that, if disclosed, could jeopardize the security or integrity of an information and technology system owned, operated or maintained by the State or any public body subject to the requirements of this chapter.

b. Nothing in this paragraph shall interfere with the right of any committee of the General Assembly to hear information in the committee at the request of the committee chair or, if appropriate, to hear information in an executive session of the committee, or to subpoena information pursuant to § 705 of this title;

(18) a. Any military service discharge document or documents, a discharge, separation notice, certificate of service, report of transfer or discharge, or any other notice or document which is evidence of severance or transfer from military service and which contains a service record from the armed forces of the United States, or any document that purports to represent a notice of separation from or service in any armed forces of the United States including but not limited to the United States Department of Defense, DD Form 214, of a veteran of the armed forces of the United States, which has been heretofore recorded at a county recorder of deeds. Such document or documents may only be disclosed in accordance with the provisions of paragraph (o)(17)b. of this section.

b. *Access to authorized persons.* — The following persons are permitted to view or reproduce recorded military service discharge documents:

1. The veteran subject of the discharge;

2. The spouse or child of a veteran, with consent of the veteran;

3. If the veteran is deceased, a survivor or heir of the veteran who may be eligible to claim any type of benefit by virtue of the veteran's service in the military;

4. A person with a signed and notarized authorization from the veteran;

5. A county, state or federal officer assisting the veteran or veteran's family with a veteran's benefit application;

6. Anyone authorized by an order from a Delaware court, to view or copy the document; or

7. Government agencies, including courts, that have an interest in assisting the veteran subject to the military service discharge record or in assisting the beneficiaries of the deceased veteran subject to the military service discharge record in obtaining a benefit.

c. Any document referenced in paragraph (o)(18)a. of this section shall be deemed a public record upon the passage of 70 years from the date of the subject veteran's separation or discharge from service; or

(19) Any communications between a member of the General Assembly and that General Assembly member's constituent, or communications by a member of the General Assembly on behalf of that General Assembly member's constituent, or communications between members of the General Assembly.

(p) "Requesting party" shall mean the person filing the FOIA request.

(q) "State of emergency" means as defined in § 3102 of Title 20.

(r) "Virtual meeting" means a meeting of a public body that 1 or more members attend through the use of an electronic means of communication.

(60 Del. Laws, c. 641, § 1; 61 Del. Laws, c. 55, § 1; 63 Del. Laws, c. 424, § 1; 64 Del. Laws, c. 113, § 1; 65 Del. Laws, c. 191, §§ 2-6; 66 Del. Laws, c. 143, § 1; 67 Del. Laws, c. 281, § 194; 69 Del. Laws, c. 67, § 2; 69 Del. Laws, c. 250, § 2; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 260, §§ 1, 2, 3; 73 Del. Laws, c. 354, § 1; 75 Del. Laws, c. 235, §§ 3-5; 77 Del. Laws, c. 38, §§ 1-5, 8; 77 Del. Laws, c. 211, §§ 1, 2; 78 Del. Laws, c. 12, § 1; 78 Del. Laws, c. 382, § 1; 79 Del. Laws, c. 265, § 19; 79 Del. Laws, c. 272, § 1; 79 Del. Laws, c. 307, § 1; 79 Del. Laws, c. 334, § 1; 80 Del. Laws, c. 296, § 1; 82 Del. Laws, c. 265, § 2; 82 Del. Laws, c. 265, § 5; 83 Del. Laws, c. 65, § 1.)

§ 10003. Examination and copying of public records.

(a) All public records shall be open to inspection and copying during regular business hours by the custodian of the records for the appropriate public body. Reasonable access to and reasonable facilities for copying of these records shall not be denied to any citizen.

(b) All state agencies and public bodies shall implement and promulgate a policy for addressing requests made under the Freedom of Information Act.

(c) All state agencies and public bodies shall develop a web portal for receiving FOIA requests through the internet. Such portals shall utilize the standard request form promulgated by the Attorney General.

(d) (1) All state agencies and public bodies are to provide reasonable assistance to the public in identifying and locating public records to which they are entitled access, and all records held by the agency are "public records" to which the public should have access unless they fall within the scope of enumerated exceptions in § 10002 of this title.

(2) All public bodies in the executive branch of state government that are subject to the provisions of this chapter and are required by statute, regulation, or other established policy to publish an annual or biennial report, shall electronically post copies of these reports to a single designated State website approved by the Secretary of State. Electronic notification of the availability of these reports on the designated State website shall fulfill a public body's duty to publish and provide these reports to the Governor, General Assembly, or other state agencies or state officials.

(e) All state agencies and public bodies shall provide a mailing address for receiving FOIA requests through the U.S. mail.

(f) *Form of request.* — (1) All FOIA requests shall be made in writing to the public body in person, by U.S. mail, by e-mail, by fax, or online in accordance with the provisions hereunder. FOIA requests may be submitted using the FOIA Request Form promulgated by the Office of the Attorney General provided, however, that any FOIA request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form. Copies of the FOIA request form may be obtained from the website of any state agency, school district, or other public body.

(2) All requests shall adequately describe the records sought in sufficient detail to enable the public body to locate such records with reasonable effort. The requesting party shall be as specific as possible when requesting records. To assist the public body in locating the requested records, the public body may request that the requesting party provide additional information known to the requesting party, such as the types of records, dates, parties to correspondence, and subject matter of the requested records.

(g) *FOIA coordinator.* — (1) Each public body shall designate a FOIA coordinator who shall serve as the point of contact for FOIA requests and coordinate the public body's responses thereto. The FOIA coordinator shall be identified on the public body's website and each public body shall provide the name and contact information for its FOIA coordinator to the Attorney General. The public body shall update this information on its website and with the Attorney General within 20 working days of any change in its FOIA coordinator or the FOIA coordinator's contact information. The FOIA coordinator may designate other employees to perform specific duties and functions hereunder.

(2) The FOIA coordinator and/or his or her designee, working in cooperation with other employees and representatives, shall make every reasonable effort to assist the requesting party in identifying the records being sought, and to assist the public body in locating and providing the requested records. The FOIA coordinator and/or his or her designee will also work to foster cooperation between the public body and the requesting party.

(3) In addition to the foregoing responsibilities, the FOIA coordinator shall maintain a document tracking all FOIA requests. For each FOIA request, the document shall include, at a minimum, the requesting party's contact information, the date the public body received the request, the public body's response deadline, the date of the public body's response (including the reasons for any extension), the names, contact information and dates of correspondence with individuals contacted in connection with requests, the dates of review by the public body, the names of individuals who conducted such reviews, whether documents were made available, the amount of copying and/or administrative fees assessed, and the date of final disposition.

(h) *Response to requests.* — (1) The public body shall respond to a FOIA request as soon as possible, but in any event within 15 business days after the receipt thereof, either by providing access to the requested records, denying access to the records or parts of them, or by advising that additional time is needed because the request is for voluminous records, requires legal advice, or a record is in storage or archived. If access cannot be provided within 15 business days, the public body shall cite 1 of the reasons hereunder why more time is needed and provide a good-faith estimate of how much additional time is required to fulfill the request.

(2) If the public body denies a request in whole or in part, the public body's response shall indicate the reasons for the denial. The public body shall not be required to provide an index, or any other compilation, as to each record or part of a record denied.

(i) *Requests for e-mail.* — (1) Requests for e-mail records shall be fulfilled by the public body from its own records, if doing so can be accomplished by the public body with reasonable effort. If the public body determines that it cannot fulfill all or any portion of such request, the public body shall promptly request that its information and technology personnel or custodians provide the e-mail records to the public body.

(2) Before requesting the information and technology personnel or custodians to provide e-mail records, the public body shall provide an itemized written cost estimate to the requesting party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or modify the request.

(j) *Requests for other noncustodial records.* — (1) If all or any portion of a FOIA request seeks records controlled by the public body but are not within its possession or cannot otherwise be fulfilled by the public body with reasonable effort from the records it possesses, then the public body shall promptly request that the relevant custodian provide the noncustodial records to the public body.

(2) Before requesting any noncustodial records, the public body shall provide an itemized written cost estimate to the requesting party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or modify the request.

(k) *Review by public body.* — Prior to disclosure, records may be reviewed by the public body to ensure that those records or portions of records deemed nonpublic may be removed pursuant to § 10002 of this title or any other applicable provision of law. In reviewing the records, all documents shall be considered public records unless subject to 1 of the exceptions set forth in § 10002 of this title or any other applicable provision of law.

(*l*) *Hours of review.* — The public body shall provide reasonable access for reviewing public records during regular business hours.

(m) *Fees.* — Unless otherwise set forth in the Delaware Code or any applicable code of a county or municipal public body, the following fees shall apply:

(1) *Photocopying fees.* — In instances in which paper records are provided to the requesting party, photocopying fees shall be as follows:

Standard-sized, black and white copies: The first 20 pages of standard-sized, black and white copies material shall be provided free of charge. The charge for copying standard sized, black and white public records for copies over and above 20 shall be $0.10 per sheet ($0.20 for a double-sided sheet). This charge applies to copies on the following standard paper sizes: 8.5" x 11", 8.5" x 14", and 11" x 17".

Oversized copies/printouts: The charge for copying oversized public records shall be as follows: 18" x 22", $2.00 per sheet; 24" x 36", $3.00 per sheet; documents larger than 24" x 36", $1.00 per square foot.

Color copies/printouts: An additional charge of $1.00 per sheet will be assessed for all color copies or printouts for standard-sized copies (8.5" x 11", 8.5" x 14", and 11" x 17") and $1.50 per sheet for larger copies.

(2) *Administrative fees.* — Administrative fees shall be levied for requests requiring more than 1 hour of staff time to process. Charges for administrative fees may include staff time associated with processing FOIA requests, including, without limitation: identifying records; monitoring file reviews; and generating computer records (electronic or print-outs). Administrative fees shall not include any cost associated with the public body's legal review of whether any portion of the requested records is exempt from FOIA. The public body shall make every effort to ensure that administrative fees are minimized, and may only assess such charges as shall be reasonable required to process FOIA requests. In connection therewith, the public body shall minimize the use of nonadministrative personnel in processing FOIA requests, to the extent possible.

Prior to fulfilling any request that would require a requesting party to incur administrative fees, the public body shall provide an itemized written cost estimate of such fees to the requesting party, listing all charges expected to be incurred in retrieving such records. Upon receipt of the estimate, the requesting party may decide whether to proceed with, cancel, or modify the request.

Administrative fees will be billed to the requesting party per quarter hour. These charges will be billed at the current hourly pay grade (prorated for quarter hour increments) of the lowest-paid employee capable of performing the service. Administrative fees will be in addition to any other charges incurred under this section for copying fees.

When multiple FOIA requests are submitted by or on behalf of the requesting party in an effort to avoid incurring administrative charges, the public body may in its discretion aggregate staff time for all such requests when computing fees hereunder. Notwithstanding the foregoing, any Freedom of Information Act policy adopted by a public body pursuant to subsection (b) of this section hereunder may include provisions for the waiver of some or all of the above administrative fees; provided that such waiver shall apply equally to a particular class of persons (i.e., nonprofit organizations).

(3) *Microfilm and/or microfiche printouts.* — The first 20 pages of standard-sized, black and white material copied from microfilm and/or microfiche shall be provided free of charge. The charge for microfilm and/or microfiche printouts over and above 20 shall be $0.15 per sheet.

(4) *Electronically generated records.* — Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including but not limited to DVD, CD, or other electronic storage costs) and administrative costs.

(5) *Payment.* — The public body may require all or any portion of the fees due hereunder to be paid prior to any service being performed pursuant to this section.

(60 Del. Laws, c. 641, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 10, § 1; 78 Del. Laws, c. 202, § 1; 78 Del. Laws, c. 382, § 1; 79 Del. Laws, c. 272, § 1; 79 Del. Laws, c. 273, § 1; 79 Del. Laws, c. 274, § 1.)

§ 10004. Open meetings.

(a) (1) Every meeting of all public bodies shall be open to the public except when closed under subsections (b), (c), (d), and (h) of this section.

(2) A meeting that is open to the public under paragraph (a)(1) of this section must include time for public comment, unless the meeting is of a public body within the General Assembly which is governed by the rules of proceedings adopted under § 9 of Art. II of the Delaware Constitution.

a. The time for public comment must provide a meaningful opportunity for the public to engage with the public body.

b. A public body may impose reasonable time, place, and manner restrictions on the length of the public comment period and the amount of time allotted for each public comment.

(b) A public body may call for an executive session closed to the public pursuant to subsections (c) and (e) of this section, but only for the following purposes:

(1) Discussion of an individual citizen's qualifications to hold a job or pursue training unless the citizen requests that such a meeting be open. This provision shall not apply to the discussion by a licensing board or commission which is subject to the provisions of §

8735 of this title, of an individual citizen's qualifications to pursue any profession or occupation for which a license must be issued by the public body in accordance with Delaware law;

(2) Preliminary discussions on site acquisitions for any publicly funded capital improvements, or sales or leases of real property;

(3) Activities of any law-enforcement agency in its efforts to collect information leading to criminal apprehension;

(4) Strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation, but only when an open meeting would have an adverse effect on the bargaining or litigation position of the public body;

(5) Discussions which would disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to said contribution by the contributor;

(6) Discussion of the content of documents, excluded from the definition of "public record" in § 10002 of this title where such discussion may disclose the contents of such documents;

(7) The hearing of student disciplinary cases unless the student requests a public hearing;

(8) The hearing of employee disciplinary or dismissal cases unless the employee requests a public hearing;

(9) Personnel matters in which the names, competency and abilities of individual employees or students are discussed, unless the employee or student requests that such a meeting be open.

(c) A public body may hold an executive session closed to the public upon affirmative vote of a majority of members present at a meeting of the public body. The vote on the question of holding an executive session shall take place at a meeting of the public body which shall be open to the public, and the results of the vote shall be made public and shall be recorded in the minutes. The purpose of such executive sessions shall be set forth in the agenda and shall be limited to the purposes listed in subsection (b) of this section. Executive sessions may be held only for the discussion of public business, and all voting on public business must take place at a public meeting and the results of the vote made public.

