

CHAPTER 26
FORMERLY
HOUSE BILL NO. 119
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO SPECIAL DEVELOPMENT DISTRICTS.

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

Section 1. Amend Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 55
KENT COUNTY SPECIAL DEVELOPMENT DISTRICTS

§ 5501. Definitions.

In this chapter, the following terms shall have the meanings indicated:

(1) “Bonds” or “bond” means a special obligation bond, revenue bond, note, or other similar instrument issued by the county in accordance with this chapter.

(2) “Chief financial officer” means the Director of the Kent County Department of Finance or his/her designee designated by the Director of the Kent County Department of Finance.

(3) “Cost” includes the cost of:

a. Construction, reconstruction, and renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or to be acquired by a municipal, local, county, state, or federal government or any agency, department, or office thereof for a public purpose;

b. All machinery and equipment including machinery and equipment needed to expand or enhance the services of a municipal, local, county, state, or federal government or any agency, department, or office thereof to the special development districts created pursuant to § 5502 of this title;

c. Financing charges and interest prior to and during construction, and, if deemed advisable by the county, for a limited period after completion of the construction, interest, and reserves for principal and interest, including costs of county bond insurance and other type of financial guaranty, liquidity support, and costs of issuance;

d. Extensions, enlargements, additions, and improvements;

e. Architectural, engineering, financial, and legal services;

f. Plans, specifications, studies, surveys, and estimates of cost and of revenues;

g. Administrative expenses necessary or incident to determining to proceed with the improvements, including infrastructure improvements; and

h. Other expenses as may be necessary or incident to the construction, acquisition, financing, and operation of the improvements, including infrastructure improvements, including administrative expenses charged to collect and/or administer the tax revenues.

(4) "County" or "county" means Kent County.

(5) "County administrator" means the Kent County Administrator or his/her designee designated by the Kent County Administrator.

(6) "Issuing Body" or "issuing body" means a municipality or other political subdivision, department or agency of the State (other than the county) when it acts to issue a bond, a note, or other similar instrument.

(7) "Levy Court" means the Kent County Levy Court.

(8) "Other Obligations" or "Other Obligation" means a bond, a note, or other similar instrument issued by an issuing body for any the purposes stated in § 5502 of this title.

§ 5502. Special taxes authorized; purpose; requirements and restrictions.

(a)(1) For any purpose stated in subsection (b)(1) or (2) of this section, the county may:

(i) Create a special development district;

(ii) Levy ad valorem or special taxes; and

(iii) Issue bonds and other obligations.

(2) For any purpose stated in subsection (b)(3) of this section, the county may:

(i) Create a special development district;

(ii) Levy ad valorem or special taxes; and

(iii) pledge funds under an agreement described in subsection (b)(3) of this section to secure payment on Other Obligations.

(3) Before the county may establish a special development district under this chapter, all of the owners of real property in the proposed special development district shall request that the county establish the special development district.

(b) The purpose of the authority granted under subsection (a) of this section is:

(1) To provide financing, refinancing, or reimbursement for the cost of the design, construction, establishment, extension, alteration, maintenance, or acquisition of adequate storm drainage systems, sewers, water systems, roads, bridges, culverts, tunnels, streets, roadways, traffic signals, signage, sidewalks, lighting, parking, parks and recreation facilities, open space, farm land preservation, fire protection facilities, public safety facilities, paramedic facilities, libraries, transit facilities, solid waste facilities, identifying monuments, landscaping of entrances and medians, and other improvements, including infrastructure improvements, as necessary, whether situated within the special development district or outside the special development district if the improvements, including infrastructure improvements, provide service or benefit to the property within the special development district, for the development and utilization of the land, each with respect to any defined geographic region within the county;

(2) To provide financing, refinancing, or reimbursement for the costs associated with tax increment financing undertaken with respect to TIF Districts pursuant to Chapter 54 of this title; and

(3) To pledge under a written agreement the ad valorem or special taxes levied under this chapter to secure the payment, or reimbursement of a payment, of Other Obligations. Such agreement shall be between

the county and the issuing body, and shall run to the benefit of and be enforceable on behalf of any holder, of Other Obligations.

