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## TITLE 22

### Municipalities

#### CHAPTER 5. PARKING AUTHORITIES

##### § 501. Findings and declaration of policy.

It is determined and declared as a matter of legislative finding that:

(1) Residential decentralization in incorporated cities has been accompanied by an ever increasing trend in the number of persons entering the business sections by private automobile as compared with other modes of transportation;

(2) The free circulation of traffic of all kinds through the streets of cities is necessary to the health, safety and general welfare of the public whether residing in the city or traveling to, through or from the city in the course of lawful pursuits;

(3) The greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion on the streets of cities;

(4) The parking of motor vehicles on the streets has contributed to this congestion to such an extent as to interfere seriously with the primary use of such streets for the movement of traffic;

(5) Such parking prevents the free circulation of traffic in, through and from the city, impedes rapid and effective fighting of fires and the disposition of police forces in the district and endangers the health, safety and welfare of the general public;

(6) Such parking threatens irreparable loss in valuations of property in the city which can no longer be readily reached by vehicular traffic;

(7) This parking crisis, which threatens the welfare of the community, can be reduced by providing sufficient off-street parking facilities properly located in the several residential, commercial and industrial areas of the city;

(8) The establishment of a parking authority will promote the public safety, convenience and welfare;

(9) The utilization of street level space for parking garages within a city's central business district reduces the available space for retail and other commercial uses, thereby interfering with the growth and development of the central business district;

(10) It is intended that the parking authority cooperate with all existing parking facilities so that private enterprise and government may mutually provide adequate parking

services for the convenience of the public;

therefore it is declared to be the policy of this State to promote the safety and welfare of the inhabitants thereof by the creation in incorporated cities of bodies corporate and politic to be known as "parking authorities" which shall exist and operate for the purposes contained in this chapter. Such purposes are declared to be public uses for which public money may be spent and private property may be acquired by the exercise of the power of eminent domain. (48 Del. Laws, c. 369, § 2; 22 Del. C. 1953, § 501; 73 Del. Laws, c. 377, § 1.)

#### **§ 502. Definitions.**

As used in this chapter, unless the context requires a different meaning:

(1) "Authority" means a body politic and corporate created pursuant to this chapter.

(2) "Board" means the governing body of the authority.

(3) "Bonds" means and includes the notes, bonds and other evidence of indebtedness or obligations which the authority is authorized to issue pursuant to § 504 of this title.

(4) "Business owner" means any individual, general partner or owner of 50% or more of the voting stock of a corporation which has a business location within the city and which has a business license under the city business license ordinance or has a state business license in cities without licensing ordinance which lists the location of said business within the city.

(5) "City" means incorporated city or town.

(6) "Construction" means and includes acquisition and construction, and "to construct" means and includes to acquire and to construct, all in such manner as may be deemed desirable.

(7) "Facility" or "facilities" means lot or lots, buildings and structures above, at or below the surface of the earth, including equipment, entrances, exits, fencing and all other accessories necessary or desirable for the safety and convenience of the parking of vehicles.

(8) "Federal agency" means and includes the United States of America, the President of the United States of America and any department or corporation agency or instrumentality heretofore or hereafter created, designated or established by the United States of America.

(9) "Improvement" means and includes extension, enlargement and improvement, and "to improve" means and includes to extend, to enlarge and to improve, all in such manner as may be deemed desirable.

(10) "Municipality" means any county, incorporated city or incorporated town of this State.

(11) "Persons" means and includes natural persons.

(12) "Project" means any structure, facility or undertaking which the authority is authorized to acquire, construct, improve, maintain or operate under this chapter. (48 Del. Laws, c. 369, § 3; 22 Del. C. 1953, § 502; 68 Del. Laws, c. 273, § 1.)

### § 503. Method of incorporation.

(a) Whenever the city council or other governing body of a city desires to organize an authority, under this chapter, it shall adopt an ordinance signifying its intention to do so.

In the event that such ordinance sets forth the proposed articles of incorporation in full it shall not be required, any law to the contrary notwithstanding, in publishing such ordinance, under existing law, to publish such proposed articles of incorporation in full, but it shall be sufficient compliance with such law in such publication to set forth briefly the substances of such proposed articles of incorporation and to refer to this chapter. Thereafter the city council shall cause a notice of such ordinance to be published at least 1 time in a newspaper published and of general circulation in the county in which the authority is to be organized. The notice shall contain a brief statement of the substance of the ordinance, including the substance of such articles, making reference to this chapter and shall state that on a day certain, not less than 3 days after publication of the notice, articles of incorporation of the proposed authority will be filed with the Secretary of State of this State.

(b) On or before the day specified in the notice the city council shall file with the Secretary of State articles of incorporation together with proof of publication of the notice referred to in subsection (a) of this section. The articles of incorporation shall set forth:

- (1) The name of the authority;
- (2) A statement that such authority is formed under this chapter;
- (3) The name of the city, together with the names and addresses of its council members;
- (4) The names, addresses and term of office of the first members of the board of the authority.

