

**LAWS**  
*OF THE*  
**STATE OF DELAWARE**

*ONE HUNDRED AND THIRTY-SIXTH*

*GENERAL ASSEMBLY*

*FIRST SESSION COMMENCED AND HELD AT DOVER*

**On Tuesday, January 8, A.D.**  
**1991**

*SECOND SESSION COMMENCED AND HELD AT DOVER*

**On Tuesday, January 14, A.D.**  
**1992**

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**VOLUME LXVIII**  
**Part I**

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## CHAPTER 1

## FORMERLY

## SENATE BILL NO. 14

AN ACT AWARDED SPECIAL PENSION BENEFITS TO JAMES H. HARBISON, TRANSFERRING MONIES INTO THE SPECIAL PENSION FUND CREATED BY VOLUME 61, CHAPTER 455, LAWS OF DELAWARE, AND DIRECTING THE BOARD OF PENSION TRUSTEES TO ADMINISTER PAYMENT OF THE PENSION PROVIDED BY THIS ACT AS IF THE AWARD WERE PURSUANT TO CHAPTER 55, TITLE 29, DELAWARE CODE.

WHEREAS, James H. Harbison is currently employed as Executive Secretary by the Commission of Veterans Affairs, Department of State, State of Delaware; and

WHEREAS, James H. Harbison, prior to becoming a state employee, served over six years as a member of the Governor's Veterans Affairs Committee established by Executive Order No. 67, dated December 15, 1978; and

WHEREAS, James H. Harbison has distinguished himself as a respected, tenacious and exceptionally competent spokesman for Delaware's military veterans with members of both the Executive and Legislative Branches of Delaware government; and

WHEREAS, James H. Harbison has, for the past year, been engaged in an unrelenting battle against the ravages of cancer; and

WHEREAS, James H. Harbison has only accrued four and one-half years of creditable serve in the Delaware State Employees' Pension Plan; and

WHEREAS, James H. Harbison should be rewarded for his dedicated and devoted service to the State of Delaware and her approximately 79,000 veterans.

NOW, THEREFORE:

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

Section 1. The Board of Pension Trustees is hereby authorized and directed to grant James H. Harbison, a disability pension, effective the month after his termination from State service or after his death as if such pension were awarded pursuant to Chapter 55, Title 29 of the Delaware Code.

Section 2. The Budget Director and the Controller General are authorized to transfer the sum of \$21,620.22 from the Budget Office Contingency Appropriation in Senate Bill No. 500 of the 135th General Assembly for Budget Office Contingency (10-02-04), to the Special Pension Fund authorized by Volume 61, Chapter 455, Laws of Delaware, for the purpose of implementing the provisions of Section 1 of this Act.

Approved January 18, 1991.

## CHAPTER 2

## FORMERLY

HOUSE BILL NO. 25  
AS AMENDED BY HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 21, TITLE 21, OF THE DELAWARE CODE TO ALLOW SPECIAL PLATES FOR MEMBERS OF THE DELAWARE NATIONAL GUARD AND RESERVES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths of all members elected to each House thereto concurring therein):

Section 1. Amend Chapter 21, Title 21, Delaware Code by adding the following new section:

"§2139A. Special license plates for members of the Delaware National Guard and Reserves.

(a) The owner of any vehicle described in paragraph (b) of this section may apply to the Department for the assignment to that vehicle of a special Delaware National Guard or Reserve number; provided, however, the owner of the vehicle must possess official documentation which indicates he or she is a bona fide member of the Delaware National Guard or Reserves.

(b) This section shall apply only to:

1. A private passenger vehicle; or
2. A truck with no more than a three-fourth ton manufacturer's rated capacity.

(c) Other than the annual registration fee required by this title, no fee shall be required for registration under this section; however, the original application shall be subject to a \$10 administrative fee.

(d) Only 1 special license plate shall be issued to an applicant.

(e) The Department shall reserve sufficient special license plates, including appropriate letters and numbered consecutively, beginning with the numeral 1, as are required under this section.

