

LAWS
OF THE
STATE OF DELAWARE

ONE HUNDRED AND THIRTY-NINTH

GENERAL ASSEMBLY

FIRST SESSION COMMENCED AND HELD AT DOVER

On Tuesday, January 14, A.D.
1997

SECOND SESSION COMMENCED AND HELD AT DOVER

On Tuesday, January 13, A.D.
1998

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CHAPTER 1

FORMERLY

SENATE BILL NO. 12

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE AND VOLUME 70, CHAPTER 425 OF THE DELAWARE LAWS RELATING TO THE SALARY OF THE GOVERNOR.

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

Section 1. Amend § 2101, Title 29, Delaware Code to replace "\$70,000" with "\$107,000".

Section 2. The salary provided for by Section 1 shall become effective upon the inauguration of a Governor on January 21, 1997 and shall supersede the salary for the Governor set forth in Section 10, at Budget Unit (10-01-01), of 70 Delaware Laws, Chapter 425 (the "FY '97 Budget Act"). The Budget Director, with the concurrence of the Controller General, shall transfer sufficient funds as necessary from contingencies contained in (10-02-04) of the FY '97 Budget Act to fund said salary adjustment as contained in this Act for the remainder of the fiscal year ending June 30, 1997.

Approved January 18, 1997

CHAPTER 2

FORMERLY

HOUSE BILL NO. 41

AN ACT TO WAIVE THE STATUTORY PROVISIONS OF CHAPTER 66, TITLE 16, OF THE DELAWARE CODE RELATING TO THE APPOINTMENT BY THE GOVERNOR OF THE IMMEDIATE PAST PRESIDENT OF THE STATE VOLUNTEER FIREFIGHTERS' ASSOCIATION TO THE STATE FIRE PREVENTION COMMISSION.

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

Section 1. Governor Thomas R. Carper is hereby exempted from the provisions of 16 Del. C. §6601(A) which state that the Governor shall appoint the immediate past President of the State Volunteer Firefighters' Association as the seventh member of the State Fire Prevention Commission; and Governor Thomas R. Carper is hereby authorized to appoint a prior past President of the State Volunteer Firefighters' Association other than the immediate past President as the seventh member of the State Fire Prevention Commission.

Section 2. The authority herein granted to the Governor shall expire on September 16, 1997.

Approved January 23, 1997

CHAPTER 3

FORMERLY

SENATE BILL NO. 13

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO LIMITATION
ON AMOUNT OF BONDS THAT MAY BE ISSUED.

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

Section 1. Amend §2107, Title 14 of the Delaware Code by adding at the end of said
section the following:

"or in the case of Sussex County school districts, 10% of 50% of the full market value of
real estate, in Kent County school districts, 10% of 60% of the full market value of real
estate; and in New Castle County school districts, 10% of 100% of the full market value
of real estate, whichever is greater. For purposes of this section, the full market value of
real estate shall be determined by the Assessment to Sales Ratio Study conducted
annually by the State Budget Office."

Approved February 10, 1997

CHAPTER 4

FORMERLY

SENATE BILL NO. 15
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO STATE
PROCUREMENT.

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

Section 1. Amend Title 29, § 6902(1) by striking the words "but shall not include agencies" and substituting in lieu thereof the words "but shall not include any local government unit or agency".

Section 2. Amend §6903(d), Title 29, Delaware Code by inserting after the words "contract and" and before the words "is paid" the words "in connection therewith".

Section 3. Amend §6903(f), Title 29, Delaware Code by inserting after the words "to pay" and before the words "or is" the words "to an agency official, representative or employee."

Section 4. Amend Title 29, § 6903(b) of the Delaware Code by striking said subsection in its entirety and redesignating § 6903(c) through (h) as § 6903(b) through (g) of Title 29.

Section 5. Amend Title 29, § 6904(f) of the Delaware Code by striking the words "public works" as they appear therein.

Section 6. Amend Title 29, § 6923(c)(3) of the Delaware Code by striking the words "a contract has been awarded" and substituting in lieu thereof the words "receipt of a fully executed contract".