All of which matter shall be determined in accordance with this chapter. The articles of incorporation shall be executed by the incorporating city by its proper officer and under its municipal seal.

(c) If the Secretary of State finds that the articles of incorporation conform to law the Secretary shall forthwith, but not prior to the day specified in the notice, endorse approval thereon, and when all proper fees and charges have been paid shall file the articles and issue a certificate of incorporation to which shall be attached a copy of the approved articles. Upon the issuance of such certificate of incorporation by the Secretary of State, the corporate existence of the authority shall begin when such certificate has been recorded in the office for the recording of deeds in the county where the principal office of the authority is to be located. The certificate of incorporation shall be conclusive evidence of the fact that such authority has been incorporated, but proceedings may be instituted by the State to dissolve any authority which shall have been formed without substantial compliance with this section.

(d) When the authority has been organized and its officers elected, the secretary shall certify to the Secretary of State the names and addresses of its officers, as well as the

principal office of the authority. Any change in the location of the principal office shall likewise be certified to the Secretary of State within 10 days after such change. Any change in the numerical composition of the board shall likewise be certified to the Secretary of State within 10 days after such change. (48 Del. Laws, c. 369, § 4; 22 Del. C. 1953, § 503; 68 Del. Laws, c. 273, § 5; 70 Del. Laws, c. 186, § 1.)

#### **§ 504. Purpose and powers.**

(a) The authority, incorporated under this chapter, shall constitute a public body corporate and politic, exercising public powers of the State as an agency thereof and shall be known as the parking authority of the city, but shall in no way be deemed to be in instrumentality of the city or engaged in the performance of a municipal function. The authority shall be for the purpose of conducting the necessary research activity, to maintain current data leading to efficient operation of off-street parking facilities, for the fulfillment of public needs in relation to parking, establishing a permanent coordinated system of parking facilities, planning, designing, locating, acquiring, holding, constructing, improving, maintaining and operating, owning or leasing, either in the capacity or lessor or lessee, land and facilities to be devoted to the parking of vehicles of any kind.

The authority shall not directly engage in the sale of gasoline, the sale of automobile accessories, automobile repair and service or any other garage service, other than the parking of vehicles, and the authority shall not directly engage in the sale of any commodity of trade or commerce; provided, however, that the authority may lease space in any of its facilities for use by the lessee for the sale of gasoline, the sale of automobile accessories, automobile repair and service or any other garage service and may lease portions of any of its garage buildings or structures for commercial use by the lessee, where, in the opinion of the authority, such leasing is necessary and feasible for the financing and operation of such facilities, and, provided further, where, in the opinion of the authority, the space above any parking facility is not needed for parking, the authority may lease the right to occupy and use the space above any parking facility for commercial uses other than parking, together with the right to use and occupy such space within the parking facility as may be necessary for the purposes of access to and support of structures occupying the space above such parking facility and, provided further, the authority may lease up to 5 percent, or such other amended percentage under federal law that would permit the issuance of tax free revenue bonds for financing of construction, of the total square footage of any of its garage buildings or structures located within a city's central business district for commercial use that is accessible from the level of the street adjoining the buildings or structures. Any such lease shall be granted by the authority to the highest and best bidder, upon terms specified by the authority, after due public notice has been given asking for competitive bids; provided, however, that if after such public notice no bid is received and/or the authority rejects any bid or bids received, thereafter the authority may negotiate any such lease or leases without further public notice but on a basis more favorable than that contained in any bid or bids rejected, if any. The phrase "due public notice", as used in this section, shall mean a notice published at least 10 days before the award of any such lease in a newspaper of general circulation published in a municipality where the authority has its principal office, and, if no newspaper is published therein, then by publication in a newspaper of general circulation in the county where the authority has its principal office. The authority may reject any or all bids if, in the opinion of the authority, any such lease granted as a result of any such bid or bids would not be adequate or feasible for the financing and operation of such facilities.

(b) Every authority may exercise all powers necessary or convenient for the carrying out of the aforesaid purposes including, but without limiting the generality of the foregoing, the rights and powers described below:

(1) To have existence as a corporation in perpetuity unless the articles of incorporation limit the duration of the corporation's existence to a specified date. If the articles of incorporation limit the corporation's existence to a specific date, the corporation's existence shall continue thereafter until the principal and interest upon all of its bonds shall have been paid or provisions made for such payment and until all of its other obligations shall have been discharged;

(2) To sue and be sued, implead and be impleaded, complain and defend in all courts;

(3) To adopt, use and alter at will a corporate seal;

(4) To acquire, purchase, hold, lease as lessee, and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purpose of the authority and to sell, lease or lessor, transfer and dispose of any property or interest therein at any time required by it;

(5) To acquire by purchase, lease or otherwise and to construct, improve, maintain, repair and operate projects;

(6) To make bylaws for the management and regulation of its affairs;