(f) Upon receipt of any official correspondence from the Delaware National Guard or Reserve advising that the individual to whom a special plate has been issued is no longer affiliated with the National Guard or Reserve such special plate shall be forfeited and/or revoked immediately.

(g) This bill shall become effective 60 days after its enactment into law.

Approved January 28, 1991.

## CHAPTER 3

## FORMERLY

SENATE BILL NO. 22  
AS AMENDED BY SENATE AMENDMENT NOS. 1 AND 2

## AN ACT TO REINCORPORATE THE TOWN OF ELSMERE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend the provisions of 48 Laws of Delaware, Chapter 43, entitled "An Act to Re-Incorporate the Town of Elsmere, New Castle County" by substituting therefor the following:

"ARTICLE I: INCORPORATION

Section 101. Incorporation

The municipal corporation of the State of Delaware now known as the 'The Town of Elsmere' and the inhabitants thereof within the corporate limits as defined in Article I, Section 102 of this Charter or subsequently altered by annexation procedures shall, under the name of 'The Town of Elsmere', continue to be a municipal body politic in perpetuity.

Section 102. Boundaries

The boundaries of the Town of Elsmere shall continue as heretofore existing under the Charter of 'The Town of Elsmere' immediately prior to the enactment of this Charter.

The Council of the Town of Elsmere may at any time hereafter cause a survey and plot to be made of said Town and said plot, when made and approved by the Council, shall be recorded in the Office of the Recorder of Deeds in and for New Castle County, State of Delaware, and the same or the record thereof, or a duly certified copy of the said record shall be in evidence in all courts of law and equity in this State.

Section 103. Annexation

If and when a majority of the property owners in territory contiguous to the Town of Elsmere shall sign a petition seeking to have the areas in which said property owners reside annexed to the Town of Elsmere and submit the petition together with a survey of the areas proposed for annexation to the Council of the Town of Elsmere, said Council shall submit the question of annexation to the voters of the Town of Elsmere. If a majority of said voters, at a special election held for that purpose, shall vote in favor of the proposed annexation, then said area as shown on said survey, shall become and be a part of the Town of Elsmere. The annexed area shall become and be a part of the district to which said area is contiguous. If the annexed area is contiguous to more than one district, the annexed area shall become part of the district with which it has the longest common boundary.

Section 104. Districts

The Town of Elsmere shall be divided into six districts as follows:

(1) BEGINNING at a point of intersection of the center line of New Road with the center line of Dupont Road; thence easterly along the center line of Dupont Road to its intersection with Little Mill Creek and the southerly boundary line of the Town of Elsmere; thence along the southerly, easterly and northerly boundary lines of the Town of Elsmere to its intersection with the center line of gray Avenue to its intersection with the center line of Pardee Avenue; thence northwesterly along the center line of Pardee Avenue to its intersection with the center line of Cleveland Avenue; thence southwesterly along the center line of Cleveland Avenue to its intersection with the center line of Dupont Road; thence southwesterly along the center line of Dupont Road to its intersection with New Road and the point and place of BEGINNING.

(2) BEGINNING at the point of intersection of the center line of New Road with the center line of DuPont Road; thence southeasterly along the center line of DuPont Road to its intersection with Little Mill Creek; thence southwesterly along Little Mill Creek and the southerly boundary line of the Town of Elsmere to its intersection with the extension of the center line of Belmont Avenue; thence northerly along the center line of Belmont Avenue to its intersection with the center line of Maple Avenue West; thence northeasterly along the center line of Maple Avenue West to its intersection with the extension of Birch Avenue; thence northwesterly along the center line of Birch Avenue and its extensions to its intersection with the center of New Road; thence northeasterly along the center line of New Road to its intersection with the center line of DuPont Road and the point and place of BEGINNING.