(d) This section shall not prohibit the removal of any person from a public meeting who is wilfully and seriously disruptive of the conduct of such meeting.

(e) (1) This subsection concerning notice of meetings does not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, health, or safety, or to the General Assembly.

(2) All public bodies shall give public notice of their regular meetings and of their intent to hold an executive session closed to the public, at least 7 days in advance of the meeting. The notice must include all of the following:

a. The agenda, if the agenda has been determined.

b. The date, time, and place of a meeting, including whether the meeting will be conducted under § 10006A of this title.

(3) An agenda provided under paragraph (e)(2) of this section is subject to change. Changes to an agenda may include any of the following:

a. Additional items, including an executive session, which arise at the time of the public body's meeting.

b. The deletion of items, including an executive session.

(4) All public bodies shall give public notice of the type set forth in paragraph (e)(2) of this section of any special or rescheduled meeting as soon as reasonably possible, but in any event no later than 24 hours before such meeting. A special or rescheduled meeting shall be defined as one to be held less than 7 days after the scheduling decision is made. The public notice of a special or rescheduled meeting shall include an explanation as to why the notice required by paragraph (e)(2) of this section could not be given.

(5) Public notice required by this subsection shall include, but not be limited to, conspicuous posting of said notice at the principal office of the public body holding the meeting, or if no such office exists at the place where meetings of the public body are regularly held, and making a reasonable number of such notices available. In addition, for all noncounty and nonmunicipal public bodies, public notice required by this subsection shall include, but not be limited to, electronic posting on a designated State of Delaware website, approved by the Registrar of Regulations by May 1, 2013, which shall be accessible to the public. In addition, all public bodies in the executive branch of state government that are subject to the provisions of this chapter shall electronically post said notice to the designated State of Delaware website approved by the Secretary of State.

(6) When the agenda is not available as of the time of the initial posting of the public notice it shall be added to the notice at least 6 hours in advance of said meeting, and the reasons for the delay in posting shall be briefly set forth on the agenda.

(f) Each public body shall maintain minutes of all meetings, including executive sessions, conducted pursuant to this section, and shall make such minutes available for public inspection and copying as a public record. Such minutes shall include a record of those members present and a record, by individual members (except where the public body is a town assembly where all citizens are entitled to vote), of each vote taken and action agreed upon. Such minutes or portions thereof, and any public records pertaining to executive sessions conducted pursuant to this section, may be withheld from public disclosure so long as public disclosure would defeat the lawful purpose for the executive session, but no longer. All public bodies in the executive branch of state government that are subject to the provisions of this chapter and meet 4 or fewer times per year shall electronically post draft minutes of open public meetings, identified as "draft minutes," to the designated State website approved by the Secretary of State within 20 working days after the conclusion of the meeting.

Prior to being posted, draft minutes may be distributed to members of the public body who were present at the open public meeting. Draft minutes may continue to be revised and corrected up until final minutes are approved by the public body at an open meeting. All public bodies in the executive branch of state government that are subject to the provisions of this chapter shall electronically post final approved minutes of open public meetings to the designated State of Delaware website approved by the Secretary of State within 5 working days of final approval of said minutes.

(g) Every regularly scheduled meeting of a public body shall be held within the geographic jurisdiction of that public body. All such other meetings shall be held as follows:

(1) A public body serving any political subdivision of the State, including, but not limited to, any city, town or school district, shall hold all such other meetings within its jurisdiction or the county in which its principal office is located, unless it is school board training that has been approved by the Secretary of Education as beneficial to school board development activities.

(2) For the purposes of this subsection, a "regularly scheduled meeting" shall mean any meeting of a public body held on a periodic basis.

(3) The provisions of this subsection, insofar as they are not practicable, shall not apply to any emergency meeting which is necessary for the immediate preservation of the public peace, health or safety, or to a meeting held by a public body outside of its jurisdiction which is necessary for the immediate preservation of the public financial welfare.

(h) This section shall not apply to the proceedings of:

(1) Grand juries;

(2) Petit juries;

(3) Special juries;

(4) The deliberations of any court;

(5) The Board of Pardons and Parole;

(6) Public bodies having only 1 member;

(7) Public bodies within the legislative branch of the state government other than the House of Representatives, the Senate, the Joint Finance Committee, the Joint Committee on Capital Improvement, the Joint Legislative Oversight and Sunset Committee, Legislative Council, Legislative Hall Art and History Advisory Commission, committees, excluding ethics committees, specifically enumerated and created by Resolution of the House of Representatives or Senate or task forces specifically enumerated and created by Resolution of the House of Representatives or Senate;

(8) a. The Victims' Compensation Assistance Program Appeals Board may close any meeting to the public where:

1. The claim to be considered derives from any sexual offense within the definitions of a crime in § 9002 of Title 11.

2. The claim to be considered derives from any offense by or against a child, as defined in this section, unless such child has been deemed amenable to the jurisdiction of a criminal court as to the matter before the Board.

3. The claim to be considered derives from any matter not yet adjudicated.

4. The claim to be considered involves a "victim" who is a "child" as those terms are defined in Chapter 90 of Title 11.

b. The Board shall produce a complete record of any proceedings closed to the public which record may be denied to anyone seeking access for good cause shown; and

(9) The deliberations of the following agencies for any case decision governed by the Administrative Procedures Act in Chapter 101 of this title:

a. Delaware Human and Civil Rights Commission;

b. Industrial Accident Board;

c. Tax Appeals Board; and

d. Victims' Compensation Assistance Program Appeals Board.

(i) In an enforcement action pursuant to § 10005 of this title, a citizen or the Attorney General, as the case may be, may seek the forfeiture of all or part of the compensation of members of a board, commission or other public body for any closed meeting which such board, commission or other public body closed knowing that such action violated this chapter. Such forfeiture may only be ordered by the Court if the Court makes a specific finding that the board, commission or public body had no good faith basis to believe that the meeting could be closed. It shall be an absolute defense that an individual never voted in favor of the closed meeting. If the board, commission or public body also met validity for other purposes on the same day as the meeting which violated the act, such valid action shall be considered by the Court in determining the extent of any forfeiture award.

(60 Del. Laws, c. 641, § 1; 63 Del. Laws, c. 269, § 1; 65 Del. Laws, c. 191, §§ 7-12; 66 Del. Laws, c. 419, § 1; 67 Del. Laws, c. 367, §§ 1, 2; 71 Del. Laws, c. 38, § 1; 71 Del. Laws, c. 117, § 1; 71 Del. Laws, c. 191, § 1; 71 Del. Laws, c. 193, § 1; 72 Del. Laws, c. 459, § 1; 72 Del. Laws, c. 460, § 18; 75 Del. Laws, c. 178, §§ 1, 2; 77 Del. Laws, c. 38, §§ 6, 7; 77 Del. Laws, c. 211, § 3; 78 Del. Laws, c. 288, § 5; 79 Del. Laws, c. 125, § 4; 79 Del. Laws, c. 271, § 1; 79 Del. Laws, c. 393, § 1; 80 Del. Laws, c. 260, § 5; 82 Del. Laws, c. 265, § 3; 82 Del. Laws, c. 265, § 5; 83 Del. Laws, c. 65, § 2; 83 Del. Laws, c. 305, § 10; 83 Del. Laws, c. 506, § 1; 84 Del. Laws, c. 480, § 2.)

§ 10005. Enforcement.

(a) Any action taken at a meeting in violation of this chapter may be voidable by the Court of Chancery. Any citizen may challenge the validity under this chapter of any action of a public body by filing suit within 60 days of the citizen's learning of such action but in no event later than 6 months after the date of the action.

(b) Any citizen denied access to public records as provided in this chapter may bring suit within 60 days of such denial. Venue in such cases where access to public records is denied shall be placed in a court of competent jurisdiction for the county or city in which the public body ordinarily meets or in which the plaintiff resides. Notwithstanding the foregoing, a person denied access to public records by an administrative office or officer, a department head, commission, or instrumentality of state government which the Attorney General is obliged to represent pursuant to § 2504 of this title must within 60 days of denial, present a petition and all supporting documentation to the Chief Deputy as described in subsection (e) of this section. Thereafter, the petitioner or public body the Attorney General is otherwise obligated to represent may appeal an adverse decision on the record to the Superior Court within 60 days of the Attorney General's decision.

(c) In any action brought under this section, the burden of proof shall be on the custodian of records to justify the denial of access to records, and shall be on the public body to justify a decision to meet in executive session or any failure to comply with this chapter.

(d) Remedies permitted by this section include an injunction, a declaratory judgment, writ of mandamus and/or other appropriate relief. The court may award attorney fees and costs to a successful plaintiff of any action brought under this section. The court may award attorney fees and costs to a successful defendant, but only if the court finds that the action was frivolous or was brought solely for the purpose of harassment.

(e) Any citizen may petition the Attorney General to determine whether a violation of this chapter has occurred or is about to occur. The petition shall set forth briefly the nature of the alleged violation. Upon receiving a petition, the Attorney General shall promptly determine whether the petition is against an administrative office or officer, agency, department, board, commission or instrumentality of state government which the Attorney General is obliged to represent pursuant to § 2504 of this title. Every petition against an administrative office or officer, agency, department, board, commission or instrumentality of state government which the Attorney General is obliged to represent pursuant to § 2504 of this title shall be referred to the Chief Deputy Attorney General who shall, within 20 days of receiving the petition, render a written determination to the petitioner and the public body involved declaring whether a violation has occurred or is about to occur. If the Chief Deputy finds that a violation of this chapter has occurred or is about to occur, the Attorney General shall not represent the public body in any appeal filed pursuant to this chapter for such violation if the public body the Attorney General is otherwise obligated to represent fails to comply with the Chief Deputy's determination. Regardless of the finding of the Chief Deputy, the petitioner or the public body may appeal the matter on the record to Superior Court. In every other case, the Attorney General shall, within 10 days, notify in writing the custodian of records or public body involved. Within 20 days of receiving the petition, the Attorney General shall make a written determination of whether a violation has occurred or is about to occur, and shall provide the citizen and any custodian of records or public body involved with a copy of the determination. If the Attorney General finds that a violation of this chapter has occurred or is about occur, the citizen may: (1) File suit as set forth in this chapter; or (2) request in writing that the Attorney General file suit on the citizen's behalf. If such request is made, the Attorney General may file suit, and shall within 15 days notify the citizen of the decision to file suit, unless the custodian of records or public body has agreed to comply with this chapter. The citizen shall have the absolute right to file suit regardless of the determination of the Attorney General, and may move to intervene as a party in any suit filed by the Attorney General.

(f) An administrative office or officer, agency, department, board, commission or instrumentality of state government which the Attorney General is obligated to represent pursuant to § 2504 of this title shall not require the approval of the Attorney General pursuant to § 2507 of this title to address claims of violation under this chapter.

(60 Del. Laws, c. 641, § 1; 65 Del. Laws, c. 191, § 13; 66 Del. Laws, c. 354, §§ 1, 2; 77 Del. Laws, c. 400, §§ 1-3.)

§ 10006. Video-conferencing participation in open meetings [Repealed].

(77 Del. Laws, c. 211, § 4; repealed by 83 Del. Laws, c. 65, § 3, effective June 30, 2021.)

§ 10006A. Open meetings; virtual meetings; reasonable accommodations for members with a disability.

(a) A public body shall allow a member of the public body with a disability to attend a meeting of the public body through the use of an electronic means of communication, instead of being required to attend in-person at a physical location, as a reasonable modification under § 4504 of Title 6 or a reasonable accommodation under § 723 of Title 19, unless it imposes an undue burden. A member attending a meeting through the use of an electronic means of communication as a reasonable modification or reasonable accommodation is considered present for all purposes as if the member is physically attending, including for quorum and voting.

(b) At the discretion of the chair or presiding officer, a public body may allow the public to monitor or provide public comment through the use of an electronic means of communication at any meeting.

(c) A public body may hold a virtual meeting if all of the following occur:

(1) The meeting notice under § 10004 of this title includes information regarding how the public can monitor or participate in the meeting under paragraph (c)(6) of this section.

(2) The meeting has an anchor location.

(3) The identity of a member or witness is verified, and the actions of a member are authenticated, in a manner satisfactory to the presiding officer or chair.

(4) All participating members and witnesses can simultaneously do 1 of the following regarding each member or witness who is recognized by the presiding officer or chair:

a. Hear the comments of each member or witness.

b. Hear the comments of and view each member or witness.

(5) A document used during the meeting by a member or witness, and that is accepted by the presiding officer or chair, is immediately provided to each member or witness participating in the meeting and made available to the public under § 10003 of this title.

(6) Except during an executive session under § 10004 of this title, the public is able to do all of the following through an electronic means of communication:

a. Monitor the meeting.

b. Provide public comment, if the public body is required to accept, or provides an opportunity for, public comment.

(7) Minutes of the virtual meeting are maintained under § 10004 of this title.

(d) (1) All actions taken during a virtual meeting conducted under this section have the same legal effect as if the members were physically present at the same location.

(2) For the purposes of determining quorum for a virtual meeting, a member participating in a virtual meeting is considered present as if the member were physically present at the meeting.

(3) For the purposes of voting during a virtual meeting, a member participating in a virtual meeting is able to vote as if the member were physically present at the meeting.

(4) A technological problem that prevents or limits public access otherwise required under this chapter does not invalidate a virtual meeting or an action taken at a virtual meeting.

(e) During a state of emergency, a public body may hold a virtual meeting at which members participate through the use of an electronic means of communication without an anchor location if, in addition to the requirements under subsection (c) of this section, all of the following occur:

(1) The virtual meeting is preceded by the same public notice as required under § 10004 of this title, except that notice of the public meeting does not need to be conspicuously posted at the principal office of the public body holding the meeting or where meetings of the public body are regularly held.

(2) If all of the members of the public body are elected by the public to serve on the public body, all of the following must occur:

a. A document that is used during the meeting by a member or witness, and that is accepted by the presiding officer or chair, is immediately transmitted to each member or witness participating in the meeting.

b. The public is able to review a recording of the meeting within a reasonable time after the meeting concludes.