(7) To appoint officers, agents, employees and servants, to prescribe their duties and to fix their compensation;

(8) To fix, alter, charge and collect rates and other charges for its facilities at reasonable rates to be determined exclusively by it, subject to appeal as provided in this paragraph, for the purposes of providing for the payment of the expenses of the authority, the construction, improvement, repair, maintenance and operation of its facilities and properties, the payment of the principal of and interest on its obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations or with the city. Any person questioning the reasonableness of any rate fixed by the authority may bring suit against the authority in the Superior Court of the county wherein the project is located. The Superior Court shall have exclusive jurisdiction to determine the reasonableness of rates and other charges fixed, altered, charged or collected by the authority. Appeals may be taken to the Supreme Court within 30 days after the Superior Court has rendered a final decision;

(9) To borrow money, make and issue negotiable notes, bonds, refunding bonds and other evidences of indebtedness or obligations of the authority, the bonds to have a maturity date not longer than 40 years from the date of issue, except that no refunding bonds shall have a maturity date longer than the life of the authority, and to secure the payment of such bonds or any part thereof by pledge or deed of trust of all or any of its revenues and receipts, and to make such agreements with the purchasers or holders of such bonds, or with others in connection with any such bonds, whether issued or to be issued, as the authority deems advisable, and in general to provide for the security for the bonds and the rights of the holders thereof;

(10) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business;

(11) Without limitation of the foregoing to borrow money and accept grants from and to enter into contracts, leases or other transactions with any federal agency, the State, municipality, corporation or authority;

(12) To have the power of eminent domain;

(13) To pledge, hypothecate or otherwise encumber all or any of the revenues or receipts of the authority as security for all or any of the obligations of the authority;

(14) To do all acts and things necessary for the promotion of its business and the general welfare of the authority to carry out the powers granted to it by this chapter or any other law;

(15) To enter into contracts with the State, municipalities, corporations or authorities for the use of any project of the authority and fixing the amount to be paid therefor;

(16) To enter into contracts of group insurance for the benefit of its employees and to set up a retirement or pension fund for such employees similar to that existing in the municipality where the principal office of the project is located;

(17) To make contracts with municipalities concerning the use of the space above municipal streets and sidewalks;

(18) To execute mortgages covering its lands and buildings, including construction mortgages, as may be necessary or desirable in the carrying out of its business; provided, however, that in the event of a default by the authority which results in title to a parking facility passing to a private mortgagee or person, all tax exemption privileges or other special privileges accorded to the parking facility because of its public nature shall cease, except exemption from taxation of bonds, the interest thereon or the income therefrom.

(c) The authority shall not at any time or in any manner pledge the credit or taxing power of this State, nor shall any of its obligations be deemed to be obligations of this State, nor shall this State be liable for the payment of principal or of interest on such obligations.

(d) In addition to this chapter providing for the financing of the costs of acquiring lands and premises and for the construction and improvement of parking projects, the authority may by resolution, as provided in this subsection, establish a benefit district.

(1) One benefit district may be designated for the condemnation of lands for 1 or several parking stations. The authority shall determine the percentage of the costs of condemnation which shall be assessable to such benefit district. Not more than 80 percent of such costs shall be assessable to such benefit district or benefit districts.

(2) After a benefit district has been established, no further proceedings shall be taken unless there is filed with the secretary of the authority, within 60 days of the passage of the resolution creating the benefit district, a petition requesting the establishment of such public parking station or stations. Such petition shall be signed by the resident owners of real estate owning not less than 51 percent of the front feet of the real estate fronting or abutting upon any street included within the limits of the benefit district. In determining the sufficiency of the petition, lands owned by the city, county, State or United States or by nonresident owners of real estate within the benefit district shall not be counted in the aggregate of lands within such benefit district. After any petition has been signed by an owner of land in the benefit district, the change of ownership of the land shall not affect the petition. In any case where the owners of lands within the benefit district are tenants in common, each cotenant shall be considered a landowner to the extent of the cotenant's undivided interest in the land. The owner of a life estate shall also

be deemed a landowner for the purpose of this chapter. Guardians of minors or insane persons may petition for their wards when authorized by the proper court so to do. Resident owner of land, as defined in this paragraph, shall be any landowner residing in the city and owning land in the benefit district. No suit shall be maintained in any court to enjoin or in any way contest the establishment of such parking stations or the establishment of a benefit district unless the suit be instituted and summons served within 30 days from and after the date of the filing of such petition with the secretary of the authority.