(3) BEGINNING at the point of intersection of the center line of New Road with the extension of the center line of Birch Avenue; thence southeasterly along the center line of Birch Avenue; thence southeasterly along the center line of Birch Avenue and its extensions to its intersection with the center line of Maple Avenue West; thence southwesterly along the center line of Maple Avenue West to its intersection with the center line of Belmont Avenue; thence southerly along the center line of Belmont and its extension to its intersection with Little Mill Creek; thence northwesterly along Little Mill Creek; thence southwesterly and northwesterly along Little Mill Creek; thence southwesterly and northwesterly along Little Mill Creek and the southwesterly boundary line of the Town of Elsmere to its intersection with the center line of Chestnut Run (West Branch) to its intersection with the center line of Maple Avenue to its intersection with the center line of Maple Avenue to its intersection with the center line of Sycamore Avenue, approximately 320 feet to its intersection with the center line of the Right of Way of the Baltimore and Ohio Railroad; thence northeasterly along the center line of the Right of Way of the Baltimore and Ohio Railroad to its intersection with the extension of the center line of Bungalow Avenue; thence northeasterly along the center line of Bungalow Avenue and extension to the intersection with the center line of Sycamore Avenue; thence northeasterly along the center line of Sycamore Avenue to its intersection with Tamarack Avenue thence northwesterly along the center line of Robert Kirkwood Highway; thence northeasterly along the center line of Robert Kirkwood Highway and the center line of New Road to its intersection with the extension of the center line of Birch Avenue and the point and place of BEGINNING.

(4) BEGINNING at the point of intersection of the center line of Robert Kirkwood Highway and the center line of Tamarack Avenue extended; thence southeasterly along the center line of Tamarack Avenue to its intersection with the center line of Sycamore Avenue; thence southwesterly along the center line of Sycamore Avenue to its intersection with the center line of Bungalow Avenue; thence southeasterly along the center line of Bungalow Avenue and its extension to its intersection with the center line of the Right of Way of the Baltimore and Ohio Railroad; thence southwesterly along the center line of the Right of Way of the Baltimore and Ohio Railroad to its intersection with Little Mill Creek; thence northwesterly along Little Mill Creek and the southwesterly boundary line of the Town of Elsmere to its intersection with the center line of Chestnut Run (West Branch); thence northeasterly along the center line of Chestnut Run (West Branch) to its intersection with the center line of Maple Avenue to its intersection with the center line of Maple Avenue to its intersection with the center line of Sycamore Avenue, approximately 320 feet to its intersection with the center line of an alley; thence northeasterly along the said alley to its intersection with the center line of Cypress Avenue; thence northeasterly along the center line of Cypress Avenue; thence northeasterly along the center line of Cypress Avenue approximately 40 feet to its intersection with the extension of the center line of Beech Avenue and its extension to its intersection with the center line of Robert Kirkwood Highway to its intersection with the extension of the center line of Tamarack Avenue and the point and place of BEGINNING.

(5) BEGINNING at the point of intersection of the center line of Robert Kirkwood Highway with the center line of Beech Avenue Extended;

thence southwesterly along the center line of Beech Avenue and its extension to its intersection with the center line of Cypress Avenue; thence southwesterly along the center line of Cypress Avenue approximately 40 feet to its intersection with the center line of an alley; thence southwesterly along the center line of the alley to its intersection with the center line of Sycamore Avenue; thence southwesterly along the center line of Sycamore Avenue to its intersection with Maple Avenue; thence northwesterly along the center line of Chestnut Run (West Branch) and the northwesterly boundary line of the Town of Elsmere; thence northeasterly along the northerly to boundary line of the Town of Elsmere by its various courses to a point opposite the point of intersection of Olga Road and Sanders Road; thence leaving said boundary line southeasterly to the point of intersection of Olga Road and Sanders Road; thence southerly along the center line of Sanders Road to its intersection with the center line of Robert Kirkwood Highway; thence southwesterly along the center line of Kirkwood Highway; to a point of intersection with the center line of Beech Avenue Extended and the point and place of BEGINNING.