(f) If necessary to prevent a public health emergency, as defined in § 3132 of Title 20, the Governor may issue an executive order allowing public bodies to hold virtual meetings at which all members may participate through the use of an electronic means of communication without an anchor location. A virtual meeting held under this subsection must comply with the requirements under subsection (e) of this section.

(82 Del. Laws, c. 265, §§ 4, 5; 83 Del. Laws, c. 65, § 4; 83 Del. Laws, c. 450, § 6.)

§ 10007. Education.

(a) The Attorney General shall publish biennially a manual for FOIA coordinators. The Attorney General shall send the manual to each FOIA coordinator electronically and shall make the manual available on the Attorney General's website. The Attorney General shall, at a minimum, include the following in the manual:

(1) An explanation of the duties and responsibilities of the FOIA coordinator;

(2) An explanation of the time frames included within this chapter, how to calculate these time frames, and the circumstances in which any of these time frames are tolled;

(3) An explanation of the power of the public body to charge fees for requests for public records;

(4) An explanation of the reasons for calling an executive session closed to the public pursuant to purposes listed in § 10004(b) of this title, including an explanation of the strategy session exception; and

(5) A summary of Delaware judicial opinions, Attorney General opinions, and other legal opinions issued in the preceding 2 years related to this chapter.

(b) The Attorney General shall hold annually a training seminar for FOIA coordinators that shall be open to the public and noticed in accordance with this chapter. The Attorney General shall send notice of the training to each FOIA coordinator and shall post notice of the training on the Attorney General's website. The Attorney General shall, at a minimum, include the following in the training:

(1) The topics included in the manual pursuant to subsection (a) of this section;

(2) A discussion of best practices for responding to requests for public records; and

(3) A question and answer session.

(c) The Attorney General shall, in addition to any other publication method deemed appropriate by the Attorney General, maintain a website containing Attorney General opinions related to this chapter. The Attorney General shall include on the website a summary of the holding of each Attorney General opinion.

(d) Nothing in this section shall be construed as legal advice in contravention of § 2504(2) or § 2515 of this title.

(79 Del. Laws, c. 272, § 1.)

§ 10008. Livestreaming Board of Trustees meetings of public institutions of higher learning.

(a) For purposes of this section, "full Board of Trustees" means the full Board of Trustees for each of the following:

(1) University of Delaware, under § 5107 of Title 14.

(2) Delaware State University, under § 6505 Title 14.

(3) Delaware Technical and Community College, under § 9105 of Title 14.

(b) Meetings of a full Board of Trustees must be available over the internet by livestream broadcast that meets all of the following:

(1) Streams audio and video of the meeting.

(2) Permits the public to hear all participants contemporaneously.

(c) A recording of a meeting livestreamed under subsection (b) of this section must be posted on a public website within a reasonable time after the meeting concludes and must remain on the website for at least 1 year.

(d) Notice of a full Board of Trustees meeting must include information on how the public can access the livestream broadcast of the meeting and a recording of the meeting.

(e) (1) A technological failure that prevents, or a technological limitation that limits, public access otherwise required under paragraphs (b)(1) and (b)(2) of this section does not invalidate a meeting or an action taken at a meeting.

(2) Subsections (b) and (c) of this section do not require the livestreaming or recording of the portion of a full Board of Trustees meeting that is in an executive session under § 10004 of this title.

(83 Del. Laws, c. 533, § 1;84 Del. Laws, c. 233, § 29, effective Sept. 21, 2023.)

Part X
General Regulations for State Agencies

Chapter 101
Administrative Procedures

Subchapter I
Policy and Definitions

§ 10101. Policy.

The purpose of this chapter is to standardize the procedures and methods whereby certain state agencies exercise their statutory powers and to specify the manner and extent to which action by such agencies may be subjected to public comment and judicial review.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 7.)

§ 10102. Definitions.

As used in this chapter:

(1) "Agency" means any authority, department, instrumentality, commission, officer, board or other unit of the state government authorized by law to make regulations, decide cases or issue licenses. Agency does not include the General Assembly, courts, municipalities, counties, school districts, the University of Delaware, Delaware State University, Delaware Technical and Community College and other political subdivisions, joint state-federal, interstate or intermunicipal authorities and their agencies.

(2) "Agency action" means either an agency's regulation or case decision, which could be a basis for the imposition of injunctive orders, penal or civil sanctions of any kind or the grant or denial of relief or of a license, right or benefit by any agency or court, or both.

(3) "Case" or "case decision" means any agency proceeding or determination that a named party as a matter of past or present fact, or of threatened or contemplated private action, is or is not in violation of a law or regulation, or is or is not in compliance with any existing requirement for obtaining a license or other right or benefit. Such administrative adjudications include, without limitation, those of a declaratory nature respecting the payment of money or resulting in injunctive relief requiring a named party to act or refrain from acting or threatening to act in some way required or forbidden by law or regulation under which the agency is operating.

(4) "Court" means the Superior Court of the State except for appeals from the Division of Child Support Services, which will be heard by the Family Court of the State.

(5) "License" means the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but it does not include a license required solely for revenue purposes.

(6) "Party" means each person or agency named or admitted in an agency proceeding as a party, or properly seeking and entitled as of right to be admitted as a party to an agency proceeding.

(7) "Regulation" means any statement of law, procedure, policy, right, requirement or prohibition formulated and promulgated by an agency as a rule or standard, or as a guide for the decision of cases thereafter by it or by any other agency, authority or court. Such statements do not include locally operative highway signs or markers, or an agency's explanation of or reasons for its decision of a case, advisory ruling or opinion given upon a hypothetical or other stated fact situation or terms of an injunctive order or license.

(8) "Subordinate" means either:

a. One or more but less than a quorum of the members of a board constituting an agency; or

b. Any person or persons designated in writing to act on its behalf.

(9) "Substantive" or "substantive in nature" means, when used in connection with regulations, those regulations allowing, requiring or forbidding conduct in which private persons are otherwise free or prohibited to engage, or regulations which state requirements, other than procedural, for obtaining, retaining or renewing a license or any kind of benefit or recompense.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 65 Del. Laws, c. 228, § 9; 70 Del. Laws, c. 90, § 1; 73 Del. Laws, c. 401, § 1; 80 Del. Laws, c. 234, § 29.)

Subchapter II
Agency Regulations

§ 10111. Organization regulations; rules of procedure.

For the benefit of the public, each agency shall adopt the following regulations:

(1) A general description of its organization, its methods of operations and the manner, including addresses and telephone numbers, whereby the public may obtain information and otherwise deal with the agency; and

(2) A statement of the nature and requirements of all rules of practice and procedure used by the agency to exercise its statutory authority in compliance with this chapter.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10112. Public information.

(a) Each agency shall make available promptly to the public upon request, for inspection, originals or legible copies of its public records in accordance with the State's Freedom of Information Act laws (Chapter 100 of Title 29).

(1)-(3) [Repealed.]

(b), (c) [Repealed.]

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 83 Del. Laws, c. 312, § 2.)

§ 10113. Adoption of regulations; exemptions.

(a) All regulations, except those specifically exempted, shall be adopted according to the requirements of this chapter.

(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally:

(1) Descriptions of agency organization, operations and procedures for obtaining information;

(2) Rules of practice and procedure used by the agency;

(3) Delegations of authority to subordinates;

(4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors;

(5) Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations; and

(6) Codifications of existing agency or judicial principles of decision derived from previous decisions and rulings.

Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 73 Del. Laws, c. 55, § 1.)

§ 10114. Requests for regulation-making proceedings.

Proceedings for the adoption, amendment or repeal of a regulation may be initiated by an agency on the motion of an agency member or at the request of any person who so petitions the agency on a form prescribed for that purpose by the Director of the Office of Management and Budget. The agency at its next regular meeting shall either grant the petition and initiate the proceedings specified by this chapter or deny the petition and give its reasons for doing so. If the petition is received by the agency within 5 days of such meeting, the agency may defer action on the petition until the next succeeding regular meeting.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 75 Del. Laws, c. 88, § 16(5).)

§ 10115. Notice [For application of this section, see 80 Del. Laws, c. 113, § 8].

(a) Whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication, in full or as a summary, in the Register of Regulations pursuant to § 1134 of this title. Any submission to the Registrar hereunder shall include, to the extent applicable, any agency regulatory statement required to be submitted by the agency pursuant to Chapter 104 of this title.

(1) The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act and reference to any other regulations that may be impacted or affected by the proposal;

(2) The notice shall state the manner in which persons may present their views: (i) if in writing, of the place to which and the final date by which such views may be submitted; or (ii) if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations.

(b) If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation a minimum of 20 days prior to such public hearing and shall also be advertised at least 20 days prior to such public hearing by electronic posting on a designated State of Delaware website, approved by the Registrar of Regulations by May 1, 2013, which shall be accessible to the public.

(c) The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

(d) No regulation being proposed to be formulated, adopted, amended or repealed shall be published if the requisite notice prescribed in subsection (a) of this section is not submitted with the proposed regulation to the Registrar of Regulations.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 68 Del. Laws, c. 159, § 1; 71 Del. Laws, c. 48, § 8; 72 Del. Laws, c. 88, § 4; 78 Del. Laws, c. 288, § 6; 80 Del. Laws, c. 113, §§ 5, 6.)

§ 10116. Written submittals.

Before adopting, amending or repealing any regulation, an agency shall give notice as prescribed in § 10115 of this title and shall receive all written suggestions, compilations of data, briefs or other written materials submitted to it by any person. The agency, in its

discretion, may designate a subordinate to organize, classify, summarize and make recommendations with respect to the materials, which recommendations may be considered with the materials by the agency in reaching its conclusions.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10117. Public hearings.

When an agency is required by law to hold public hearings before adopting, amending or repealing a regulation and, otherwise, if an agency in its discretion determines to hold public hearings, in addition to giving opportunity for the submission of written materials, the following shall apply to the conduct of such hearings:

(1) The hearing shall be conducted either by the agency or by a subordinate designated by the agency for that purpose who shall be empowered in connection with such hearing to:

a. Issue subpoenas, in the agency's sole discretion, for witnesses or other evidence, on the agency's initiative or at the request of any person;

b. Administer oaths to witnesses; and

c. Exclude irrelevant, immaterial, insubstantial, cumulative, privileged matter and unduly repetitive proofs, rebuttals and cross-examination.

(2) A record from which a verbatim transcript can be prepared shall be made of all hearings. The expense of preparing any transcript shall be borne by the person requesting it. No part of the public hearing is exempt from this record requirement.

(3) If the hearing notice includes a specific length of time for the holding of the hearing, the hearing shall not adjourn prior to the end of that length of time.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 78 Del. Laws, c. 356, § 1; 80 Del. Laws, c. 327, § 1.)

§ 10118. Agency findings; form of regulations.

(a) The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. The opportunity for public written comment shall be extended for a minimum of 15 days after the final public hearing when 1 or more public hearings are held on the proposal.

(b) At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include:

(1) A brief summary of the evidence and information submitted;

(2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended;

(3) A brief narrative assessment of the impact, if any, of the regulation on the achievement of the State's greenhouse gas emissions reduction targets, as specified in § 10003 of Title 7, and the impact of the regulation on the State's resiliency to climate change, or a statement that any such impact will be de minimis or that such assessment is not practical for the regulation. If prepared, the narrative assessment should include a brief description of the agency's efforts to consider climate change, resiliency, and the State's greenhouse gas emissions reduction targets in developing the regulation.

(4) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received;

(5) The exact text and citation of such regulation adopted, amended or repealed;

(6) The effective date of the order;

(7) Any other findings or conclusions required by the law under which the agency has authority to act; and

(8) The signatures of at least a quorum of the agency members.

(c) In the event an agency makes substantive changes in the proposal as a result of the public comments, evidence and information, the agency shall consider the revised proposal as a new proposal subject to the notice requirements of § 10115 of this title and all other requirements of this subchapter. If the changes are not substantive, the agency shall not be required to repropose the regulation change. Whether a change constitutes substantive or nonsubstantive matter shall be determined by the agency head.

(d) In the event the proposing agency seeks to withdraw its proposal, the proposing agency shall notify the Registrar, in writing, that the proposal is being withdrawn and the Registrar shall publish the withdrawal information in the next issue of the Register of Regulations.

(e) The agency shall file such order with the Registrar of Regulations which shall become the official regulation as defined in § 1132 of this title.

(f) No agency shall adopt a regulation if more than 12 months have elapsed since the end of the public comment period or the last public hearing, whichever is later, on the proposed regulation.

(g) The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form, in full or as a summary, in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under § 10119 of this title.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 68 Del. Laws, c. 159, § 2; 71 Del. Laws, c. 48, § 9; 72 Del. Laws, c. 88, § 5; 78 Del. Laws, c. 356, § 2; 84 Del. Laws, c. 141, § 3.)

§ 10119. Emergency regulations.

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

Subchapter III

Case Decisions

§ 10121. Application of subchapter.

This subchapter shall apply to all agency case decisions except:

(1) Decisions relating to the assessment of taxes or tax penalties made by the Tax Appeals Board; or

(2) Temporary restraining orders and similar orders authorized by law to be issued summarily.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10122. Notice of proceedings.

Whenever an agency proposes to proceed for a case decision, it shall give 20 days' prior notice to all parties as follows:

(1) The notice shall describe the subject matter of the proceedings;

(2) The notice shall inform the parties of the opportunity, if permitted by law, to elect to proceed by informal fact-finding and of the date by which such election must be made;

(3) The notice shall give the date, time and place the formal hearing will be held if informal fact-finding is not elected;

(4) The notice shall cite the law or regulation giving the agency authority to act;

(5) The notice shall inform the party of the right to present evidence, to be represented by counsel and to appear personally or by other representative; and

(6) The notice shall inform the parties of the agency's obligation to reach its decision based upon the evidence received.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 70 Del. Laws, c. 186, § 1.)

§ 10123. Informal fact-finding.