(3) Whenever the authority shall have acquired lands for public parking stations and shall have declared and ordered that not more than 80 percent of the cost of establishing or improving public parking stations, as provided in this subsection, will be paid by the levy of special assessments upon real estate situate in any 1 or more benefit districts, it shall cause to be made by some competent person an estimate, under oath, of the cost thereof, which estimate shall be filed with the secretary of the authority. The assessment against the benefit district shall be apportioned among the various lots, tracts, pieces and parcels of land within the benefit district in accordance with the special benefits accruing thereto, this apportionment of benefit assessments to be made by 3 disinterested property owners appointed by the mayor of the city or if such city has no mayor, by its chief executive officer within 30 days after the filing of the estimate of the cost of the improvement with the secretary of the authority. As soon as the amount chargeable against each piece of property is ascertained, the authority of such city shall by resolution levy such amount against this real estate in the benefit district, which resolution shall be published once in a newspaper of general circulation in such city. No suit to question the validity of the proceedings of the authority shall be commenced after 30 days from the awarding of a contract for such improvements and until the expiration of the 30 days the contractor shall not be required to commence work under the contract. If no suit shall be filed within such 30 days then all proceedings theretofore had shall be held to be regular, sufficient and valid.

(4) The cost of condemnation and improvement of such public parking stations may be levied and assessed in not to exceed 10 installments, with interest on the whole amount remaining due and unpaid each year at a rate of interest not exceeding 5 percent per annum. Any owner of land within the benefit district may, within 30 days after the assessment resolution is passed, pay the entire amount assessed against the land. The authority of such city may assess, levy and collect the cost of condemnation and improvement of such public parking stations as is assessed against the privately owned property in the benefit district. The assessment shall constitute a lien from the date the same is assessed by resolution, as provided in this paragraph, against the respective premises against which the same is levied, in the same manner as city taxes on real estate are constituted a lien, and shall be collectible in the manner provided for the collection of taxes assessed against the real estate of the City of Wilmington by monition process, as provided in Chapter 143, Volume 36, Laws of Delaware.

(e) When any real property or any interest therein heretofore or hereafter acquired by the authority is no longer needed for the purposes defined in this chapter or when, in the opinion of the authority, it is not desirable or feasible to hold and use such property for said purposes, the authority may sell the same at private or public sale as the authority shall determine, granting and conveying to the purchaser thereof a fee simple marketable title thereto. The authority may make such sale for such price and upon such terms and conditions as the authority deems advisable and for the best interests of the authority and may accept in payment, wholly or partly, cash, bonds, mortgages, debentures, notes, warrants or other evidences of indebtedness as the authority may approve. The consideration received from any such sale may be applied by the authority, in its discretion, to the repayment, in whole or in part, of any funds contributed to the authority

by a municipality under § 508 of this title or retained by the authority for the purposes of this chapter. Without limitation of the foregoing, the authority may accept as consideration in whole or in part for the sale of any such real property, a covenant, agreement or undertaking on the part of any purchaser to provide and maintain off-street parking facilities on such property or a portion thereof for the fulfillment of public parking needs for such period and under such terms and conditions as the authority shall determine. Any such covenant, agreement or undertaking on the part of the purchaser as aforesaid and the right of the authority to fix and alter rates to be charged for any such parking facilities, as well as the right of appeal as in this section provided, shall be set forth and reserved in the deed or deeds of conveyance. Any such covenant, agreement or undertaking may be enforced by the authority in an action for specific performance brought in the Court of Chancery of this State. (48 Del. Laws, c. 369, § 5; 22 Del. C. 1953, § 504; 49 Del. Laws, c. 72; 50 Del. Laws, c. 222, § 1; 50 Del. Laws, c. 279, §§ 1, 2; 55 Del. Laws, c. 293, §§ 1, 2; 57 Del. Laws, c. 51; 57 Del. Laws, c. 179, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 92, § 1; 73 Del. Laws, c. 377, § 2.)

### § 505. Bonds.

(a) The bonds of any authority referred to and authorized to be issued by this chapter shall be authorized by resolution of the board thereof, and shall be of such series, bear such date or dates, mature at such time or times not exceeding 40 years from their respective dates, bear interest at such rate or rates, payable semiannually, be in such denominations, be in such form, either coupon or fully registered, without coupons, carry such registration, exchangeability and interchangeability privileges, be payable in such medium or payment and at such place or places, be subject to such terms of redemption, not exceeding 105 percent of the principal amount thereof, and be entitled to such priorities in the revenues or receipts of such authority, as such resolution or resolutions may provide. The bonds shall be signed by such officers as the authority shall determine, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of the treasurer of the authority, all as may be prescribed in such resolution or resolutions. Any such bonds may be issued and delivered notwithstanding that 1 or more of the officers signing such bonds or the treasurer whose facsimile signature shall be upon the coupon or any officer thereof shall have ceased to be such officer or officers at the time when such bonds shall actually be delivered.

The bonds may be sold at public or private sale for such price or prices as the authority shall determine. Pending the preparation of the definitive bonds, interim receipts may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the authority may determine.

