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HOUSE OF REPRESENTATIVES  
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 297

AN ACT TO AMEND TITLE 17 OF THE DELAWARE CODE RELATING TO THE CONSTRUCTION AND  
ACCEPTANCE OF NEW ROADS AND STREETS FOR STATE MAINTENANCE.

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

1 Section 1. Amend § 508, Title 17 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows:

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

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

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

9 (3) ~~No~~ A person, firm—firm, or corporation ~~shall— may not~~ construct, or cause to be ~~constructed—any~~  
10 ~~constructed,~~ a new road or street outside the corporate limits of any ~~city or town—~~ municipality and intended to be  
11 dedicated by the owner ~~thereof— of the road or street~~ to the public use, including the initial installation of traffic and  
12 street name signs, unless ~~such~~ the road or street is in conformity with this section and with plans and specifications  
13 approved by the ~~Department and with this section.~~ Department.

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

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

19 (6) ~~Such construction shall~~ The construction of a new road or street must be performed ~~pursuant to~~ under a  
20 written agreement with the Department, signed by the ~~developer as hereinafter defined~~ incorporating but not limited to  
21 developer, that includes all of the following:

22 a. ~~the~~ The plans and specifications approved by the ~~Department,~~ Department.

23 ~~b. the~~ The posted security for completion, completion required under paragraph (b)(1) of this section.  
24 ~~c. the~~ The location of any decorative subdivision entrance signs installed by the developer, developer.  
25 ~~d. and whatever~~ Any other terms the Department, in its sole discretion, the Department determines may  
26 be necessary.

27 ~~The owner or person actually engaged in any development or construction of residential or commercial~~  
28 ~~property as determined by the Department which will affect or require access onto state-maintained highways, streets~~  
29 ~~and roads shall be known as the "developer" for purposes of this section.~~

30 ~~(2)(7)a. Pursuant to the terms of this section and such rules, regulations, standards and/or regulations as may~~  
31 ~~be adopted by virtue thereof, the~~ The Department shall accept such roads or streets a road or street constructed in  
32 compliance herewith into with this section and the rules, regulations, and standards adopted by the Department under  
33 this section into the state maintenance system; system.

34 ~~b. provided, however, that with regard to any road or street constructed to serve any dwelling, building or~~  
35 ~~facility, etc., other than single family residences, the~~ Notwithstanding paragraph (a)(7)a. of this section, the  
36 Department shall have has the sole discretion as to whether such a road or street shall be constructed to serve a  
37 dwelling, building, facility, or other structure is accepted into the state maintenance system.

38 ~~(b)(1) Before~~ Except as provided by paragraph (b)(3) of this section, before commencement of any construction  
39 ~~undertaken pursuant to~~ under this section, including the installation of utilities within the dedicated right-of-way, the a  
40 developer shall first post with the Department a good and sufficient bond, certified check, letter of credit credit, or other  
41 form of security acceptable to the Department in a manner and form approved by the Department and in such amount as  
42 may be fixed, but not to exceed 10% in the amount of 100% of the estimated cost of such the construction as approved by  
43 the Department, which Department. The bond, certified check, letter of credit or the like, shall be credit, or other form of  
44 security acceptable to the Department must be conditioned on the faithful performance and satisfactory completion of the  
45 obligations imposed by subsection (a) of this section.

46 ~~(2)a. The Department shall release 75% of the amount posted under paragraph (b)(1) or (b)(3) of this section~~  
47 ~~as required by any written agreement under subsection (a) of this section, after final paving is completed per plan by~~  
48 ~~the obligations imposed by subsection (a) of this section.~~

49 ~~b. The Department shall release the remaining 25% of the amount posted under paragraph (b)(1) or (b)(3)~~  
50 ~~of this section as required by any written agreement contemplated within subsection (a) of this section when the~~  
51 ~~Department accepts the new road or street into the state maintenance system.~~

52 c. If a developer and the Department enter into more than one written agreement for a project or  
53 development or the written agreement provides for phasing of the completion of the required improvements, the  
54 process for the release under paragraphs (b)(2)a. and (b)(2)b. of this section is to be undertaken on an individual  
55 written agreement basis or as work required by any phasing of the required improvements is completed.