Where a formal hearing is not required by law and where the parties agree in advance to proceed in such manner, the agency shall acquire the information upon which it bases its decision by means of informal conference or consultation among the parties as follows:

(1) The agency shall conduct the conference itself or may designate a subordinate to do so;

(2) The parties may appear in person and by counsel; and

(3) The parties may submit any relevant factual data, documents, testimony and argument. Only such evidence and argument presented at such conference or presented to the agency and opposing parties before the conference may be taken into consideration by the agency in making its findings and rendering its decision.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10124. Public hearings; notice.

When required by law or when the parties do not consent to informal proceedings, or when the matters at issue involve price fixing, rate making or similar matters of general public interest, as determined by the agency, the agency shall conduct a formal, public evidentiary hearing to which the following provisions shall apply:

(1) The notice required by § 10122 of this title shall be published in at least 2 Delaware newspapers of general circulation and shall be advertised by electronic posting on a designated State of Delaware website, approved by the Registrar of Regulations by May 1, 2013, which shall be accessible to the public; and

(2) Applicants for licenses, renewals and other rights or benefits shall not be entitled to prior notice of application requirements but shall receive notice of any proposed contest of such applications.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 78 Del. Laws, c. 288, § 7.)

§ 10125. Conduct of public hearings; burden of proof; record.

(a) The hearing may be conducted by the agency or by a subordinate designated for that purpose.

(b) In connection with such hearings, the agency or its designated subordinate may be empowered to:

(1) Issue subpoenas for witnesses and other sources of evidence, either on the agency's initiative or at the request of any party;

(2) Administer oaths to witnesses;

(3) Exclude plainly irrelevant, immaterial, insubstantial, cumulative and privileged evidence;

(4) Limit unduly repetitive proof, rebuttal and cross-examination;

(5) Cause interrogatories to issue and depositions to be taken; or

(6) Hold prehearing conferences for the settlement or simplification of issues by consent, for the disposal of procedural requests or disputes and to regulate and expedite the course of the hearing.

(c) The burden of proof shall always be upon the applicant or proponent.

(d) A record from which a verbatim transcript can be prepared shall be made of all hearings in all contested cases. Transcripts shall be made at the request and expense of any party.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10126. Proposed orders.

(a) Whenever a subordinate presides over an informal conference or a formal hearing, the subordinate shall prepare a proposed order for the consideration of the agency which shall include:

(1) A brief summary of the evidence and recommended findings of fact based upon the evidence;

(2) Recommended conclusions of law; and

(3) Recommended decision.

(b) When the proposed order is submitted to the agency, a copy shall be delivered to each of the other parties who shall have 20 days to submit in writing to the agency exceptions, comments and arguments respecting the proposed order.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 70 Del. Laws, c. 186, § 1.)

§ 10127. Record.

With respect to each case, all notices, correspondence between the agency and the parties, all exhibits, documents and testimony admitted into evidence and all recommended orders, summaries of evidence and findings and all interlocutory and final orders of the agency shall be included in the agency's record of the case and shall be retained by the agency.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10128. Decision; final order.

(a) The agency shall make its decision based upon the entire record of the case and upon the summaries and recommendations of its subordinates.

(b) Every case decision of any agency shall be incorporated in a final order which shall include, where appropriate:

(1) A brief summary of the evidence;

(2) Findings of fact based upon the evidence;

(3) Conclusions of law;

(4) Any other conclusions required by law of the agency; and

(5) A concise statement of the agency's determination or action on the case.

(c) Every final order shall be authenticated by the signatures of at least a quorum of all agency members, unless otherwise provided by law.

(d) Every final order shall immediately be mailed or delivered to each party and each other person requesting it.

(e) Every final order may be amended or modified by the same procedure used for the initial adoption of the order.

(f) When any professional licensing board or commission governed by Title 23, 24, or 28, and listed in § 10161(a) of this title, orders, at the conclusion of a hearing, that a license shall be revoked or suspended, the revocation or suspension shall be effective immediately. A written order, pursuant to this section, shall be served no later than 30 days after the hearing date.

(g) When any professional licensing board or commission governed by Title 23, 24, or 28, and listed in § 10161(a) of this title reaches its conclusions of law and determines an appropriate disciplinary action, if any, the Board or Commission shall issue a written decision

and order in accordance with this section. However, notwithstanding the provisions of subsection (c) of this section, the decision and order may be issued over the signature of only the President or other officer of the Board.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 77 Del. Laws, c. 369, § 1; 78 Del. Laws, c. 130, § 1.)

§ 10129. Ex parte consultations.

No member or employee of an agency assigned to participate in any way in the rendering of a case decision shall discuss or communicate, directly or indirectly, respecting any issue of fact or law with any person or party, except upon notice to and opportunity for all parties to participate. This section shall not apply to communications required for the disposition of ex parte matters authorized by law or to communications by and among members of an agency, the agency's staff and the agency's attorney.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

Subchapter IV

Licenses

§ 10131. Hearings; notice.

(a) Hearings relating to licenses may be held at a time fixed in the discretion of the agency unless timely requested by a party or required by law or regulation.

(b) Whenever an agency proposes to grant, renew or extend a license, it may do so without notice unless a law or regulation requires notice and opportunity for a hearing.

(c) Whenever an agency proposes to deny an application for a license, timely and properly made, or to revoke, suspend, annul or withdraw a license or where it is required by law or regulation to give notice, it shall first give written notice to the licensee or applicant of the intended action and the reasons therefor. The form of the notice shall comply as far as practicable with § 10122 of this title, except that instead of setting a hearing date, it may afford the party at least 10 days to request a hearing.

(d) Notice of a hearing shall be given at least 20 days before the day it is to be held.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10132. Effective date of agency's action.

(a) Whenever an application is made to renew a license or for a new license for an activity of a continuing nature, the activity does not become illegal until the application has been finally denied by the agency.

(b) Whenever an agency proposes to revoke, suspend, annul or withdraw a license, such action shall not be effective until a final order is issued, except when the public health, safety or welfare clearly requires emergency action and the agency's order so states.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10133. Withholding or denying licenses.

No license or renewal for which proper and timely application has been made shall be withheld or denied except for failure of the applicant to comply with the applicable laws and regulations.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10134. Revoking, suspending, annulling or withdrawing licenses.

No license shall be revoked, suspended, annulled or withdrawn unless the licensee fails to comply with the lawful requirements for retention of such license.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

Subchapter V

Judicial Review

§ 10141. Review of regulations.

(a) Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

(b) No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

(c) When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

(d) Except as provided in subsection (c) of this section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

(e) Upon review of regulatory action, the agency action shall be presumed to be valid and the complaining party shall have the burden of proving either that the action was taken in a substantially unlawful manner and that the complainant suffered prejudice thereby, or that

the regulation, where required, was adopted without a reasonable basis on the record or is otherwise unlawful. The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency acted.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 48, § 13.)

§ 10142. Review of case decisions.

(a) Any party against whom a case decision has been decided may appeal such decision to the Court.

(b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.

(c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.

(d) The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10143. Mandamus for agency action.

Any person aggrieved by the failure of an agency to take action required of it, by law, may bring an action in the Court for an appropriate writ of mandamus.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10144. Stay pending review.

When an action is brought in the Court for review of an agency regulation or decision, enforcement of such regulation or decision by the agency may be stayed by the Court only if it finds, upon a preliminary hearing, that the issues and facts presented for review are substantial and the stay is required to prevent irreparable harm.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10145. Commencement of review.

No petition, appeal or other application for relief of the Court shall be considered as having been taken or made until it has been filed with the Prothonotary and served upon the agency in accordance with the rules of the Court.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

Subchapter VI

Registration

§§ 10151-10155. Definitions; Delaware Administrative Commission created; composition; remuneration; term; duty of agencies; Register of Regulations; powers and duties of Commission [Repealed].

Repealed by 69 Del. Laws, c. 107, § 2, eff. January 1, 1994.

Subchapter VII

Application of Chapter

§ 10161. State agencies affected.

(a) This chapter shall apply only to the following agencies:

(1) Appeals Commission, as defined by § 301(b) of Title 4;

(2) State Banking Commissioner;

(3) Public Service Commission;

(4) Real Estate Commission;

(5) Delaware Human and Civil Rights Commission;

(6) Tax Appeal Board;

(7) State Insurance Commissioner;

(8) Industrial Accident Board;

(9) Environmental Appeals Board;

(10) Coastal Zone Industrial Control Board;

(11) State Board of Education;

(12) Merit Employee Relations Board;
(13) Division of Boiler Safety;
(14) Board of Veterinary Medicine;
(15) Board of Landscape Architecture;
(16) Board of Clinical Social Work Examiners;
(17) Board of Architects;
(18) Board of Podiatry;
(19) Board of Pilot Commissioners;
(20) Board of Chiropractic;
(21) State Board of Electrical Examiners;
(22) Board of Medical Licensure and Discipline;
(23) Council of the Delaware Association of Professional Engineers;
(24) Board of Occupational Therapy Practice;
(25) Division of Child Support Services;
(26) Board of Mental Health and Chemical Dependency Professionals;
(27) State Board of Dentistry and Dental Hygiene;
(28) Board of Nursing;
(29) Board of Examiners in Optometry;
(30) Board of Examiners of Psychologists;
(31) Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers;
(32) Board of Professional Land Surveyors;
(33) Board of Accountancy;
(34) Board of Pharmacy;
(35) Board of Geologists;
(36) Board of Cosmetology and Barbering;
(37) Commission on Adult Entertainment Establishments;
(38) Board of Physical Therapy and Athletic Trainers;
(39) Real Estate Commission;
(40) Board of Funeral Services;
(41) Board of Examiners of Nursing Home Administrators;
(42) Delaware Board of Charitable Gaming;
(43) Board of Massage and Bodywork;
(44) Committee of Dietetics/Nutrition;
(45) Council on Real Estate Appraisers.
(46) The Professional Standards Board;
(47) Election Commissioner;
(48) Board of Plumbing Examiners;
(49) Manufactured Home Installation Board;
(50) Division of Professional Regulation;
(51) Board of Home Inspectors; and
(52) Board of Elevator Mechanics.

(b) All agencies which are not listed in subsection (a) of this section shall only be subject to subchapters I and II of this chapter and §§ 10141, 10144 and 10145 of this title.

(c) Nothing in this section shall be construed to prevent prosecution under, or be otherwise inconsistent with, Titles 11 and 24.

(d) At a properly convened board meeting, the board president or chairperson of any professional licensing board governed by Title 23, 24, or 28 and listed in subsection (a) of this section that is not already authorized by statute to use hearing panels or committees to resolve cases, may nominate at least 3 members of the board, the 3 members being 2 professional members and 1 public member if practical, to serve on a hearing panel to decide disciplinary complaints and complaints of unlicensed practice. Nominees must be approved by a majority vote of the board members present at the properly convened meeting. The board president or chairperson shall designate 1 member of a hearing panel to serve as the hearing panel chair. Hearing panels shall consist of board members only.

(e) Notice of the panel hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of this title. All hearings shall be informal without use of rules of evidence. A verbatim record must be kept of all public hearings, a transcript of which must be provided at cost upon a party's request. Decisions of the hearing panel must be made by majority vote of the hearing panel members. Decisions must be based on the evidence presented at the hearing and must be supported by substantial evidence in the record. Decisions must not be based exclusively on hearsay.

(1) If the hearing panel determines that no violation of the applicable provisions of Title 23, 24, 28 or this title or any of the board's rules and regulations promulgated thereunder has occurred, it shall issue an order dismissing the complaint.

(2) If the hearing panel determines that a violation of the applicable provisions of Title 23, 24, 28 or this title or any of the board's rules and regulations promulgated thereunder has occurred, it shall issue an order stating its proposed findings of fact, conclusions of law, and disciplinary sanctions.

(3) If the respondent fails or refuses to appear, the hearing panel may nevertheless proceed to hear the complaint and render a decision.

(f) Orders issued by the hearing panel are not final until approved by the board having jurisdiction. By majority vote of the members present at a properly convened board meeting, the board shall approve or reject the hearing panel's written order based only on the information contained in the order. The board shall overturn the decision of a hearing panel only if it decides that a hearing panel decision is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If a board does not approve the hearing panel's order, the matter must be remanded to the hearing panel for further proceedings in accordance with the board's written reasons for withholding its approval. Where the respondent is in disagreement with the action of the board, the respondent may appeal the board's decision in accordance with the provisions of the Administrative Procedures Act. The court shall hear the appeal on the record. Stays shall be granted in accordance with § 10144 of this title. Copies of orders must be served personally or by registered or certified mail to each party.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 63 Del. Laws, c. 460, § 15; 63 Del. Laws, c. 461, § 18; 63 Del. Laws, c. 462, § 3; 64 Del. Laws, c. 1, § 2; 64 Del. Laws, c. 39, § 2; 64 Del. Laws, c. 161, § 1; 64 Del. Laws, c. 413, § 4; 64 Del. Laws, c. 476, § 9; 64 Del. Laws, c. 477, § 5; 64 Del. Laws, c. 483, § 2; 65 Del. Laws, c. 172, § 2; 65 Del. Laws, c. 228, § 7; 65 Del. Laws, c. 238, § 1; 65 Del. Laws, c. 378, § 6; 65 Del. Laws, c. 416, § 1; 66 Del. Laws, c. 105, § 10; 66 Del. Laws, c. 128, § 2; 67 Del. Laws, c. 144, § 9; 67 Del. Laws, c. 449, § 2; 68 Del. Laws, c. 297, § 1; 69 Del. Laws, c. 107, § 1; 69 Del. Laws, c. 306, § 3; 70 Del. Laws, c. 143, § 3; 70 Del. Laws, c. 582, §§ 3, 4; 71 Del. Laws, c. 185, § 3; 71 Del. Laws, c. 296, § 18; 71 Del. Laws, c. 298, § 4; 72 Del. Laws, c. 265, § 4; 72 Del. Laws, c. 294, § 54; 72 Del. Laws, c. 338, § 7; 72 Del. Laws, c. 418, §§ 3, 4; 72 Del. Laws, c. 486, § 23; 73 Del. Laws, c. 392, § 1; 75 Del. Laws, c. 105, §§ 6, 7; 75 Del. Laws, c. 365, §§ 5-11; 76 Del. Laws, c. 245, § 1; 76 Del. Laws, c. 413, § 4; 77 Del. Laws, c. 127, § 1; 77 Del. Laws, c. 319, § 1; 77 Del. Laws, c. 463, § 3; 78 Del. Laws, c. 102, § 1; 78 Del. Laws, c. 170, §§ 5-7; 78 Del. Laws, c. 376, § 3; 78 Del. Laws, c. 384, § 2; 79 Del. Laws, c. 168, § 2; 80 Del. Laws, c. 234, § 29; 81 Del. Laws, c. 280, § 54; 83 Del. Laws, c. 305, § 11; 83 Del. Laws, c. 469, § 2.)