Section 7. Amend Title 29, § 6923(j)(4) of the Delaware Code by striking the words "contract award" as they appear in the first sentence therein and substituting in lieu thereof the words "receipt of a fully executed contract".

Section 8. Amend Title 29, § 6924(j)(3) of the Delaware Code by striking the words "contract award" as they appear therein and substituting in lieu thereof the words "receipt of a fully executed contract".

Section 9. Amend Title 29, § 6906(a) and Title 29, § 6906(b) of the Delaware Code by striking the words "§ 6903" as they appear therein and substituting in lieu thereof the words "the provisions".

Section 10. Amend Title 29, § 6980 of the Delaware Code by striking the words "§ 6983(e)" as they appear therein and substituting in lieu thereof the words "§§ 6983, 6984, 6985 and 6986".

Section 11. Amend §6980, Title 29, Delaware Code by striking the words "will be subject to the provisions of §6983(e) and §6985 of this title, but" as they appear therein.

Section 12. This Act shall become effective upon enactment.

Approved February 10, 1997

CHAPTER 5

FORMERLY

SENATE BILL NO. 25

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE
DETENTION AND CONFINEMENT OF YOUTH.

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

Section 1. Amend § 2103A, Title 11, Delaware Code by deleting said section in its entirety and in inserting in lieu thereof the following:

"When a child has reached his or her 16th birthday and has been found to be nonamenable to the rehabilitative processes of the Family Court or has been charged with an offense in Superior Court and thereafter made application for transfer of said charges to Family Court pursuant to § 1011 of Title 10 and is denied or fails to make application pursuant to § 1011 of Title 10 within the required time and therefore was held over for trial in Superior Court, there shall be a joint placement decision made by the Commissioner of the Department of Corrections ("the Commissioner") or his or her designee and the Secretary of the Department of Services for Children, Youth and Their Families ("the Secretary") or his or her designee to confine the child in the Young Criminal Offender Program within the Department of Corrections until the child reaches his or 18th birthday. The Commissioner and the Secretary shall have exclusive authority to determine such placement decisions. For any child who is currently confined in a juvenile correctional facility and who has reached their 16th birthday and has been found to be nonamenable to the rehabilitative processes of the Family Court or has been charged with an offense in Superior Court and thereafter has made application for transfer of said charges to Family Court pursuant to § 1011 of Title 10 and was denied or failed to make application pursuant to § 1011 of Title 10 within the required time and was therefore was held over for trial in Superior Court, the Commissioner of the Department of Corrections and the Secretary of the Department of Services for Children, Youth and Their Families shall transfer such children to the Young Criminal Offender Program within the Department of Corrections upon opening of such program unless they, based on their best judgment as to the level of security and the nature of the facility required for such a child, determine otherwise. No child subject to the joint placement process shall be entitled to appeal or otherwise challenge such placement decision."

Section 2. Amend § 4204A(a), Title 11, Delaware Code by deleting said section in its entirety and replacing said section with the following:

"(a) When a child, as defined under § 901(3) of Title 10, is sentenced in Superior Court as an adult, within 30 days there shall be a joint placement decision to be made by the Commissioner of the Department of Corrections ("The Commissioner") and the Secretary of the Department of Services for Children, Youth and Their Families ("The Secretary") to transfer the child to the Young Criminal Offender Program within the Department of Corrections until the child reaches the child's 18th birthday unless they, based on their best judgment as to the level of security and the nature of the facility required for such a child, determine otherwise. No child subject to the joint placement process shall be entitled to appeal or otherwise challenge such placement decision. The Commissioner and the Secretary shall have the exclusive authority to determine placement of such a child after sentencing in Superior Court."

Section 3. Amend § 4204A(b), Title 11, Delaware Code by deleting said subsection in its entirety and inserting in lieu thereof the following:

"(b) Notwithstanding the subsection (a) of this section, no child who has not reached his or her 16th birthday shall be transferred to the Department of Corrections pursuant to this section. At any point during the course of confinement, an administrative review of the

placement may be requested by the Commissioner or the Secretary for further consideration and, if appropriate, transfer to or from either Department."