(b) Any resolution or resolutions authorizing any bonds may contain provisions which shall be part of the contract with the holders thereof as to:

(1) Pledging the full faith and credit of the authority or of the municipality for such obligations or restricting the same to all or any of the revenues of the authority from all or any projects or properties;

(2) The construction, improvement, operation, extension, enlargement, maintenance and repair of the project and the duties of the authority with reference thereto;

(3) The terms and provisions of the bonds;

(4) Limitations on the purposes to which the proceeds of the bonds then or

thereafter to be issued or of any loan or grant by the United States may be applied;

(5) The rate of tolls and other charges for use of the facilities of or for the services rendered by the authority;

(6) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(7) Limitations on the issuance of additional bonds;

(8) The terms and provisions of any deed of trust or indenture securing the bonds or under which the same may be issued; and

(9) Any other additional agreements with the holders of the bonds.

(c) Any authority may enter into any deeds of trust, indentures or other agreements with any bank or trust company or other person or persons in the United States having power to enter into the same, including any federal agency, as security for such bonds, and may assign and pledge all or any of the revenues or receipts of the authority thereunder. Such deed of trust, indenture or other agreement may contain such provisions as may be customary in such instruments or as the authority may authorize, including provisions as to:

(1) The construction, improvement, operation, maintenance and repair of any project and the duties of the authority with reference thereto;

(2) The application of funds and the safeguarding of funds on hand or on deposit;

(3) The rights and remedies of the trustee and holders of the bonds which may include restrictions upon the individual right of action of such bondholder; and

(4) The terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

(d) The bonds shall have all the qualities of negotiable instruments under the law merchant and the Uniform Commercial Code of the State. (48 Del. Laws, c. 369, § 6; 22 Del. C. 1953, § 505; 57 Del. Laws, c. 625, §§ 1-3.)

#### **§ 506. Remedies of bondholders.**

(a) The rights and the remedies conferred upon or granted to the bondholders in this section shall be in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or resolutions providing for the issuance of bonds or by any deed of trust, indenture or other agreement under which the same may be issued. In the event that the authority shall default in the payment of principal or interest on any of the bonds after the principal or interest shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days, or in the event that the authority shall fail or refuse to comply with this chapter or shall default in any agreement made with the holders of the bonds, the holders of 25 percent in aggregate principal amount of the bonds then outstanding by instrument or instruments filed in the office of the recorder of deeds of the county, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the bondholders for the purpose provided in this section.

(b) Such trustee and any trustee under any deed of trust, indenture or other agreement may, and, upon written request of the holders of 25 percent or such other percentages as may be specified in any deed of trust, indenture or other agreement, in principal amount of the bonds then outstanding, shall, in the trustee's own name:

(1) By mandamus or other suit, action or proceeding at law or in equity enforce all rights of the bondholders, including the right to require the authority to collect rates, rentals or other charges adequate to carry out any agreement as to or pledge of the revenues or receipts of the authority, and to require the authority to carry out any other agreements with or for the benefit of the bondholders, and to perform its and their duties under this chapter;

(2) Bring suit upon the bonds;

(3) By action or suit in equity require the authority to account as if it were the trustee of an express trust for the bondholders;

(4) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

(5) By notice in writing to the authority declare all bonds due and payable, and, if all defaults shall be made good, then with the consent of the holders of 25 percent or such other percentage as may be specified in any deed of trust, indenture or other agreement, of the principal amount of the bonds then outstanding, to annul such declaration and its consequences.

(c) The Court of Chancery in and for the county wherein the authority is located shall have jurisdiction of any suit, action or proceedings by the trustee on behalf of the bondholders. Any trustee when appointed or acting under a deed of trust, indenture or other agreement, and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver, who may enter and take possession of the facilities of the authority or any part or parts thereof, the revenues or receipts from which are or may be applicable to the payment of the bonds in default and operate and maintain the same and collect and receive all rentals and other revenues thereafter arising therefrom, in the same manner as the authority or the board might do, and shall deposit all such moneys in a separate account and apply the same in such manner as the Court shall direct. In any suit, action or proceeding by the trustee the fees, counsel fees and expenses of the trustee and of the receiver, if any, and all costs and disbursements allowed by the Court shall be a first charge on any revenues and receipts derived from the facilities of the authority, the revenues or receipts from which are or may be applicable to the payment of the bonds in default. The trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth in this section or incident to the general representation of the bondholders in the enforcement and protection of their rights.