(6) BEGINNING at the point of intersection of the center line of New Road and the center line of DuPont Road; thence southwesterly along the center line of New Road to its intersection with the center line of Sanders Road; thence northerly along the center line of Sanders Road to its intersection with Olga Road; thence northwesterly to a corner in the northerly boundary line of the Town of Elsmere; thence northeasterly along the northerly boundary line of the Town of Elsmere by its various courses and crossing the Philadelphia and Reading Railroad and DuPont Road to its intersection with the center line of Gray Avenue; thence southwesterly along the center line of Gray Avenue to its intersection with the center line of Pardee Avenue; thence northwesterly along the center line of Pardee Avenue to its intersection with the center line of Cleveland Avenue; thence southwesterly along the center line of Cleveland Avenue to its intersection with the center line of DuPont Road; thence southerly along the center line of DuPont Road to its intersection with the center of New Road and the point and place of BEGINNING.

## ARTICLE II. POWERS OF THE TOWN

### Section 201. Powers of the Town

The Town of Elsmere shall have all the powers granted to municipal corporations by the Constitution and general laws of the State of Delaware, together with all the implied powers expressly granted. The Town of Elsmere shall continue to enjoy all powers which have been granted to it by special Acts of the General Assembly of the State of Delaware, except insofar as they may be repealed by the enactment of this Charter. The Town of Elsmere as a body politic and corporate shall succeed to, own or possess all property, whether real, personal or mixed, and all rights, privileges, franchises, powers and immunities now belonging to, possessed by or enjoyed by the former corporation, known as 'The Commissioners of Elsmere', without the necessity of any deeds or instruments of conveyance or transfer.

The Town of Elsmere may have and use a corporate seal, may sue and be sued, may acquire property within or without its corporate limits by purchase, gift, devise or lease for the purpose of providing sites for public buildings, parks, sewer systems, sewage treatment plants, gas, telephone or electric systems, water systems, water plants or other municipal purposes; and may sell, lease, mortgage, hold, manage and control such property or utility as its interests may require; and, except as prohibited by the Constitution or laws of the State of Delaware or restricted by this Charter, the Town of Elsmere shall and may exercise all municipal powers, functions, rights, privileges and immunities of every name and nature whatsoever.

In the event it is necessary to mortgage any property now acquired or hereinafter acquired by the Town of Elsmere, the Town is given the power to give a bond and warrant secured by a mortgage to any proposed mortgagee in an amount not exceeding One Million Dollars (\$1,000,000) and for a term not exceeding twenty (20) years, without regard to the provisions of Article IV, Section 406 of this Charter.

The enumeration of particular powers in this Charter shall not be held or deemed to be exclusive; rather, in addition to the powers enumerated

herein, implied thereby, or appropriate to the exercise thereof, it is intended that the Town of Elsmere shall have and may exercise all powers which, under the Constitution of the State of Delaware, it would be competent for this Charter to specifically enumerate. All the powers of the Town, whether express or implied, shall be exercised in the manner prescribed by this Charter, or, if not prescribed herein, then in a manner provided by ordinance or resolution of the Council.

### ARTICLE III. STRUCTURE OF GOVERNMENT

#### Section 301. Composition of Government

The government of the Town and the exercise of all powers conferred by this Charter, except as otherwise provided herein, shall be vested in a Mayor and a Town Council. The Mayor shall be elected at large by the qualified voters of the Town. One member of the Town Council shall be elected by the qualified voters of each district.

The Mayor and Council under this Charter shall be first elected on the last Saturday in June, 1955, to serve until their respective successors have been elected and qualified. The next regular municipal election of the Mayor and Council after June of 1955 shall be held on the last Saturday in April of 1957, and regular municipal elections of the Mayor and Council shall be held on the last Saturday in April of odd-numbered years thereafter.