Part X
General Regulations for State Agencies

Chapter 102
Delaware Legislative Oversight and Sunset Act

§ 10201. Definitions.

As used in this chapter:

(1) “Committee” means the Joint Legislative Oversight and Sunset Committee established by this chapter.

(2) “Committee staff” means the employees of the Division of Legislative Services who are assigned to support the Committee.

(3) “Entity” means a regulatory, administrative, advisory, executive, or legislative body of this State, including a board, bureau, commission, department, division, committee, council, association, authority, or organized body established by an act of the General Assembly of this State that meets any of the following:

a. Is given authority in the Delaware Code to regulate a business, occupation, or profession.

b. Is supported in whole or in part by public funds.

c. Expends or disburses public funds.

d. Is specifically charged by a public body to advise or make recommendations.

(4) “Focused review” means a specialized assessment of an entity, conducted under § 10212 of this title.

(5) “Full review” means a formal assessment of the entirety of an entity, conducted under § 10211 of this title. “Full review” does not include a focused review.

(6) “Highest administrative officer” means an official who is appointed by the Governor as a member of the Governor’s cabinet.

(7) “Performance evaluation” means the review mechanism under this chapter that is an assessment of an entity’s performance and function.

(8) “Self-report” means the report under § 10207 of this title.

(9) “Under review” means undergoing a process implemented under this chapter.

(62 Del. Laws, c. 301, § 3; 76 Del. Laws, c. 221, § 1; 80 Del. Laws, c. 260, § 1; 82 Del. Laws, c. 132, § 1; 84 Del. Laws, c. 66, § 1; 84 Del. Laws, c. 255, § 58.)

§ 10202. Declaration of policy.

(a) It is essential to the maintenance of a healthy state economy and a government that has the confidence of its citizens that the State establish a system of periodic legislative review of its entities. The review of entity performance and activities is consistent with other activities and goals of the General Assembly. The primary purpose of a full review or focused review under this chapter is to determine whether there is a genuine public need for the entity under review and, if so, to determine whether the entity is correctly performing to meet that need.

(b) The purpose of this chapter is to provide an action-forcing mechanism designed to increase the accountability of an entity through increased legislative scrutiny of the entity and its activities. The intent of the General Assembly is to establish a timetable and process for a full review or focused review of an entity and the services it provides and ultimately to review each entity established by or receiving financial assistance from the State.

(c) The purpose of this chapter is not to terminate an entity which the Committee determines is sufficiently meeting a recognized Delaware state need and is accountable and responsive to the public interests. Rather, the primary purpose of this chapter is to use the review mechanism to strengthen and support an entity that the Committee determines is meeting a recognized Delaware state need.

(62 Del. Laws, c. 301, § 3; 76 Del. Laws, c. 221, § 1; 80 Del. Laws, c. 260, § 1; 84 Del. Laws, c. 66, § 2.)

§ 10203. Committee composition; chair and vice chair; appointment; quorum; reimbursement; hearings.

(a) The Joint Legislative Oversight and Sunset Committee is composed of 5 members of the Senate appointed by the President Pro Tempore and 5 members of the House of Representatives appointed by the Speaker of the House of Representatives.

(1) Not more than 3 Senate appointees, nor 3 House appointees, may belong to the same political party.

(2) The committee chair and vice chair alternate each year between a Representative appointed by the Speaker of the House of Representatives and a Senator appointed by the President Pro Tempore of the Senate. During odd-numbered years, a Senator serves as chair and a Representative serves as vice chair; during even-numbered years, a Representative serves as chair and a Senator serves as vice chair.

(b) Committee members must be appointed in the first January of each General Assembly, or within 1 week of the organization of each respective house, whichever is later.

(c) Quorum. —

(1) A quorum consists of at least 6 committee members. A quorum must be present in order to transact business, except that a quorum is not required if the only business the Committee is transacting is to hear an entity under review give a presentation.

(2) A proposition is carried by a majority of the entire Committee, unless a statute or rule requires a larger number of affirmative votes. A vacancy on the Committee is not counted to determine the number of members needed to achieve a majority.

(3) [Repealed.]

(d) A member of the Committee is entitled to reimbursement from the appropriate funds of the member's house for the expenses that the member actually and necessarily incurs in performing the duties of the Committee. A request for reimbursement must be approved by the committee chair.

(e) A member of the Joint Finance Committee or Legislative Council may not serve on the Committee. However, this subsection does not apply when the minority party in either house has less than 7 members.

(f) Except as provided by Committee rules or § 10209(d) of this title, each committee hearing is open to the public, but only committee members and persons the chair designates are permitted to speak or otherwise participate.

(62 Del. Laws, c. 301, § 3; 63 Del. Laws, c. 44, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 221, § 1; 80 Del. Laws, c. 260, § 1; 84 Del. Laws, c. 66, § 3; 85 Del. Laws, c. 26, § 1.)

§ 10204. Committee staff; appropriations.

(a) Employees of the Division of Legislative Services and of the Office of the Controller General serve as the permanent staff of the Committee.

(b) The Committee may, by the affirmative vote of at least 6 members, provide for other assistance, equipment, or expenditures that are within the limits of the Committee's budget. The General Assembly shall appropriate funds that it considers necessary to carry out the Committee's activities and goals.

(62 Del. Laws, c. 301, § 3; 76 Del. Laws, c. 221, § 1; 80 Del. Laws, c. 260, § 1; 84 Del. Laws, c. 66, § 4; 84 Del. Laws, c. 255, § 59.)

§ 10205. Committee rules and regulations.

The Committee may adopt rules or regulations necessary to carry out the activities and goals of this chapter.

(62 Del. Laws, c. 301, § 3; 76 Del. Laws, c. 221, § 1; 80 Del. Laws, c. 260, § 1; 84 Del. Laws, c. 66, § 5.)

§ 10206. Committee subpoena powers.

(a) (1) The Committee may issue process to a witness at any place in this State and compel the witness's attendance or compel the production of a document, book, record, paper, or other object that may be necessary or proper for the purpose of a full review or focused review.

(2) The Committee may issue an attachment when necessary to obtain compliance with a subpoena or other process. An attachment issued under this section may be addressed to and served by any peace officer in this State.

(3) The committee chair shall issue in the name of the Committee a subpoena that the Committee requests by affirmative vote of a majority of committee members. If the chair is unavailable, the chair's designee may issue a subpoena or another lawful process under this section.

(b) Testimony taken under subpoena must be given under oath subject to the penalties of perjury, and must be reduced to writing.

(62 Del. Laws, c. 301, § 3; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 221, § 1; 80 Del. Laws, c. 260, § 1; 84 Del. Laws, c. 66, § 6.)

§ 10207. Entity self-report.

(a) *Self-report for full review. —*

An entity under full review shall forward to committee staff a self-report that includes all of the following information:

(1) A chart or diagram showing the greater entity of which it is a part, if any, and each entity over which it has jurisdiction.

(2) Entity goals and objectives, and the statutory authority, if any, for the goals and objectives.

(3) Each entity program that has existed for at least 1 year immediately before the date of the self-report.

(4) The total value of state funds or materials, or both, that the entity used for each of the 5 fiscal years immediately before the date that the Committee selects the entity for review.

(5) A listing of each provision in the Delaware Code from which the entity derives its rights, duties, or functions.

(6) The last 5 budget reports or similar documents for the period immediately before the date of the self-report, relating to each program priority, activity, or accomplishment.

(7) A concise and specific statement describing the performance or achievement of the entity relating to the criteria for review under § 10211 of this title.

(8) Additional information that the Committee or its staff may request, including a record, document, or file over which the entity has custody or jurisdiction, if the additional information is available.

(9) Summary and results related to each past, upcoming, or ongoing audit of the entity, including each completed audit report from the 5 fiscal years immediately before the date of the self-report.

(10) Each annual report the entity has published during the 5 fiscal years immediately before the self-report.

(b) *Self-report for focused review. —*

Subject to paragraph (f)(2) of this section, an entity under focused review shall forward to committee staff a self-report that includes the information under subsection (a) of this section that the staff requests of the entity.

(c) *Date self-report is due. —*

An entity under full review or focused review shall submit a self-report to committee staff not later than the date the staff establishes based on the Committee's needs.

(d) *Updates to self-report. —*

An entity under full review or focused review shall provide committee staff with updates, if any, to the information required under this section throughout the review.

(e) The full review or focused review process continues regardless of an entity's cooperation with the review.

(f) *Committee staff duties relating to self-report. —*

Committee staff shall do all of the following:

(1) Provide an entity under full review or focused review a template for the self-report, instructions for completing the self-report, and a date by which the self-report is due.

(2) Based on the scope of a focused review, as determined under § 10212(b)(3) of this title, committee staff shall determine which of the categories of information listed under subsection (a) of this section are appropriate for the focused review and include only those categories in the template staff provides an entity under paragraph (f)(1) of this section.

(3) Make the self-report available to the public after committee staff reviews the self-report for completeness and, if appropriate, provides the entity an opportunity to submit additional information, but not later than the date of the Committee's initial public hearing relating to the entity.

(62 Del. Laws, c. 301, § 3; 76 Del. Laws, c. 221, § 1; 80 Del. Laws, c. 260, § 1; 82 Del. Laws, c. 132, § 2; 84 Del. Laws, c. 66, § 7.)

§ 10208. Confidentiality; Freedom of Information Act.

(a) Committee staff shall treat as confidential each record or communication that an entity submits relating to the entity's focused review or full review, unless any of the following apply:

(1) Disclosure is necessary to enable committee staff to perform staff's duties under this chapter. Committee staff may disclose a record or communication under this paragraph only to the extent it is necessary to perform staff's duties.

(2) The entity did not maintain the record or communication as confidential before the review.

(3) The entity agrees in writing that the record or communication may be disclosed.

(b) On receipt of a record or communication that by law is confidential under subsection (a) of this section or privileged, committee staff shall maintain the confidentiality or privilege and may not further disclose or disseminate the information, except as provided under applicable state or federal law.

(c) Each record or communication exchanged between committee staff and an entity under full review or focused review that is exempt from public disclosure under the Freedom of Information Act, Chapter 100 of Title 29 before the exchange remains exempt after the exchange.

(84 Del. Laws, c. 66, § 8.)

§ 10209. Full review; hearing notice; committee staff duties; committee duties.

(a) The purpose of a full review is to evaluate an entity and its statues, policies, rules, regulations, and programs.

(b) *Notice of hearing. —*

Whenever possible, the Committee shall give 2 weeks' notice to an entity under full review of a committee hearing related to that entity; however, lack of notice does not affect the lawfulness of a committee action or decision.

(c) *Committee staff duties. —*

To prepare the committee for a full review of an entity, committee staff shall do all of the following:

(1) Fulfill staff's duties under § 10207(f) of this title, relating to the entity's self-report.

(2) Conduct a thorough review of the information that the entity under review provides in its self-report under § 10207(a) of this title.

(3) Obtain, verify, and review each report, audit, or action taken by another entity or organization concerning the entity under review.

(4) *Performance evaluation. —*

Conduct a performance evaluation of the entity under review.

a. The purpose of a performance evaluation is to do all of the following:

1. Improve the entity's accountability, effectiveness, and efficiency.

2. Determine how well the entity has served and is serving the public need.

b. A performance evaluation must be based on, at a minimum, all of the following:

1. Program effectiveness, including analysis of both of the following:

A. If the entity is a licensing entity, the extent to which the entity has permitted qualified applicants to be licensed.

B. The extent to which the entity has served the public need, using the criteria for review under § 10211 of this title.

2. Whether the entity has sufficient internal controls to achieve effective and efficient operations and provide a reliable reporting mechanism for internal and external use.

3. Whether the entity has complied with a law or another requirement that affects the entity's performance, including the extent to which the entity has recommended statutory changes, and whether those changes directly benefit the public or primarily benefit the entity, or another entity or organization, and benefit the public only indirectly.

(5) Prepare a staff report.

a. Staff shall compile and produce a staff report. The staff report must include information that assists the Committee in conducting a thorough review of the entity and meet the Committee's requirements under this section. The staff report must include at least all of the following:

1. Background information on the entity.

2. Staff's analysis, conclusions, and recommendations arising from the staff's independent research and information that the entity submits, including from the entity's self-report.

3. The entity's response, if any, to staff's analysis, conclusions, and recommendations.

4. Additional research that the Committee may request.

b. After staff produces the staff report, staff shall provide the entity an opportunity to review and comment on the report before the submitting the report to the Committee or making the report available to the public.

c. After the Committee and the entity under review receive the staff report, staff shall make the report available to the public.

(d) *Committee duties. —*

To review an entity, the committee shall do all of the following:

(1) Conduct the review at a public hearing.

(2) Consider the staff report and additional information that the entity under review or committee staff may provide.

(3) Deliberate and consider recommendations in the staff report.

(4) Create additional recommendations that the Committee determines is necessary or appropriate.

(5) Review the implementation of recommendations, if any, contained in an annual report relating to a previous full review or focused review of the entity.

(6) Take testimony relating to the full review or focused review from additional persons at the request of a committee member and approval of the chair.

(62 Del. Laws, c. 301, § 3; 76 Del. Laws, c. 221, § 1; 80 Del. Laws, c. 260, § 1; 82 Del. Laws, c. 132, § 3; 84 Del. Laws, c. 66, § 9.)

§ 10210. Public hearings.

(a) (1) From January through March each year, unless the needs of the General Assembly require otherwise, the Committee shall convene an initial hearing for each entity under full review or focused review that the chair schedules, to provide an opportunity for the Committee to meet with the entity to discuss the analysis, conclusions, and recommendations in the entity's staff report and otherwise fulfill the Committee's duties under § 10209(d) of this title for a full review or § 10212 of this title for a focused review.

