



SPONSOR: Rep. Matthews & Sen. Walsh
Reps. Mulrooney, Keeley, K. Williams; Sen. Ennis

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 83

AN ACT TO AMEND TITLE 17 OF THE DELAWARE CODE RELATING TO DELDOT RIGHTS OF WAY.

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

1 Section 1. Amend § 131, Title 17 of the Delaware Code by making deletions as shown by strikethrough and
2 insertions as shown by underline as follows:

3 § 131. General jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Initial stage fee:

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

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

Construction stage fee:

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

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

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

(j) This title does not prohibit any county government from enacting or enforcing a maintenance ordinance consistent with this title that concerns or affects an area within a Department right of way located within an unincorporated residential subdivision.

SYNOPSIS

This bill clarifies a county government authority to enact and enforce an ordinance affecting an area within a right of way and consistent with state code. Specifically, it enables a county government to enact an ordinance that concerns the maintenance of sidewalks in residential subdivisions.