#### Section 301.1 The Mayor

The Mayor shall have been a resident of the Town for three years, and not less than 30 years of age at the time of his election. He shall be elected at large at the biennial Town election and shall serve for a term of two years or until his successor shall be duly elected and qualified, but the first Mayor elected under this Charter shall serve from the date of his qualification until the qualification of his successor after the election of April 1957. Before entering upon the duties of his office, he shall be sworn or affirmed by a Justice of the Peace, or by a notary public, to perform the duties thereof honestly, faithfully and diligently.

The conviction of the Mayor of any felony or of any misdemeanor relating to the conduct of his office shall result in an automatic forfeiture of his office, which shall thereupon be vacant.

#### Section 301.2 The Treasurer

The Treasurer shall be elected at large for the same term as the Mayor, as provided in Sections 301 and 301.1. The Treasurer shall have been a resident of the Town for at least one year prior to his election.

The Treasurer shall not pay out any money except upon check or warrant countersigned by the Mayor and authorized by the Council. In case of the temporary absence or inability to act of the Treasurer, the President Pro Tempore shall be empowered to countersign checks. The Treasurer shall attend all meetings of the Council.

In the event that the office of Treasurer becomes vacant for any cause, the vacancy shall be filled for the unexpired term by appointment by the Mayor subject to confirmation by a majority of Council.

#### Section 302. Qualifications of Mayor and Council

Any qualified voter of the Town of Elsmere who has attained the age of twenty-one years, in the case of councilman, and thirty years, in the case of Mayor, and who has not been convicted of a felony shall be eligible for the office of Mayor or Councilman; provided that any person elected to Council must at the time of his election reside in the district from which elected.

Loss of residence in the Town or in the district from which elected, or a conviction of a felony, or failure to attend three consecutive regular meetings of Council without being excused by the Council, during the tenure of office shall create a vacancy. In case of a vacancy for any cause, a special election, conducted in the same manner as a regular election,

except that the nominating petitions shall not be filed later than 20 days before the date of the special election, shall be held within 60 days after the occurrence of the vacancy, as may be proclaimed by the Council; provided, however, that if the vacancy occurs within 365 days of a regular election, the vacancy shall be filled by appointment by the Mayor subject to confirmation by a majority of the Council.

#### Section 303. Compensation

The Council shall determine the annual salary of the Mayor, Councilman and Treasurer by ordinance, but no ordinance increasing such salary shall become effective until the date of commencement of the terms of members of the Council elected at the next regular election, provided that such election follows the adoption of such ordinance by at least six (6) months. Members of the Council shall receive reimbursement for actual and necessary expenses incurred in traveling when on official business. The salary of the Mayor may exceed that of Councilmen.

#### Section 304. Meetings of Council

The Council of the Town of Elsmere shall take office on the Monday following the regular municipal election, shall hold an organizational meeting in the evening of the next Thursday at which the President Pro Tempore shall be elected by the Council from among the members of the Council, and shall meet regularly at least once a month thereafter. Special meetings may be called by the Mayor and shall be called upon the written request of any three members of the Council. At least two days' written notice of special meetings shall be given to each Councilman, provided that if all the Councilmen shall sign a waiver of notice of a particular special meeting, then the notice aforesaid shall not be a prerequisite to the validity of such special meeting. All meetings of the Council shall be open to the public.

#### Section 305. Mayor's Relationship to Council

The Mayor shall be the executive of the Town. He shall preside at meetings of the Council, but shall have no vote therein, except in case of ties. He shall execute on behalf of the Town, when authorized by Council, all agreements, contracts, bonds, deeds, leases, and other documents necessary to be executed. Unless otherwise provided by ordinance or resolution, the Mayor shall appoint all committees. He shall countersign all orders, checks or warrants authorized by Council and drawn on the Treasurer for payment of money, and shall have all and every power conferred and perform all duties imposed upon him by this Charter and the ordinances of the Town.

In case of the temporary absence or inability to act of the Mayor, the President Pro Tempore, when lawfully acting as Mayor shall have all the powers conferred upon the Mayor by this Charter.

