



SPONSOR: Sen. McDowell
Sens. Hansen, Marshall, McBride, Poore, Townsend,
Walsh; Rep. Heffernan

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 246

AN ACT TO AMEND TITLES 9 AND 22 OF THE DELAWARE CODE RELATING TO COUNTIES,
MUNICIPALITIES AND PUBLIC LANDS.

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

1 Section 1. Amend Section 670, Chapter 6, Title 9 of the Delaware Code by making deletions as shown by strike and
2 insertions as shown by underline as follows:

3 § 670 Acquisition of land for parks; title and ownership; gifts.

4 (a) The county government may take or acquire by condemnation in accordance with law, agreement, purchase or
5 gift, lands located within the county outside of the corporate limits of any city or town and not already devoted to a public
6 purpose or used by a public utility in its service of the public as may seem to the county government suitable for park and
7 recreational purposes and necessary to meet the requirements of this chapter. Title and ownership of such lands, however
8 acquired, shall be vested in the State for the use of the county. The county government, pursuant to agreement executed by
9 an incorporated city or town, may acquire by agreement, purchase or gift, or may lease or agree to undertake to control and
10 maintain for a term of years, lands located within the county owned by the incorporated city or town.

11 (b) Gifts of land, buildings or money may be accepted for specific maintenance or establishment of park and
12 recreational areas.

13 (c) The county governments of this state may execute and deliver, in proper form, a lease, concession agreement,
14 easement, or license agreement for any part of the public lands owned by them, including park land and land held in a
15 public trust. The demise and lease of such lands, including public parks, may be upon such conditions and for such rentals
16 at the county government deems advisable for the public good. Whoever leases any of the lands under any restrictions or
17 conditions of a county government and fails to comply with the restrictions or conditions set forth in the lease with the
18 government forfeits the leasehold interest granted by the lease.

19 Section 2. Amend Chapter 1, Title 22 of the Delaware Code by making deletions as shown by strike and insertions as
20 shown by underline as follows:

21 § 117. Lease of public lands.

22 The municipal governments of this state may execute and deliver, in proper form, a lease, concession agreement, easement,
23 or license agreement for any part of the public lands owned by them, including park land and land held in a public trust.
24 The demise and lease of such lands, including public parks, may be upon such conditions and for such rentals as the
25 municipal government deems advisable for the public good. Whoever leases any of the lands under any restrictions or
26 conditions of a municipal government and fails to comply with the restrictions or conditions set forth in the lease with the
27 government forfeits the leasehold interest granted by the lease.

SYNOPSIS

This act provides greater flexibility for County and Municipal governments to enter into public-private partnerships for public lands. These agreements provide opportunities for the preservation of public land and limit the amount of government money required to maintain the land.

This act is intended to abrogate the restrictions on permitted uses for public land, including public parks, held in a public trust as provided in the common law, including the restrictions set forth in *Anderson v. Mayor and Council of Wilmington*, 137 A.2d 521 (Del. Ch. 1958) and *City of Wilmington v. Lord*, 332 A.2d 414 (Del. Ch. 1975), *aff'd*, 378 A.3d 635 (Del. 1977).

Author: Senator McDowell