Section 4. Amend § 4204A(c), Title 11, Delaware Code by deleting said section in its entirety and inserting in lieu thereof the following: "Nothing in this section shall be construed to give a child the right to challenge such placement decision."

Section 5. This bill revises the Delaware Code as it currently exists. It is the intent of the General Assembly that adult adjudicated youth ages 16 and older will be housed in the Young Criminal Offenders Program within the Department of Corrections when such program is available.

Section 6. Effective August 31, 1998, the General Assembly intends that, per its terms, the amendment to the Delaware Code made by 70 Del. Laws c. 597 (Section 1 and Section 2 of Senate Bill 437 of the 138th General Assembly), will become effective.

Section 7. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Section 8. This legislation will be effective upon enactment.

Approved February 11, 1997

CHAPTER 6

FORMERLY

HOUSE BILL NO. 42
AS AMENDED BY HOUSE AMENDMENT NOS. 2, 3 AND 4AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SCHOOL
PROPERTY.

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

Section 1. Amend 14 *Del. C.* §1056(e) by deleting the first sentence thereof in its entirety and inserting in lieu thereof the following:

"A school board shall permit the use of property under its jurisdiction free of charge, except, however, for the expense of custodial salaries, heating and lighting in excess of the school's normal operations, whenever the entity seeking to use the property is an educational, cultural, civic, political or recreational entity, organized or operating primarily within the boundaries of the district, provided there is no monetary gain to the individuals or organization using such property as a result of such use, except as provided for in subsection (d)(4) of this section."

Section 2. Amend 14 *Del. C.* §1056(e) by deleting the phrase "determined by a school board, subject to the approval of the State Board of Education" and all text that follows through the end of Subsection (e), and by inserting in lieu thereof the following:

"adopted by a school board in accordance with the applicable provisions of this title and Title 29. All such fees collected by a school board shall be retained by the school district to be used as local funds for any permissible educational purpose."

Section 3. Amend 14 *Del. C.* §1057(b) by deleting Subsection (b) in its entirety, and by inserting in lieu thereof the following:

"(b)(1) Notwithstanding any provision of §1056 of this title, when any real property or part thereof of any reorganized school district is not then deemed necessary for school purposes, temporarily or permanently, the board of education of the district may lease such property or part thereof to any person or organization. The leasing person or organization may be required to pay a rental or fee to be determined by the board and to assume sole responsibility for the complete maintenance and preservation of the property, including compliance with all applicable building and housing codes, so that there will be no cost or obligation to the school district for the continued ownership of such property.

(2) Any funds raised from rent or charges collected by the school district on any lease for a period of ten years or less shall be retained by the school district to be used as local funds for any permissible educational purpose. Any funds raised from rent or charges collected by the school district on any lease for a period of more than ten years shall be applied to the costs of maintaining and operating the leased property, if any, with the balance to be turned over to the State Treasurer to be assigned to the State and the school district according to paragraph (15) of subsection (a) of this section.

(B) Notwithstanding the provisions of paragraph (A) of this subsection, in the event that there is any outstanding, unpaid, bonded indebtedness held by the State with respect to the building or grounds leased by a local district in accordance with the provisions of this section, or any identifiable portion thereof, a pro-rated portion of the lease proceeds in excess of the cost of custodial salaries and utilities associated with the lease shall be turned over to the State Treasurer during any period of the lease that the bonded indebtedness held by the State remains outstanding and unpaid. The amount of such excess lease revenues payable to the State shall be equal to the lesser of: 1) the

actual debt service payable by the State during any period covered by the lease, or 2) the amount of the excess revenues generated by the lease during any period that the bonded indebtedness held by the State remains outstanding and unpaid multiplied by a fraction equal to the State share in the major capital project or projects for which the outstanding, unpaid, bonded indebtedness was originally issued. In the event that the outstanding, unpaid bonded indebtedness relates only to an identifiable portion of the leased facility, the amount payable to the State Treasurer shall be the amount calculated in accordance with the preceding sentence multiplied by a fraction, the numerator of which shall be the gross square footage of the identifiable portion of the leased facility which is included in the lease, and the denominator of which shall be the gross square footage of the entire identifiable portion of the leased facility to which the outstanding, unpaid bonded indebtedness relates.