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

61 (c)(1) The Department shall inspect ~~any a~~ a new road or street being constructed in accordance with under this  
62 section as well as and any construction construction, including utilities within the road or street right-of-way to insure that  
63 right-of-way, to ensure the construction is in conformity with standards, plans plans, and specifications approved by the  
64 Department. Upon On dedication of the right-of-way to the public use and satisfactory completion of the street or road  
65 construction road or street construction, including its connection to an existing state maintained road within the sole  
66 judgment, discretion and approval thereof by the Department, highway, street, or road, the Department shall so notify the  
67 developer that the new road or street has been accepted into the state maintenance system and that the dedicated right-of-  
68 way has been accepted according to the terms of such the acceptance.

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

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

76 (4) The Department, ~~upon on~~ upon on acceptance of a road or street, shall thereafter assume the sole and absolute care,  
77 management management, and control of the new road or street as a public road or street. Until such time as the  
78 Department accepts the a new road or street, the developer or the developer's legal successor in interest shall be is  
79 solely responsible for maintenance thereof. of the road or street.

80 (5)a. The Department's standards for ~~newly constructed residential subdivision streets~~ a new road or street  
81 include a requirement that a decorative sign that includes the name of the subdivision and a logo of the State's famous

82 patriot, Caesar Rodney. These new signs shall be Rodney be installed at each newly approved subdivision and shall be  
83 paid for by the developer or developers of such of the subdivision.

84 ~~b. Existing subdivisions may also~~ A subdivision in existence on July 1, 2005, may request the Department  
85 to install ~~these new signs~~ a decorative sign required under paragraph (c)(5)a. of this section in place of other signs  
86 previously used by the Department. ~~Such~~ The requested replacement signs shall decorative sign must be paid for  
87 by the subdivision or from Community Transportation Funds allocated by a legislator ~~requesting such signs. who~~  
88 requests the decorative sign.

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

92 (d) ~~In order to carry out the purpose of this section, the~~ The Department shall make and publish rules, regulations,  
93 ~~standards and/or standards, or specifications for planning, designing, constructing~~ constructing, and maintaining ~~any a new~~  
94 road or street.

95 (e) The bond, certified check, letter of ~~credit~~ credit, or other ~~acceptable forms of security;~~ form of security  
96 acceptable to the Department posted with the Department ~~shall be~~ under paragraph (b)(1) or (b)(3) of this section is  
97 immediately due and owing ~~upon~~ on failure of the developer to meet the obligations set forth in the agreement executed  
98 ~~pursuant to~~ under this section. ~~Upon~~ On failure of the developer to comply with the standards, ~~plans~~ plans, and  
99 specifications ~~and/or~~ or with the terms of the ~~said construction~~ agreement executed under this section, the Department may  
100 do one or more of the following:

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

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

106 (3) Move to fine ~~violators pursuant to this section;~~ a violator under this section.

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

108 (5) ~~Within its sole discretion, conditionally~~ Conditionally accept and satisfactorily complete the road or street  
109 and recover damages in the amount of completion costs and incidental expenses from the ~~developer;~~ and/or developer.

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

112 (f) ~~Any person, firm, corporation, developer and/or the like which does not comply with this section shall, A~~  
113 ~~developer that does not comply with this section~~ within 100 days of written notification by the Department of such  
114 ~~violation, be a violation is to be punished by a fine of not less than \$100 nor more than \$1,000 for each offense, and the~~  
115 ~~offense and the further sum in an amount equal to the amount fined for the initial offense for each and every day such~~  
116 ~~violation exists; provided that the the violation exists. The total fine shall imposed under this subsection may not exceed the~~  
117 total estimated cost of ~~street~~ the construction and incidental expenses related thereto. to the construction of the road or  
118 street.

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

121 (h) ~~Any developer who is found to be A developer found~~ in violation of this section by the Department ~~shall~~  
122 ~~thereafter be unable to conduct~~ is prohibited from conducting business in the State until all conditions created by ~~such the~~  
123 developer constituting a violation of this section have been corrected to the satisfaction of the Department.

124 (i) ~~The Justice of the Peace Courts shall have~~ Court has jurisdiction over violations a violation of this section ~~to the~~  
125 ~~extent that they are hereby granted the authority to~~ section. The Court may order forfeiture of the security ~~posted pursuant~~  
126 ~~to required under paragraph (b)(1) or (b)(3) of this section and may impose the fines set forth in a fine under~~ subsection (f)  
127 of this section.

#### SYNOPSIS

Due to the rapidly increasing costs of materials and labor, combined with the frequency in which developers have gone out of business or otherwise been unable to complete work required within developments, this Act increases the funding required to be secured by a developer to ensure the developer fulfills the developer's obligations to construct and complete improvements within a subdivision.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.