(d) Nothing in this section or any other section of this chapter shall authorize any receiver appointed pursuant to this chapter for the purpose of operating and maintaining any facilities of the authority to sell, assign, mortgage or otherwise dispose of any of the assets of whatever kind and character belonging to the authority. It is the intention of this chapter to limit the powers of such receiver to the operation and maintenance of the facilities of the authority as the Court shall direct, and no holder of bonds of the authority nor any trustee shall ever have the right in any suit, action or proceedings at law or in equity to compel a receiver, nor shall any receiver ever be authorized or any court be empowered to direct the receiver, to sell, assign, mortgage or otherwise dispose of any assets of whatever kind or character belonging to the authority. (48 Del. Laws, c. 369, § 7;

22 Del. C. 1953, § 506; 70 Del. Laws, c. 186, § 1.)

### **§ 507. Governing body.**

(a) The powers of each authority shall be exercised by a board composed of not less than 5 nor more than 7 members, all of whom shall be residents or business owners within the city creating the authority. In municipalities with population greater than 50,000, however, the powers of each authority shall be exercised by a board composed of 5 members, all of whom shall be residents of the city creating the authority. The mayor of the city, or if such city or town has no mayor, its chief executive officer, shall appoint the members of the board, 1 of whom shall serve for 1 year, 1 for 2 years, 1 for 3 years, 1 for 4 years, and 1 for 5 years from the 1st day of July in the year in which such authority is created as provided in this chapter. If the board is composed of 6 members, initially 2 rather than 1 shall be appointed for 2-year terms and if the board is composed of 7 members, initially 2 rather than 1 shall be appointed for both 2-year terms and 3-year terms. Thereafter the mayor shall not sooner than 60 days, nor later than 30 days prior to July 1st in each year in which a vacancy occurs, appoint a member of the board for a term of 5 years to succeed the member whose term expires on the 1st day of July next succeeding. Vacancies for unexpired terms that occur more than 60 days before the end of a term shall be promptly filled by appointment by the mayor. All such appointments shall be subject to the confirmation of the city council or other governing body of the city. Any member of the board may be removed for cause by the mayor, or if such city or town has no mayor, by its chief executive officer, with the concurrence of two thirds of all the members of the council or other governing body of the city or town, and the person against whom such charges are made shall be given a reasonable opportunity to make a defense.

(b) Members shall hold office until their successors have been appointed and may succeed themselves. A member shall receive no compensation for services, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of duties.

(c) The members of the board shall select from among themselves a chairperson, a vice chairperson and such other officers as the board may determine. The board may employ a secretary, an executive director, its own counsel and legal staff and such technical experts and such other agents and employees, permanent or temporary, as it may require and may determine the qualifications and fix the compensation of such persons. A majority of the total board membership shall constitute a quorum for its meetings. Members of the board shall not be liable personally on the bonds or other obligations of the authority, and the rights of creditors shall be solely against such authority. The board may delegate to 1 or more of its agents or employees such of its powers as it deems necessary to carry out the purposes of this chapter, subject always to the supervision and control of the board. The board shall have full authority to manage the properties and business of the authority and to prescribe, amend and repeal bylaws, rules and regulations governing the manner in which the business of the authority may be conducted and the powers granted to it may be exercised and embodied. (48 Del. Laws, c. 369, § 8; 22 Del. C. 1953, § 507; 68 Del. Laws, c. 273, §§ 2-4; 70 Del. Laws, c. 186, § 1.)

### **§ 508. Acquisition of lands; cost financing by municipality.**

The authority may acquire by purchase or eminent domain proceedings either the fee or such rights, title, interest or easement in such lands as the authority deems necessary for any of the purposes mentioned in this chapter. When acquiring property or property rights the authority shall, in arriving at a fair and reasonable price, consider the fair market value as required by Chapter 61 of Title 10. Relocation shall be paid according to the terms set forth in Chapter 93 of Title 29. The following shall not be taken under the right of eminent

domain: Property devoted to a public use, property of a public service company, property used for burial purposes, place of public worship in a municipality whose population is greater than 50,000 people, property used as a facility or facilities for the parking of motor vehicles, unless the total square footage to be utilized for the parking of motor vehicles in the total proposed project which the eminent domain proceedings concern (including square footage that may be provided on levels other than the ground level) shall be at least twice the total square footage being utilized at the time of taking for the parking of motor vehicles in the facility or facilities so taken or in a municipality whose population is 50,000 people or less, property used as a facility or facilities for parking of motor vehicles unless said property has been leased by the municipality or authority and used as a parking facility by said lessee within the preceding 3 years. The right of eminent domain shall be exercised by the authority in the manner provided by Chapter 61 of Title 10.

The right of eminent domain conferred by this section may be exercised only within the city.

Court proceedings necessary to acquire property or property rights for purposes of this chapter shall take precedence over all causes not involving the public interest in all courts to the end that the provision of parking facilities be expedited.