(2) Following the initial public hearing under paragraph (a)(1) of this section, the Committee may, at the call of the chair, hold additional hearings as needed to complete conducting the full review or focused review. The entity's staff or highest administrative officer is not required to attend an additional hearing unless the chair requests their attendance.

(3) [Repealed.]

(4) To encourage participation by the general public, the Committee shall hold a public hearing in the early evening hours if the Committee determines that an evening meeting would better serve the full review or focused review, the entity under review, or the constituency that the entity serves.

(b) *Highest administrative officer attendance at public hearings. —*

The highest administrative officer of an entity under full review or focused review must be present at the initial public hearing relating to the review and at each additional public hearing for which the committee chair requests the officer's presence.

(1) The committee chair may excuse the highest administrative officer from the initial public hearing at the request of the officer, at the recommendation of committee staff, or as the chair may determine is appropriate.

(2) The highest administrative officer may, with the chair's approval, appoint a designee to meet the officer's obligations under this subsection.

(3) The Committee may designate an individual other than the highest administrative officer to meet the officer's obligations under this subsection.

(c) (1) Notwithstanding § 10203(f) of this title, at the initial public hearing held relating to an entity under full review or focused review, individuals in attendance, including members of the general public, representatives of the entity under review, and witnesses on behalf of either the entity or the general public, are entitled to be heard and to present evidence for the record.

(2) Testimony or written materials relating to a full review or focused review that a member of the general public offers may not be unreasonably refused, and the Committee must retain and consider the testimony or written materials during the review.

(3) Testimony or written materials relating to a full review or focused review that an entity or a witness on behalf of an entity, including an officer or another individual having a direct interest in the continued existence of the entity under review, must be accepted and the Committee must retain and consider the testimony or written materials during the review.

(62 Del. Laws, c. 301, § 3; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 221, § 1; 80 Del. Laws, c. 260, § 1; 82 Del. Laws, c. 132, § 4; 84 Del. Laws, c. 66, § 10.)

§ 10211. Criteria for full review.

(a) *Standard.* — (1) In conducting a full review of an entity, the Committee shall assess the entity based on each of the following:

a. Whether the entity is meeting a genuine Delaware state need.

b. Whether the entity should and can be strengthened or supported so that it can perform correctly to meet its purpose.

(2) The genuine public need for an entity under full review and whether the entity is satisfactorily meeting that need is not assumed. The entity has the burden of showing, through the criteria for review under subsection (b) of this section, that there is a genuine public need and that the entity is meeting that need.

(b) *Criteria for review.* —

The criteria to conduct a full review of an entity are as follows:

(1) The purpose of the act establishing the entity and the manner of the entity's operation designed to achieve the purpose.

(2) Whether it can be independently established, apart from information supplied by the entity or persons having a direct interest in the continued existence of the entity, that the termination of the entity would be detrimental to the public health, safety, or welfare, and whether a possibility exists that the termination would be beneficial to the public health, safety, or welfare.

(3) An assessment of less restrictive or other methods of achieving the stated objectives of the act establishing the entity and if those other methods provide as much protection to the public.

(4) Whether a law establishes a clear mandate to the entity and whether the entity has complied with the mandate, if any, in the best interests of the general public.

(5) Whether another program, activity, or entity has the same or similar objectives, and, if so, a comparison of the costs and effectiveness of that program, activity, or entity, and the identification of a duplicate program, activity, or entity with that of the entity under review.

(6) Whether, in the 3 years before the entity's full review, the entity has recommended to the General Assembly only statutory changes of primary benefit to the public, or if the recommended changes were primarily of benefit to the entity or the occupation, business, or institution which the entity serves or regulates.

(7) The efficiency with which the entity meets its statutory objectives.

(8) Whether applications and formal public complaints filed with the entity have been processed effectively and fairly.

(9) Whether the entity has issued professional or occupational licenses only to qualified applicants, and whether the entity has unfairly restricted access to a person wishing to engage in a regulated business, occupation, or profession.

(10) The extent to which the entity has encouraged participation by the public in making an entity rule, regulation, or decision, as opposed to participation solely by those the entity regulates, and the extent to which public participation has resulted in a rule, regulation, or decision compatible with the objectives of the entity.

(11) Whether the entity has operated in an open and accountable manner with public access to records and meetings, and whether there are safeguards against possible conflicts of interests.

(12) Whether an entity's provision or rule relating to ethical conduct, if any, is in fact limited to ethical or moral conduct, or if the provision or rule contains primarily commercial prohibitions and restrictions relating to profits, advertising, or another business topic.

(13) The extent to which the entity has complied with Chapters 58, 100, and 101 of this title; § § 6506, 6512, and 6519 of this title; and Section 8 of Article XV of the Delaware Constitution, or with the requirements of a law which is a direct successor to any of those listed in this paragraph (b)(13).

(14) A claimed impact as a result of federal intervention or loss of federal funds if the entity is terminated, the impact of which must be fully substantiated.

(15) Additional criteria that the Committee determines is appropriate or necessary to complete the entity's full review.

(62 Del. Laws, c. 301, § 3; 76 Del. Laws, c. 221, § 1; 80 Del. Laws, c. 260, § 1; 84 Del. Laws, c. 66, § 11.)

§ 10212. Focused review.

(a) The Committee may conduct a focused review of an entity if the Committee determines that a full review of the entity is not appropriate or necessary. The purpose of a focused review is to evaluate a component within an entity, such as a specific statute, policy, rule, regulation, or program related to the entity. A focused review is in contrast to the broader evaluation of a full review under this chapter.

(b) A focused review is conducted as follows:

(1) The Committee may select an entity or component of an entity, such as a program or sub-entity, for a focused review in the same manner that it selects an entity for a full review under § 10213(c) of this title.

(2) The Committee may begin a focused review immediately and is not subject to the timeline under § 10210(a) of this title.

(3) Committee staff shall work with the Committee to establish the scope of the focused review.

(4) Committee staff shall conduct research based on the scope established under paragraph (b)(3) of this section and any other issue, concern, defect, or problem that the Committee may request or as the research may indicate.

(5) The Committee shall set a deadline for completion of the committee staff's research, based on staff's estimation of the time needed to complete the research and the emergency nature, if any, of the focused review.

(6) In conducting research under this section, committee staff shall engage the general public and each appropriate entity or organization, including the entity under focused review, to request written testimony, comment, or other material to aid the Committee in the focused review.

(7) Committee staff shall prepare a staff report containing a summary of the staff's research and staff's findings, conclusions, and recommendations. Committee staff shall submit the report to the Committee not later than the deadline that the Committee sets under paragraph (b)(5) of this section, unless staff requests and the chair approves an extension of time.

(8) After committee staff has submitted the staff report under this section to the Committee, the Committee shall conduct the focused review by following § 10209(d) of this title.

(9) Committee staff shall make the staff report available to the public not later than the date of the Committee's initial public hearing under paragraph (b)(8) of this section.

(10) To conclude a focused review, the Committee shall publish each recommended change that the Committee may determine is necessary or appropriate.

(68 Del. Laws, c. 159, § 6; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 221, § 1; 80 Del. Laws, c. 260, § 1; 84 Del. Laws, c. 66, § 12; 84 Del. Laws, c. 514, § 61.)

§ 10213. Annual report; review selection.

(a) **Annual report. —** The Committee shall submit an annual report, compiled by committee staff and approved by the Committee, to the General Assembly, the Governor, and the Director and the Librarian of the Division of Legislative Services each year not later than July 31. The annual report must contain at least all of the following:

(1) A summary of the outcomes and Committee's actions relating to each full review or focused review that the Committee conducts since its previous annual report, including each of the recommendations the Committee makes under § 10214 of this title.

(2) A summary of the legislation that the Committee approves for introduction since the Committee's previous annual report.

(3) A list of the entities the Committee selects for full review or focused review the next year following the report.

(4) Other information that the Committee may wish to include.

(b) **Review selection. —**

The Committee must conduct at least 4 full reviews or focused reviews each year. Selection for full review or focused review may take into consideration all of the following:

(1) The number of entities whose full review or focused review is being continued to the following year. A continued full review or focused review may be counted as 1 of the 4 required reviews.

(2) The number of entities automatically scheduled for a full review or focused review.

(3) The number of entities that the General Assembly may add.

(4) The number of entities that the Committee adds under subsection (c) of this section.

(c) The Committee may, by 6 affirmative votes, add an entity to, remove an entity from, or replace an entity on the Committee's full review and focused review schedule.

(62 Del. Laws, c. 301, § 3; 68 Del. Laws, c. 23, § 1; 68 Del. Laws, c. 159, § 5; 76 Del. Laws, c. 221, § 1; 80 Del. Laws, c. 260, § 1; 84 Del. Laws, c. 66, § 13; 84 Del. Laws, c. 255, § 60.)

§ 10214. Committee recommendations; authority to recall entity.

(a) For each entity under full review or focused review, the Committee may recommend 1 or more of the following:

(1) a. Continuance of the entity as is.

b. Termination of the entity.

c. Termination of a program within the entity or a rule or regulation adopted by the entity.

d. Consolidation, merger, or transfer of the entity or of a function of the entity.

e. Continuation, holdover, or termination of the entity unless or until certain conditions are met or modifications are made, by legislation or otherwise, within a specified period of time.

(2) Budget appropriation limits for an entity.

(3) In general or specific terms, legislation which the Committee considers necessary to carry out its decision as to whether an entity should be continued or terminated.

(4) Legislation to amend the entity's governing statute or a related statute.

(b) When the Committee has released an entity from full review or focused review, it may recall the entity to a public hearing before the Committee to consider making additional recommendations under subsection (a) of this section if any of the following circumstances apply:

(1) The entity has the ability to meet a certain condition or make a modification that the Committee recommends, but fails to do so.

(2) The Committee recommends legislation to amend the entity's governing statute or a related statute, but, for any reason, the legislation fails to be enacted into law.

(3) The entity fails to submit to the Committee a report that the Committee requests with a status update on the implementation of a recommendation, on a date that the Committee determines.

(62 Del. Laws, c. 301, § 3; 68 Del. Laws, c. 159, § 5; 76 Del. Laws, c. 221, § 1; 80 Del. Laws, c. 260, § 1; 81 Del. Laws, c. 191, § 1; 81 Del. Laws, c. 238, § 1; 84 Del. Laws, c. 66, § 14; 84 Del. Laws, c. 514, § 62.)

§ 10215. Subsequent review; continuation of operations during review.

(a) An entity that has successfully completed a full review under this chapter or that has been re-established is not subject to another full review until the sixth year following its last full review, unless the Committee determines by an affirmative vote of 6 members that a sooner full review is reasonable and necessary.

(b) An entity which has been recommended for termination or reorganization, but which nevertheless is continued by legislative action or otherwise, must be placed on the Committee's review schedule for a full review at the end of 4 calendar years from the date of the entity's originally-scheduled review date. An entity which is reorganized at the Committee's recommendation must be placed on the review schedule for a full review or focused review at the end of 4 calendar years from the date of the entity's originally-scheduled full review or focused review date.

(c) An entity shall continue conducting its regular business throughout its full review or focused review unless the Committee requests otherwise in writing.

(62 Del. Laws, c. 301, § 3; 68 Del. Laws, c. 159, § 5; 76 Del. Laws, c. 221, § 1; 84 Del. Laws, c. 66, § 15.)

§ 10216. Entity termination; reorganization or merger; re-establishment.

(a) *Automatic termination.* —

If the Committee recommends the termination of an entity and the entity is not re-established by an act of the General Assembly, the entity automatically terminates effective July 1 of the next calendar year after the Committee's annual report in which the Committee first recommends the termination.

(b) *Termination of a lesser-included entity.* —

When an entity is terminated under this chapter, each lesser-included entity of the terminated entity is also terminated at the same time and under the same conditions, unless at least 1 of the following occur:

(1) The Committee specifically exempts the lesser-included entity from termination.

(2) A law exempting the lesser-included entity from termination is enacted before the end of June 30 of the next calendar year after the Committee submits its annual report regarding the entity's termination.

(c) *Reorganization or merger.* —

If the Committee recommends that the entity under review is reorganized or merged with another entity, the Committee must introduce legislation establishing the reorganization or merger not later than June 30 of the next calendar year after the Committee submits its annual report recommending the reorganization or merger. If legislation reorganizing or merging the entity is not enacted, the entity automatically terminates effective on the date that the General Assembly in which the legislation is introduced expires.

(d) [Repealed.]

(e) A bill to re-establish an entity that has been recommended for termination or reorganization must relate only to that specific entity, and the name of the affected entity must be stated in the title of the bill.

(62 Del. Laws, c. 301, § 3; 68 Del. Laws, c. 159, § 5; 76 Del. Laws, c. 221, § 1; 80 Del. Laws, c. 260, § 1; 84 Del. Laws, c. 66, § 16.)

§ 10217. Concluding year for terminated entity; fiscal matters.

(a) *Concluding year. —*

If the Committee recommends terminating an entity and legislation terminating the entity is not introduced in the same calendar year that the Committee makes the recommendation to terminate, the entity may continue in temporary existence until the end of the next calendar year following the recommendation for termination, only to properly conclude the entity's business.

(1) The Committee's recommendation to terminate an entity or legislation introduced but not enacted that terminates the entity does not reduce or otherwise limit the entity's power and authority during the entity's concluding year.

(2) On the expiration of the concluding year, all of the entity's rights, powers, and functions cease. Unobligated or unexpended appropriations of an entity terminated under this chapter lapse at the end of the concluding year.

(b) *Fund transfer. —*

At the end of a terminated entity's concluding year, money in a dedicated fund of another entity on behalf of the terminated entity must be immediately transferred to the General Fund of the State Treasury, unless otherwise provided for by law. A law or portion of a law which dedicates money to a specific fund of a terminated entity is automatically repealed at the end of the entity's concluding year.