§ 5503. Authority granted; section self-executing.

(a) In addition to other powers the county may have, and notwithstanding the provisions of any other public local law, or public general law, the county may borrow money by issuing and selling bonds, or impose ad valorem or special taxes under this chapter for any of the purposes stated in § 5502(b) of this title, if a request to the county is made by both:

(1) The owners of at least 2/3 of the assessed valuation of the real property located within the special development district; and

(2) At least 2/3 of the owners of the acreage located within the special development district, provided that:

a. Multiple owners of a single parcel are treated as a single owner; and

b. A single owner of multiple parcels is treated as 1 owner.

(b) This section is self-executing and does not require the county to enact legislation to exercise the powers granted under this section.

§ 5504. Bonds payable from special fund; complementary powers of governing body; proceeds.

(a) Bonds shall be payable from the special fund required under § 5505 of this title.

(b) If the county issues bonds under this section, the Levy Court may also:

(1) Establish sinking funds for such bonds;

(2) Establish debt service reserve funds for such bonds;

(3) Pledge other assets and revenues towards the payments of the principal of, premium, if any, and interest on such bonds; or

(4) Provide for bond insurance or any other type of credit enhancement or liquidity support of such bonds.

(c) All proceeds received from any bonds issued and sold shall be applied solely to pay costs, including:

(1) Costs of design, construction, establishment, extension, alteration, or acquisition of improvements, including infrastructure improvements;

(2) Costs of issuing bonds;

(3) Payment of the principal and interest on loans, including development loans, money advances, or any indebtedness for any of the purposes stated in § 5502(b)(1) and (2) of this title, including the refunding of bonds previously issued under this chapter;

(4) Funding of a debt service reserve fund or payment of interest prior to, during, or for a limited period of time after construction; and

(5) Purposes described in § 5502(b)(1) and (2) of this title.

§ 5505. Special fund.

(a) By resolution, the Levy Court may:

(1) Designate by resolution an area or areas within the county as a special development district even though no bonds authorized by this chapter have been issued by the county with respect to that special development district or are then outstanding;

(2) Subject to subsection (b) of this section, adopt a resolution creating a special fund with respect to the special development district; and

(3) Provide for the levy of an ad valorem or special tax on all real property within the special development district at a rate or amount designed to provide adequate revenues to pay the principal of, interest on, and redemption premium, if any, on the bonds, to replenish any debt service reserve fund, for any other purpose related to the ongoing expenses of or security, including debt service coverage requirements, for the bonds, or to secure payment by the county of its obligations under an agreement described in § 5502(b)(3) of this title. Ad valorem taxes shall be levied in the same manner, upon the same assessments, for the same period or periods, and as of the same date or dates of finality as are now or may hereafter be prescribed for general ad valorem real property tax purposes within the district, and shall be discontinued when all of the bonds have been paid in full. Special taxes shall be levied pursuant to § 5513 of this title.

(b) The resolution creating a special fund under paragraph (a)(2) of this section shall:

(1) Pledge to the special fund the proceeds of the ad valorem or special tax to be levied as provided under paragraph (a)(3) of this section; and

(2) Require that the proceeds from the tax be paid into the special fund.

§ 5506. When no bonds or Other Obligations outstanding.

(a) When no bonds are outstanding, the county may use money in the special fund for payment or reimbursement of debt service on Other Obligation that the county is obligated to pay under an agreement described in § 5502(b)(3).

(b) When no bonds are outstanding with respect to a special development district and no Other Obligations are outstanding:

(1) The special development district shall be terminated; and

(2) Any moneys remaining in the special fund on the date of termination of the special development district shall be paid to the general fund of the county.

§ 5507. Adoption of ordinance to implement authority.