In the event that the Mayor becomes disqualified from holding office by reason of resignation, death, removal from the Town, conviction of a felony, or malfeasance in office, the President Pro Tempore shall succeed to the office of the Mayor for the balance of the unexpired term. The succession of the President Pro Tempore to the office of Mayor shall create a vacancy in the Council.

#### Section 306. Judge of the Qualifications of Members

The Council shall be the judge of the election and qualification of its members and for such purpose shall have power to subpoena witnesses and require the production of records, and, in the event that special proceedings may be necessary to determine or establish such qualifications, shall keep a record of such proceedings, which record shall be subject to review by the Superior Court of the State of Delaware in and for New Castle County.

#### Section 307. Rules of the Procedure: Record

The Council shall determine its own rules of procedure and order of business. It shall keep a record of its proceedings and the record shall be open to public inspection. Elections for officers shall be by a

majority vote of the members elected to the Council and the results shall be entered on the record of Council.

Section 308. Quorum and Majority Requirement

A majority of the members elected to the Council shall constitute a quorum to do business but a smaller number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. No ordinance shall be valid unless it shall have the affirmative vote of the majority of the members elected to the Council. Resolutions, orders and motions shall be valid upon the affirmative vote of a majority of members of the Council present. No member shall be excused from voting on ordinances, resolutions, orders or motions, except when such a vote will constitute a conflict of interest.

Section 309. Organization Changes by Council: Vacancies

The enumeration of certain officials in the Charter to be appointed by the Council is not to be construed as a limitation on the power of the Council to create such new positions or offices as may be deemed essential to accomplish the objectives of the Town's government or to provide for the selection of suitable persons to fill any positions or offices.

All vacancies in appointive offices shall be filled by the Mayor, with confirmation by the consent of the majority of the whole Council, for the unexpired term.

ARTICLE IV. POWERS OF THE COUNCIL

Section 401. General Powers

The Council shall constitute the legislative body of the Town of Elsmere. It shall have power to adopt ordinances relating to the health of the population of the Town, or to prevent the introduction or spread of communicable diseases or nuisances affecting the Town. The Council may also pass ordinances, to ascertain and fix boundaries of streets, squares, lanes and alleys, or repair and amend the same and provide for the paving thereof, to alter, extend or widen any street, square, lane or alley, and to open and lay out new ones subject to provisions in that behalf hereinafter contained; to regulate the ascent and descent of all streets, lanes and alleys, and to fix the building lines on the same; to direct the paving of footways and to prescribe the width thereof; to direct the laying out of gutters and prescribe the depth thereof; to prescribe the extent of porches, cellar doors and other inlets to yards and buildings; to provide police and lighting of streets at the expense of the Town, and generally to prescribe and regulate the streets, lanes and alleys of the Town and to have and exercise control of the same, subject to the provisions in that behalf hereinafter contained; to provide for the regulation of auctions and auctioneers and public amusements; to provide for the safety of the citizens and for that purpose to prescribe the heights and thickness of walls of buildings and the mode of erecting same in said Town, and to prescribe rules and regulations directed toward the prevention of fires and explosions, and make provisions for the enforcement of said regulations; to adopt municipal zoning regulations; to adopt traffic regulations, to regulate itinerant peddlers and canvassers within the Town; to regulate the sale of goods, wares and merchandise on the streets and sidewalks within the Town and fix the license fee thereof and to license the conduct license fee which shall be reasonable in amount; to regulate signs and bill boards and to provide for permits for the erection and maintenance thereof; and to provide for the measuring or weighing of coal, lime, grain or other matter sold in said Town. They shall have the power to lay and collect fines on the owners of any horse, cow, dog or animal which may be found at large in any of the streets, squares, lanes, alleys, aforesaid, and in general to have power to do all those matters and things for the well-being of the Town and the inhabitants thereof, which shall not be in the contravention of any existing laws of this State or the Constitution thereof. Except as hereinafter provided, the Council shall not have the power to exempt any individual from the operation of any general ordinance or municipal regulation.