(c) *Limitation on spending. —*

If a terminated entity is funded in the Budget Appropriation Act for each year of the General Assembly, the entity may not spend or obligate the funds after December 31 of the concluding year or on enactment of a law terminating the entity, whichever occurs first, unless specifically provided for by law.

(d) *Property and records. —*

If a terminated entity is part of a larger entity, all property and records in the custody of the terminated entity must be transferred at the end of its concluding year to the next largest entity of which the terminated entity was a part. If the terminated entity was itself the largest entity or was an independent entity, the property or records must be transferred to the Secretary of State.

(e) *Bonded indebtedness. —*

If a terminated entity has outstanding bonded indebtedness remaining at the end of its concluding year or on enactment of legislation terminating the entity, the responsibility for the management of the repayment of the bonded indebtedness through the continuation of the entity functions, limited merely to the repayment function, is vested in the State Treasurer. The entity's claim or a claim against the entity continues and may not be terminated with the entity.

(f) *Delaware Code. —*

Each reference in the Delaware Code to a terminated entity is invalid on the expiration of the entity's concluding year or on enactment of legislation terminating the entity, whichever occurs first, unless specifically retained.

(62 Del. Laws, c. 301, § 3; 68 Del. Laws, c. 159, § 5; 76 Del. Laws, c. 221, § 1; 84 Del. Laws, c. 66, § 17.)

§ 10218. Merit system employees.

If the termination of an entity or an entity's program or activity results in unemployment for an individual employed under the Merit System of Personnel Administration [Chapter 59 of this title], the unemployed individual is entitled to first preference in each other state employment opportunity which arises thereafter for which the unemployed individual is qualified. The unemployed individual has the right of first refusal for a state employment opportunity until the individual obtains permanent employment.

(62 Del. Laws, c. 301, § 3; 68 Del. Laws, c. 159, § 5; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 221, § 1; 84 Del. Laws, c. 66, § 18.)

§ 10219. Monitoring recommendations.

During each legislative session, committee staff shall do all of the following:

(1) Monitor legislation affecting the entity for at least 2 years after an entity's full review or focused review concludes.

(2) Periodically report to the Committee a proposed or actual legislative, policy, or regulation change, if any, relating to an entity previously under full review or focused review, if the change may result in the Committee modifying a recommendation made during the review.

(76 Del. Laws, c. 221, § 1; 80 Del. Laws, c. 260, § 1; 84 Del. Laws, c. 66, § 19.)

Part X
General Regulations for State Agencies

Chapter 103
Business Registration and Licensing System

§ 10301. Findings and purpose.

The General Assembly finds that it is necessary to establish a centralized program for business registration and licensing in order to make it convenient and easy for businesses, especially small businesses, to use. The General Assembly also finds that it is necessary to establish a procedure which will reduce the total number of licenses required to do business in this State. This can be accomplished by development of a computerized system capable of storing, retrieving and exchanging license information as well as issuing and renewing master licenses while at the same time allowing the authority for determining if any requested license shall be issued to remain with the agency authorized to issue the license.

(64 Del. Laws, c. 12, § 1.)

§ 10302. Definitions.

As used in this chapter:

(1) [Repealed.]

(2) "License" means the whole or part of any agency permit, license, certificate, approval, registration, charter or any form or permission required by law, including agency rule, to engage in any activity.

(3) "Master license" means the document designed for public display issued by the system which certifies individual state agency approval for licenses the State requires for any person subject to this chapter.

(4) [Repealed.]

(5) "System" means the business registration and licensing center established by this chapter.

(64 Del. Laws, c. 12, § 1; 69 Del. Laws, c. 458, § 1; 81 Del. Laws, c. 49, § 3.)

§ 10303. Feasibility study authorized; duties; agencies to review licenses; development plan; rules and regulations [Repealed].

(64 Del. Laws, c. 12, § 1; 64 Del. Laws, c. 457, §§ 1-3; 65 Del. Laws, c. 355, § 1; 68 Del. Laws, c. 290, §§ 184, 185; 69 Del. Laws, c. 458, § 1; 75 Del. Laws, c. 88, § 17(3); repealed by 81 Del. Laws, c. 49, § 3, eff. July 1, 2017.)

§ 10304. Board of Review [Repealed].

(64 Del. Laws, c. 12, § 1; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 17(3); repealed by 81 Del. Laws, c. 49, § 3, eff. July 1, 2017.)

§ 10305. Maximum period for agency review.

Each agency administering licenses shall publish, prior to January 1, 1985, regulations prescribing the maximum period of review for each specific license or permit administered by that agency. No license or renewal for which proper and timely application has been made shall be withheld or denied because of the failure of an agency to act within the prescribed maximum period of review. Each agency will remit the application or license fee to any business if its request for a license or permit is not acted upon within the prescribed maximum period for agency review. Nothing within this section shall restrict an agency from denying approval for failure of the applicant to comply with the applicable laws and regulations.

(64 Del. Laws, c. 457, § 4.)

§ 10306. Distribution of license renewal application.

Every state agency shall regularly mail or distribute to Delaware businesses the renewal form or application necessary for retention or renewal of any regularly renewable license. No license shall be withheld, or denied, if the administering agency failed to provide the applicant with the information necessary for a proper and timely renewal or retention of a license.

(64 Del. Laws, c. 457, § 5.)

§ 10307. Development Advisory Service; composition; duties [Repealed].

Repealed by 74 Del. Laws, c. 186, § 2, effective Feb. 14, 2004.

§ 10308. Cooperation of state agencies.

The General Assembly hereby directs all state agencies to offer their full cooperation in the implementation of this chapter.

(64 Del. Laws, c. 12, § 1; 64 Del. Laws, c. 457, § 7.)

Part X
General Regulations for State Agencies
Chapter 104
Regulatory Flexibility Act

§ 10401. Short title.

This chapter shall be known and may be cited as the "Regulatory Flexibility Act."

(64 Del. Laws, c. 51, § 1.)

§ 10402. Declaration of policy.

(a) The General Assembly finds and declares that:

(1) Numerous instances of obtaining compliance with state regulatory and reporting requirements impose inequitable demands on individuals of limited means and on small businesses.

(2) Regulatory efforts to protect the state's health, safety and economic welfare have imposed burdensome legal, accounting and consulting costs upon individuals, organizations and businesses of limited resources and are adversely affecting competition in that sphere of the marketplace.

(3) The scope and volume of regulations already in effect have created high entry barriers in many small industries and has discouraged potential entrepreneurs from introducing beneficial products and processes.

(4) The practice of treating all regulated individuals, organizations and businesses in uniform manner for purposes of regulatory and reporting requirements has led to inefficient use of regulatory agency resources, enormous enforcement problems and, in some cases, action inconsistent with the legislative intent of health, safety and economic welfare legislation.

(5) Government information collection has not adequately weighed the privacy rights of individuals and organizations against the government's need for information because the design of the regulatory process has encouraged regulators to treat information as a free good.

(6) The deep public dissatisfaction with the regulatory process has stemmed in large part from a public perception of burdensome regulations failing to correct key state problems.

(b) It is the purpose of this chapter to establish as a principle of regulatory policy that regulatory and reporting requirements fit the scale of those being regulated, that fewer, simpler requirements be made of individuals and small businesses and that to achieve these ends agencies be empowered and encouraged to issue regulations which apply differently to individuals and small businesses than to larger entities.

(64 Del. Laws, c. 51, § 1.)

§ 10403. Definitions [For application of this section, see 80 Del. Laws, c. 112, 7; and 80 Del. Laws, c. 113, 8].

As used in this chapter:

(1) "Agency" means any authority, department, instrumentality, commission, offices, board or other unit of state government authorized by law to make regulations or issue licenses. Agency does not include the General Assembly, courts, municipalities, counties or other political subdivisions, joint state-federal, interstate or inter-municipal authorities or their agencies.

(2) "Agency regulatory statement" means any analysis or statement required to be submitted for publication by an agency to the Registrar of Regulations in accordance with this chapter.

(3) "Executive branch agency" means, for purposes of this chapter only, the Department of Agriculture, Department of Correction, Delaware National Guard, Delaware State Housing Authority, Department of Education, Department of Finance, Department of Health and Social Services, Department of Labor, Office of Management and Budget, Department of Natural Resources and Environmental Control, Department of Safety and Homeland Security, Department of Services for Children, Youth and Their Families, Department of State, Department of Technology and Information, Department of Human Resources and Department of Transportation.

(4) "Individual" means any natural person; provided, however, that the term "individual" shall not include any natural person who is affected by a regulation in such person's capacity as an officer, director or employee of an organization which is not a small business.

(5) "Small business" means any not-for-profit enterprise, sheltered workshop or business enterprise which is engaged in any phase of manufacturing, agricultural production or personal service, regardless of the form of its organization, when such enterprise or workshop employs fewer than 50 persons, has gross receipts of less than $10,000,000 and is not owned, operated or controlled by another business enterprise.

(64 Del. Laws, c. 51, § 1; 80 Del. Laws, c. 111, § 1; 80 Del. Laws, c. 112, § 1; 80 Del. Laws, c. 113, § 1; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 66, § 62.)

§ 10404. Consideration of possible exemptions [For application of the repeal of this section, see 80 Del. Laws, c. 112, § 7; and 80 Del. Laws, c. 113, § 8] [Repealed].

(64 Del. Laws, c. 51, § 1; repealed by 80 Del. Laws, c. 112, § 2, eff. July 22, 2015.)

§ 10404A. Regulatory impact statements [For application of this section, see 80 Del. Laws, c. 112, § 7].

(a) Any agency that proposes to adopt or amend any regulation under the Administrative Procedures Act, § 10101 et seq. of this title, that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses shall submit a regulatory impact statement to be published by the Registrar of Regulations as part of the notice requirements set forth in § 10115 of this title. Each regulatory impact statement shall include:

(1) A specific reference to the statutory provision which allows for the adoption or amendment of the rule or regulation and the statutory provisions which address the subject matter of the rule or regulation;

(2) A description of the purpose of the regulation;

(3) An identification of the individuals and/or small businesses that would be subject to compliance under the regulation;

(4) A good-faith estimate by the agency of the potential cost of compliance for individuals and/or small businesses, which at minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation; and

(5) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, to the extent such methods are not otherwise described herein.

(b) The following regulations are exempt from this section:

(1) Regulations that are not substantially likely to impose additional costs or burdens upon individuals and/or small businesses; provided, however, that any agency making such a determination shall include a statement to that effect as part of the notice requirements set forth in § 10115 of this title;

(2) Emergency regulations adopted pursuant to § 10119 of this title;

(3) Regulations that are exempt from the procedural requirements of the Administrative Procedures Act, § 10101 et seq. of this title, pursuant to § 10113(b) of this title;

(4) Regulations that define standards of conduct or qualifications of individuals applying for licensure or as licensed professionals;

(5) Regulations that are required by federal law and have already complied with the federal Regulatory Flexibility Act [5 U.S.C. § 601 et seq.]; and

(6) Such other regulations as may be determined from time to time in accordance with this chapter.

(80 Del. Laws, c. 112, § 3.)

§ 10404B. Regulatory flexibility analyses [For application of this section, see 80 Del. Laws, c. 113, § 8].

(a) Any agency that proposes to adopt or amend any regulation under the Administrative Procedures Act, § 10101 et seq. of this title, that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses shall submit a regulatory flexibility analysis to be published by the Registrar of Regulations as part of the notice requirements set forth in § 10115 of this title. In connection herewith, agencies shall consider, where applicable, lawful, feasible and desirable, the following methods of reducing the additional costs and burdens of proposed regulations on individuals and small businesses:

(1) The establishment of less stringent compliance or reporting requirements;

(2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements;

(3) The consolidation or simplification of compliance or reporting requirements;

(4) The establishment of performance standards to replace design or operational standards required in the proposed regulation;

(5) The exemption of certain individuals or small businesses from all or part of the requirements contained in the proposed regulation; and

(6) Such other alternative regulatory methods that will accomplish the objectives of the proposed regulation while minimizing the adverse impact upon individuals and small businesses.

(b) The following regulations are exempt from this section:

(1) Regulations that are not substantially likely to impose additional costs or burdens upon individuals and/or small businesses; provided, however, that any agency making such a determination shall include a statement to that effect as part of the notice requirements set forth in § 10115 of this title;

(2) Emergency regulations adopted pursuant to § 10119 of this title;

(3) Regulations that are exempt from the procedural requirements of the Administrative Procedures Act, § 10101 et seq. of this title, pursuant to § 10113(b) of this title;

(4) Regulations that define standards of conduct or qualifications of individuals applying for licensure or as licensed professionals;

(5) Regulations that are required by federal law and have already complied with the federal Regulatory Flexibility Act [5 U.S.C. § 601 et seq.]; and

(6) Such other regulations as may be determined from time to time in accordance with this chapter.

(80 Del. Laws, c. 113, § 3.)

§ 10405. Transmission of notice of proposed regulation to General Assembly standing committees; comments [For application of this section, see 80 Del. Laws, c. 112, § 7].

Upon receipt of a notice from an agency pursuant to § 10115 of this title that includes an agency regulatory statement, the Registrar of Regulations shall forthwith transmit such notice and agency regulatory statement to, and obtain the comments, if any, of, the appropriate

standing committees of the General Assembly with oversight responsibilities for legislation affecting that agency with respect to the potential impact of such proposed regulation upon individuals and/or small businesses. Nothing in this section shall require any standing committee to meet, to consider any notice hereunder, or to provide any comments in connection herewith.

(64 Del. Laws, c. 51, § 1; 80 Del. Laws, c. 112, § 4.)

§ 10406. Application of exemption.

Whenever the results of such consideration by an agency indicate that it is lawful, desirable and feasible to exempt individuals and/or small businesses or to set lesser standards of compliance by individuals and/or small businesses, the agency shall issue a rule or regulation containing an appropriate exemption for such individual and/or small businesses or setting lesser standards for compliance by individuals and/or small businesses.

(64 Del. Laws, c. 51, § 1.)

§ 10407. Review of regulations of executive branch agencies.