Any municipality establishing an authority under this chapter may, under such terms and conditions as it may deem appropriate, provide for and pay to such authority such sum or sums of money necessary to acquire, in whole or in part, the lands upon which such authority may undertake to erect a parking facility as provided in this section, or such sum or sums of money necessary to acquire or construct, in whole or in part, a parking facility or facilities as provided in this section, or such sum or sums of money necessary to pay operating expenses of the authority and debt service on outstanding bonds of the authority, or to make payments into a reserve fund for the payment of the principal of and interest on indebtedness of the authority as may be provided by any resolution of the authority authorizing the issuance of its revenue bonds or by any trust indenture securing its revenue bonds. The municipality, for the purpose of providing such sum or sums of money, may issue its general obligation bonds secured by the faith and credit of the municipality payable from unlimited ad valorem taxes on all of the real estate in the municipality subject to taxation or levy ad valorem taxes on real estate subject to taxation, unlimited as to rate or amount. In addition to the issuance of its general obligation bonds and levy of taxes as provided above, a municipality may guarantee bonds of the authority issued pursuant to § 505 of this title by pledging its full faith and credit to the payment of the principal of and interest on such revenue bonds. The aggregate amount of general obligation bonds issued by a municipality under this provision and the indebtedness so guaranteed and taxes levied shall be in addition to and not within the limitations of any existing statutory debt or tax limitation of the municipality. Any agreement by the municipality to guarantee the revenue bonds of the authority or to maintain a reserve fund or to pay debt service or operating expenses of the authority may be made a part of any contract with holders of revenue bonds of the authority and may be pledged by the authority to the payment of such revenue bonds. The enforcement or performance of such guaranty may include resort to the power of the municipality to tax real estate subject to taxation, with no limit as to rate or amount, or to any other moneys of the municipality available for such purpose. (48 Del. Laws, c. 369, § 9; 22 Del. C. 1953, § 508; 49 Del. Laws, c. 2; 50 Del. Laws, c. 221, § 1; 55 Del. Laws, c. 293, § 3; 57 Del. Laws, c. 179, § 2; 57 Del. Laws, c. 625, § 40; 65 Del. Laws, c. 316, § 1; 69 Del. Laws, c. 304, §§ 1, 2.)

#### **§ 509. Moneys; examination of accounts.**

All moneys of any authority, from whatever source derived, shall be paid to the

treasurer of the authority. The moneys shall be deposited in the first instance by the treasurer in 1 or more banks or trust companies in 1 or more special accounts. The moneys in the accounts shall be paid out on the warrant or other order of the chairperson of the authority or of such other person or persons as the authority may authorize to execute such warrants or orders. Every authority shall have at least an annual examination of its books, accounts and records by a certified public accountant. A copy of such audit shall be delivered to the city creating the authority. A concise financial statement shall be published annually at least once in a newspaper of general circulation in the city where the principal office of the authority is located. If such publication is not made by the authority, the city shall publish such statement at the expense of the authority. If the authority fails to make such an audit, then the auditor or accountant designated by the city may, from time to time, examine, at the expense of the authority, the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its finances, operation and affairs.

The Attorney General of the State may examine the books, accounts and records of any authority. (48 Del. Laws, c. 369, § 10; 22 Del. C. 1953, § 509; 70 Del. Laws, c. 186, § 1.)

#### **§ 510. Contracts; competitive bidding.**

(a) The procurement of material and the award of contracts for construction, repairs or work of any nature made by any authority shall be subject to Chapter 69 of Title 29.

(b) No member of the Board of the Wilmington Parking Authority shall be entitled to vote on any matter before the Board if such member has a direct or indirect financial interest in the outcome of such matter under review. In the event such a financial interest exists, said member shall disclose to the Board the nature of the interest and said member shall refrain from any discussion, deliberation, action and/or vote by the Board on this matter. In situations in which a member or members do not vote by reason of such financial interest, the matter pending before the Board will be decided on the basis of a majority vote of the remaining members present who do not have a financial interest in the matter. A member or members having a financial interest as set forth herein shall be counted for purposes of establishing a quorum, provided such member or members are present at the meeting. The disqualification of a member from voting on a matter before the Board by reason of a financial interest therein shall not affect the validity of any action taken by the Board relative to the matter before it.

(c) Subsection (a) of this section shall not apply to the construction of parking facilities intended to serve and be an integral part of a redevelopment project in any municipality where the municipality or its redevelopment agency has designated or selected a developer who is responsible for the overall development of the project including parking facilities. In such case, the authority may negotiate with the developer for the construction and design of public parking facilities on such terms and conditions as the authority may deem justified and in the public interest. (48 Del. Laws, c. 369, § 11; 22 Del. C. 1953, § 510; 57 Del. Laws, c. 625, § 5; 58 Del. Laws, c. 219; 68 Del. Laws, c. 401, § 1.)

#### **§ 511. Rules and regulations.**

The use of the facilities of the authority and the operation of its business shall be subject to the rules and regulations from time to time adopted by the authority. The authority shall not do anything which will impair the security of the holders of the obligations of the authority or violate any agreements with them or for their benefits. (48 Del. Laws, c. 369, § 12; 22 Del. C. 1953, § 511.)