(3) Before leasing such property or part thereof to any person or organization for any period in excess of twelve (12) months, and before renewing any existing lease where the original term was for twelve (12) months or less but the original term(s) together with the proposed renewal period(s) will exceed twelve (12) months:

(A) The school district board of education shall first offer to lease the property to State agencies. If, as a result of the public hearing, sufficient objections to the use of the property by a State agency have been raised, then the school district board of education may refuse to lease to a State agency.

(B) If no agency of State government declares an intent to lease the property within 30 days of the offer, or if the lease by a requesting State agency is denied, the school district board of education shall offer to lease the property to the local government in whose jurisdiction the property is located. If, as a result of the public hearing, sufficient objections to the use of the property by the local government have been raised, then the school district board of education may refuse to lease to the local government.

(C) If such local government does not declare an intent to lease the property within 30 days of the offer, or if the lease by a requesting local government is denied, the school district board of education may proceed either to offer to lease the property on the open market or enter into an agreement with a lessee, the terms of which are supported by an independent appraisal. If, as a result of the public hearing, sufficient objections to the use of the property by such third party lessee have been raised, then the school district board of education may refuse leasing to such third party lessee.

(4) No lease of property pursuant to this subsection shall be negotiated until the school district board of education has complied with the procedures set forth in Paragraphs (1) through (5) of Subsection (a) of this section.

(5) No lease of property pursuant to this subsection shall be entered into unless the proposed use of the property is compatible with the characteristics of the neighborhood in which the property is located.

(5) Should a school district contract with any person or organization to lease a classroom building during the regular school year, and specifically during normal operating hours, the State of Delaware shall not be obligated to build or construct any additional space that may be needed by the school district as a result of entering into such lease."

Approved February 11, 1997

CHAPTER 7

FORMERLY

HOUSE BILL NO. 48

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE BOOT
CAMP INCARCERATION ACT.

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

Section 1. Amend § 6703, Title 11, Delaware Code, by deleting the words "burglary in the second degree."

Section 2. Amend § 6705, Title 11, Delaware Code by deleting it in its entirety and inserting in lieu thereof the following:

"(a) Each participant in the boot camp program shall have first been convicted of a criminal offense. The selection of boot camp participants shall be made by the Bureau from those offenders not otherwise excluded under this section. However, satisfying the statutory or regulatory qualifications for admission to the boot camp program shall not mean that an offender shall automatically be permitted to participate in the program.

(b) Notwithstanding the provisions of subsection (a), the following offenders shall not be classified or otherwise permitted to participate in the boot camp program:

(1) Any person declared to be an habitual offender under § 4214 of this title;

(2) Any person who is serving a sentence for a violent crime but may include persons serving a sentence for a violation of probation or parole;

(3) Any person designated by the sentencing court or the Attorney General pursuant to subsection (c) of this section as not being eligible for the boot camp program.

(c) The sentencing court or the Attorney General shall have the authority to designate any person as bootcamp ineligible at the time of sentencing. Such designation shall be specifically and clearly set forth in the sentencing order."

Section 3. Amend § 6706, Title 11, Delaware Code by deleting 6706(a) and inserting in lieu thereof the following:

"(a) Not subject to any of the exclusionary criteria under § 6705(b) or § 6705(c);"

Section 4. Amend § 6709(d), Title 11, Delaware Code, by inserting at the end of said subsection the following: "Notwithstanding any provision of this Title to contrary, any boot camp participant who is otherwise appropriately classified to the boot camp program may participate in work squads pursuant to this section."

Approved February 10, 1997