In accordance with the provisions of this section, each executive branch agency shall conduct a periodic review of regulations promulgated by such agency to determine which regulations, if any, should be modified or eliminated. The review process hereunder shall commence no later than January 1, 2016, and shall recommence on a recurring basis every 4 years. Reviews by executive branch agencies hereunder shall be conducted in accordance with the following procedures:

(1) Each executive branch agency shall be assigned a 3-month regulatory review period by the Office of the Governor or any executive branch agency designated thereby. During such regulatory review period, each executive branch agency shall solicit public input, and shall conduct its own in-depth internal review, to identify regulations promulgated by such agency 4 years ago or more for possible modification or elimination.

(2) During its regulatory review period, each executive branch agency:

a. Shall conduct at least 1 public hearing in each county, notice of which shall be provided in accordance with the Administrative Procedures Act, § 10101 et seq. of this title ("APA");

b. Shall accept recommendations and input, in person, by mail, by fax, and via an online submission form; and

c. Shall adopt procedures to allow for the submission of anonymous recommendations and input.

(3) At the conclusion of its regulatory review period, each executive branch agency shall evaluate the comments, proposals, and recommendations received or generated, and shall submit any revisions (i.e., regulations to be eliminated or modified) to the Register of Regulations for publication in accordance with the APA.

(4) No later than 12 months from the commencement of any regulatory review process described herein, the Office of the Governor, or any executive branch agency designated thereby, shall submit a report to General Assembly detailing the regulations eliminated or modified as a result of such process.

(5) Notwithstanding the foregoing, each executive branch agency shall be required to consider only those regulations adopted pursuant to the APA 4 years ago or more for which it has direct promulgating authority. In connection herewith, no executive branch agency shall be required to consider regulations administered by an executive branch agency but require adoption or amendment by a board, commission, or other agency, including but not limited to regulations administered by the Department of State's Division of Professional Regulation that define standards of conduct or qualifications of individuals applying for licensure or as licensed professionals. If an executive branch agency does not have any regulations adopted pursuant to the APA 4 years ago or more for which it has direct promulgating authority, it shall not be subject to the procedures described in this section.

(6) In connection herewith, the Office of the Governor, or any executive branch agency designated thereby, may promulgate guidelines to assist executive branch agencies in implementing the requirements of this section. Such guidelines shall be subject to the APA, and may include but shall not be limited to:

a. Coordinating the regulatory review period of each executive branch agency to maximize public input, and to minimize the administrative burden imposed upon such agency and the Register of Regulations to the extent possible;

b. Requirements relating to the timing and content of any notice to be published by each executive branch agency in connection with its regulatory review period; and

c. A description of procedures to allow for the submission of anonymous recommendations and input.

(64 Del. Laws, c. 51, § 1; 80 Del. Laws, c. 111, § 2.)

§ 10408. Interagency cooperation.

Every agency of state government is authorized and required to furnish upon request such advice and assistance to any other agency considering exemptions pursuant to this chapter.

(64 Del. Laws, c. 51, § 1.)

§ 10409. Guidelines [For application of this section, see 80 Del. Laws, c. 112, § 7; and 80 Del. Laws, c. 113, § 8].

(a) No later than November 15, 2015, the Registrar of Regulations, the Office of Management and Budget (OMB), and the Department of State, in consultation with such regulatory agencies, boards, and commissions as may be necessary or desirable, shall submit for

final publication guidelines to assist state agencies in preparing the agency regulatory statements required pursuant to this chapter. The adoption of such guidelines shall be subject to the Administrative Procedures Act, § 10101 et seq. of this title, with the OMB serving as the adopting agency.

(b) The guidelines shall include, but are not limited to:

(1) Determining when, and under what circumstances, a proposed regulation is substantially likely to impose additional costs or burdens on individuals and/or small businesses;

(2) Identifying and evaluating alternative methods of achieving the purpose of a proposed regulation;

(3) Determining the potential cost of complying with a proposed regulation, including projected reporting, recordkeeping, and other administrative costs; and

(4) Evaluating and adopting such additional exemptions from the requirements applicable to agency regulatory statements as may be necessary or desirable.

(80 Del. Laws, c. 112, § 5; 80 Del. Laws, c. 113, § 4.)

Part X
General Regulations for State Agencies

Chapter 105
The Delaware Governmental Accountability Act

§ 10501. Short title.

This chapter may be cited as the “Delaware Governmental Accountability Act.”

(70 Del. Laws, c. 492, § 1.)

§ 10502. Purpose.

(a) The General Assembly believes that it is desirable to gather additional program information in order to make better informed policy decisions on statewide programs and services.

(b) The General Assembly further believes that the development of performance measures and standards for governmental programs will result in a more efficient and effective allocation and utilization of state resources.

(c) The purpose of this chapter shall be to enable the Director of the Office of Management and Budget to assist the General Assembly in reviewing the appropriate information and documentation by agencies and the budget office for distribution to the Joint Finance Committee.

(d) The Director of the Office of Management and Budget and the Controller General shall work in concert to revise budget documents to include the following:

(1) A comprehensive mission statement inclusive of the major functions and operations of the agency;

(2) A performance measure for each Internal Program Unit;

(3) An organizational chart for each department;

(4) A section in the budget book detailing an agency’s background and accomplishments; and

(5) A section in the budget book describing the link between the proposed allocation of services and what programs and/or services the agency will be able to accomplish.

(70 Del. Laws, c. 492, § 1; 75 Del. Laws, c. 88, § 21(13).)

§ 10503. Budget products.

(a) No later than January 30 of each year, the Director of the Office of Management and Budget will submit annual budget documents and supporting information inclusive of the recommended additions detailed above.

(b) The secretary or director of each agency shall discuss the mission statement, performance measures and funding requests with the General Assembly’s Joint Finance Committee Budget Hearing.

(70 Del. Laws, c. 492, § 1; 75 Del. Laws, c. 88, § 21(13).)

Part X
General Regulations for State Agencies

Chapter 106
Improving Communication Assistance for Individuals with Limited English Proficiency and Disabilities

(84 Del. Laws, c. 454, § 1.)

§ 10601. Background and purpose [For application of this section, see 84 Del. Laws, c. 454, § 2][Expires Sept. 30, 2026, pursuant to 84 Del. Laws, c. 454, § 4].

The background and purpose of this chapter are as follows:

(1) Many Delaware state public entities and programs receive federal assistance and are therefore required by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., to take reasonable steps to provide meaningful access to services for individuals with limited English proficiency. Providing meaningful access can include offering free and timely interpretation services and translation of vital documents.

(2) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., and Delaware state law require effective communication for individuals with disabilities. Providing effective communication under these laws can include offering auxiliary aids such as sign language interpreters.

(3) The General Assembly is committed to ensuring that all individuals, regardless of language or communication method, may meaningfully participate in important programs. This chapter is intended to provide the General Assembly with preliminary information about compliance with federal and Delaware state laws regarding language and communication access by obtaining reports from a sample of Delaware state public entities and programs. Additionally, this chapter provides support for language and communication assistance for individuals renting or purchasing a home or facing eviction or foreclosure.

(84 Del. Laws, c. 454, § 1.)

§ 10602. Definitions [For application of this section, see 84 Del. Laws, c. 454, § 2][Expires Sept. 30, 2026, pursuant to 84 Del. Laws, c. 454, § 4].

For purposes of this chapter:

(1) “Auxiliary aid” means as “auxiliary aids and services” is defined in 28 C.F.R. § 35.104.

(2) “Effective communication” means appropriate steps must be taken to ensure that communications with individuals with disabilities or LEP are as effective as communications with others. Federal and Delaware state law and regulation, and the interpretation thereof, govern how to determine whether “effective communication” has been provided.

(3) “Individual with a disability” means as “disability” is defined in 42 U.S.C. § 12102 and as “person with a disability” is defined in § 4502 of Title 6, when the disability affects communication.

(4) “Limited English proficiency” or “LEP” means not utilizing English as a primary language and having a limited ability to read, write, speak, or understand English.

(5) “Meaningful access” means language assistance for individuals with LEP that results in accurate, timely, and effective communication at no cost to the individual with LEP. The individual with LEP’s right to be informed of, participate in, and benefit from, a program may not be significantly restricted, delayed, or inferior as compared to English proficient individuals. Federal law and regulation, and the interpretation thereof, govern how to determine whether “meaningful access” has been provided.

(6) “Program” means all operations of a Delaware state public entity. For the purposes of § 10604(a) and (c) of this title, “program” is more narrowly defined and means 1 operation, unit, or service of a Delaware state public entity.

(7) “Tenant” means as defined in § 5141 of Title 25.

(8) “Vital document” means a document that affects access to, retention in, reduction of, termination, or exclusion from, a program’s services or benefits. “Vital document” may include any of the following:

a. Application.

b. Consent form.

c. Complaint form.

d. Intake form.

e. Notice pertaining to eligibility for services or benefits.

f. Notice pertaining to rights and the reduction, denial, or termination of services or benefits.

g. Communications that require a response from the individual with LEP or a disability.

h. Notice affecting parental custody or child support.

i. Written test that does not test English language competency but rather tests competency for a particular license, job, or skill for which knowing the English language is not required.

j. Document that must be provided by law.

k. Notice regarding the availability of free language assistance services for individuals with LEP.

(84 Del. Laws, c. 454, § 1.)

§ 10603. Communication assistance reports [For application of this section, see 84 Del. Laws, c. 454, § 2] [Expires Sept. 30, 2026, pursuant to 84 Del. Laws, c. 454, § 4].

(a) An entity or program identified under § 10604 of this title shall submit an annual report that includes all of the following information:

(1) The steps taken by the program to comply with federal and Delaware state law and regulation to provide meaningful access to individuals with LEP and effective communication for individuals with disabilities.

(2) The types of translation or interpretation services or tools used by the program.

(3) Estimate of the program expenses associated with compliance with federal and Delaware state law and regulation to provide meaningful access to individuals with LEP and effective communication for individuals with disabilities.

(4) Estimate of the number of individuals with LEP served by the program.

(5) Estimate of the number of individuals with disabilities served by the program.

(6) How the availability of free language assistance and auxiliary aids are communicated to the public.

(7) Description of staff training and frequency of training on working with individuals with LEP or disabilities.

(8) Copy of any report submitted to a federal agency within the previous year that contains information about a program's compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, or the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.

(9) Additional resources, if any, needed to improve program access for individuals with LEP or disabilities.

(b) The report must be submitted to the General assembly by December 1 of each year. If the deadline falls on a weekend or Delaware state holiday, then the report is due by the State's next following business day.

(c) For the purposes of submitting a report under this section to the General Assembly, the reports must be submitted to the Secretary of the Senate, the Chief Clerk of the House, and the Director and Legislative Librarian of the Division of Legislative Services.

(84 Del. Laws, c. 454, § 1; 84 Del. Laws, c. 255, § 36.)

§ 10604. Reporting entities and programs [For application of this section, see 84 Del. Laws, c. 454, § 2] [Expires Sept. 30, 2026, pursuant to 84 Del. Laws, c. 454, § 4].

(a) The secretary or director of each of the following departments or divisions shall select at least 2 programs within their department or division to submit reports under § 10603 of this title:

(1) Department of Health and Social Services.

(2) Department of Labor.

(3) Department of Services for Children, Youth and Their Families.

(4) Department of Correction.

(5) Department of Safety and Homeland Security.

(6) Department of Transportation.

(7) Division of Revenue.

(8) Department of Natural Resources and Environmental Control.

(9) Department of Education.

(10) Department of Justice.

(11) Department of Agriculture.

(b) The following entities shall submit reports under § 10603 of this title:

(1) Delaware Economic Development Authority.

(2) Delaware Office of Veterans' Services.

(3) Delaware Manufactured Home Relocation Authority.

(4) The Delaware Transit Corporation.

(5) Human and Civil Rights Commission.

(6) Delaware State Housing Authority.

(7) Delaware State Police.

(c) Five additional programs, to be determined by the Department of Justice, shall also submit reports as described under § 10603 of this title.

(84 Del. Laws, c. 454, § 1.)

§ 10605. Special language and communication assistance for housing matters [For application of this section, see 84 Del. Laws, c. 454, § 2][Expires Sept. 30, 2026, pursuant to 84 Del. Laws, c. 454, § 4].

(a) The Office of the Manufactured Housing Ombudsperson within the Department of Justice shall directly or indirectly provide interpretation and translation services, or other auxiliary aids, to help tenants with LEP or disabilities to better understand and participate in matters related to manufactured housing leases and evictions under Parts III and VI of Title 25.

(b) The Department of Justice shall directly or indirectly provide interpretation and translation services, or other auxiliary aids, to help tenants with LEP or disabilities or individuals with LEP or disabilities to better understand and participate in matters related to the following:

(1) Residential leases and evictions under Part III of Title 25, not related to manufactured housing.

(2) Residential home purchase and foreclosure.

(c) The Department of Justice may limit or otherwise modify the scope of services provided under this section to ensure that the cost of providing special language and communication assistance does not exceed the funding allocated for it to do so and to ensure that the number of staff required to provide special language and communication assistance does not exceed the number of staff available.

(84 Del. Laws, c. 454, § 1.)

§ 10606. Application [For application of this section, see 84 Del. Laws, c. 454, § 2][Expires Sept. 30, 2026, pursuant to 84 Del. Laws, c. 454, § 4].

This chapter may not be interpreted to limit or end the responsibility that a program or any person may have to take reasonable steps to provide meaningful access to services to individuals with LEP or to provide effective communication to individuals with disabilities under federal or Delaware state laws or regulation.

(84 Del. Laws, c. 454, § 1.)

§ 10607. Regulations [For application of this section, see 84 Del. Laws, c. 454, § 2][Expires Sept. 30, 2026, pursuant to 84 Del. Laws, c. 454, § 4].

The Department of Justice may adopt regulations to implement this chapter.

(84 Del. Laws, c. 454, § 1.)

Part XI
Agencies for Interstate Cooperation

Chapter 111
Delmarva Advisory Council [Repealed].

§§ 11101-11105. Formation of Council; jurisdiction; membership; officers; compensation; meetings; bylaws; rules and regulations; duties and responsibilities; gifts and grants; clerical personnel and consultants funding [Repealed].

Repealed by 77 Del. Laws, c. 341, § 3, effective July 2, 2010.