**§ 512. Continuation of powers.**

The State hereby pledges to and agrees with any person, firm or corporation or federal agency subscribing to or acquiring the bonds to be issued by the authority for the construction, extension, improvement or enlargement of any project or part thereof 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, are fully met and discharged. The State further pledges to and agrees with the United States and any other federal agency that, if any federal agency constructs or contributes any funds for the construction, extension, improvement or enlargement of any project or any portion thereof, the State will not alter or limit the rights and powers of the authority in any manner which would be inconsistent with the continued maintenance and operation of the project or the improvement thereof or which would be inconsistent with the due performance of any agreements between the authority and any such federal agency, and the authority shall continue to have and may exercise all powers granted in this chapter, so long as the same shall be necessary or desirable, for the carrying out of the purposes of this chapter and the purposes of the United States in the construction or improvement or enlargement of the project or such portion thereof. (48 Del. Laws, c. 369, § 13; 22 Del. C. 1953, § 512.)

**§ 513. Termination of authority.**

When any authority shall have finally paid and discharged all bonds, which, together with the interest due thereon, shall have been secured by a pledge of any of the revenues or receipts of a project, it may, subject to any agreements concerning the operation or disposition of such projects, convey such project to the city creating the authority. When any authority shall have finally paid and discharged all bonds issued and outstanding and the interest due thereon and settled all other claims which may be outstanding against it, it may convey all its property to the city and terminate its existence. A certificate requesting termination of the existence of the authority shall be filed in the office of the Secretary of State. If the certificate is approved by the city creating the authority by its ordinance or ordinances, the Secretary shall note the termination of existence on the record of incorporation and return the certificate with the Secretary's approval shown thereon to the board, which shall cause the same to be recorded in the office of the recorder of deeds of the county. Thereupon, the property of the authority shall pass to the city and the authority shall cease to exist. (48 Del. Laws, c. 369, § 14; 22 Del. C. 1953, § 513; 70 Del. Laws, c. 186, § 1.)

**§ 514. Exemption from taxation; payments in lieu of taxes.**

The effectuation of the authorized purposes of the authorities created under this chapter shall and will be in all respects for the benefit of the residents of incorporated cities for the increase of their commerce and prosperity, since such authorities will be performing essential governmental functions, and for the improvement of their health, safety and living conditions, and, in effectuating such purposes, such authorities shall not be required to pay any taxes or assessments upon any property acquired or used by them for such purposes. In lieu of such taxes or special assessments an authority may agree to make payments to the city or the county or any political subdivision. The bonds issued by any authority, their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation within this State. (48 Del. Laws, c. 369, § 15; 22 Del. C. 1953, § 514.)

**§ 515. Transfer of existing facilities to authority.**

(a) Any municipality or owner may sell, lease, lend, grant or convey to any authority any project or any part or parts thereof or any interest in real or personal property which

may be used by the authority in the construction, improvement, maintenance or operation of any project. Any municipality may transfer, assign and set over to any authority any contracts which may have been awarded by the municipality for the construction of projects not begun or, if begun, not completed. The territory being served by any project or the territory within which such project is authorized to render service at the time of the acquisition of such project by an authority shall constitute the area in which such authority shall be authorized to render service.

(b) The authority shall first report to and advise the city by which it was created of the agreement to acquire, including all its terms and conditions.

The proposed action of the authority and the proposed agreement to acquire shall be approved by the city council. Such approval shall be by two-thirds vote of all the members of the council.

(c) This section, without reference to any other law, shall be deemed complete for the acquisition by agreement of projects as defined in this chapter located wholly within or partially without the city causing such authority to be incorporated, any provisions of other laws to the contrary notwithstanding, and no proceedings or other action shall be required except as prescribed in this section. (48 Del. Laws, c. 369, § 16; 22 Del. C. 1953, § 515.)

#### **§ 516. Indemnification.**

(a) The Wilmington Parking Authority shall indemnify any 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 person is or was a member of the Authority, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such member in connection with such action, suit or proceeding, if said member acted in good faith and in a manner reasonably believe to be in or not opposed to the best interests of the Authority, and with respect to any criminal proceeding or action, the member had no reasonable cause to believe that the action was unlawful.

(b) Any indemnification under this section shall be made only as authorized in the specific case upon a determination that indemnification of the member is proper under the circumstances because the member has met the applicable standard of conduct as set forth in subsection (a) of this section. Such a determination will be made by the Attorney General or the Attorney General's designee within 15 days of the date of receipt of a request for such a determination. Such request shall be filed by the member affected and shall set forth in detail the circumstances supporting the claim for indemnification. In the event the Attorney General fails to make the determination within the time frame specified, the requested indemnification shall be deemed as granted.

(c) Expenses (including attorneys' fees) incurred by a member in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Authority in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by or on behalf of such member to repay such amount if it shall ultimately be determined that such member is not entitled to be indemnified by the Authority as authorized by this section.

(d) No payment shall be made pursuant to the provisions of this section unless the member seeking such payment shall agree that the State be subrogated, to the extent of any payment, to all rights of recovery of such member, shall agree to execute all papers required and shall do everything that may be necessary to secure such rights including the

execution of such documents necessary to enable the State effectively to bring suit in the name of the State. (68 Del. Laws, c. 401, § 2; 70 Del. Laws, c. 186, § 1.)

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