(a) In order to implement the authority conferred upon it by this chapter to issue bonds, the Levy Court shall adopt an ordinance that:

(1) Specifies and describes the proposed undertaking and states that it has complied with § 5505 of this title;

(2) Specifies the maximum principal amount of bonds to be issued;

(3) Specifies the maximum rate or rates of interest for the bonds; and

(4) Agrees to a covenant to levy upon all real property within the special development district, ad valorem taxes or special taxes in rate and amount at least sufficient in each year in which any of the bonds are outstanding to provide for the payment of the principal of, premium, if any, and the interest on the bonds.

(b) The ordinance may specify or may authorize the chief financial officer or county administrator to specify any of the following, as he/she deems appropriate, to effect the financing of the proposed undertaking:

(1) The actual principal amount of the bonds to be issued;

(2) The actual rate or rates of interest for the bonds;

(3) The manner in which and the terms upon which the bonds are to be sold;

(4) The manner in which and the times and places that the interest on the bonds is to be paid;

(5) The time or times that the bonds may be executed, issued, and delivered;

(6) The form and tenor of the bonds and the denominations in which the bonds may be issued;

(7) The manner in which and the times and places that the principal of the bonds is to be paid, within the limitations set forth in this chapter;

(8) Provisions pursuant to which any and all of the bonds may be called for redemption prior to their stated maturity dates; or

(9) Any other provisions not inconsistent with this chapter as shall be determined by the Levy Court to be necessary or desirable to effect the financing of the proposed undertaking.

(c) An ordinance authorizing the bonds provided for under this chapter, an ordinance, resolution, or order passed or adopted in furtherance of the required ordinance, the bonds, the designation of a special development district, or the levy of a special ad valorem tax or special tax may not be subject to any referendum by reason of any other state or local law.

(d) The ordinance authorizing the bonds required under this section, any ordinance, resolution, or order passed or adopted in furtherance of the required ordinance, the bonds, or the levy of a special ad valorem tax or special tax shall be subject to the request of the landowners as specified under § 5503(a) of this title.

§ 5508. Taxation of bonds.

The principal amount of the bonds, the interest payable on the bonds, their transfer and any income derived from the transfer, including any profit made in the sale or transfer of the bonds, shall be exempt from taxation by the State and by the counties and municipalities of the State.

§ 5509. Bond form; signatures; maturity; manner of sale.

(a) All bonds shall be in fully registered form. Each of the bonds shall be deemed to be a security as defined in § 8-102 of Title 6, whether or not it is either 1 of a class or series or by its terms is divisible into a class or series of instruments.

(b) All bonds shall be signed manually or in facsimile by the county administrator, and the seal of the county shall be affixed to the bonds and attested by the chief financial officer or other similar administrative officer of the county. If any officer whose signature or countersignature appears on the bonds ceases to be such officer

before delivery of the bonds, the officer's signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until delivery.

(c) All bonds shall mature not later than 30 years from their date of issuance.

(d) All bonds shall be sold in the manner, either at public or private sale, and upon the terms, as the Levy Court deems best. Any contract for the acquisition of property may provide that payment shall be made in bonds.

§ 5510. Bonds issued are securities.

Bonds issued under this chapter are securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, state banks and trust companies, national banking associations, savings banks, savings and loan associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them.

§ 5511. Powers granted are supplemental to other laws.

The powers granted under this chapter shall be regarded as supplemental and additional to powers conferred by other laws, and may not be regarded as in derogation of any powers now existing.

§ 5512. Construction of chapter.

This chapter, being necessary for the welfare of the State and its residents, shall be liberally construed to effect the purpose stated in § 5502(b) of this title.

§ 5513. Special taxes on real property as alternative to ad valorem taxes.

(a) As an alternative to levying ad valorem taxes under this chapter, the Levy Court may levy special taxes on real property in a special development district to cover the cost of improvements, including infrastructure improvements, including but not limited to costs defined in § 5501(3) of this title. In determining the basis for and amount of the tax, the cost of an improvement may be calculated and levied:

(1) Equally per front foot, lot, parcel, dwelling unit, or square foot;

(2) According to the value of the property as determined by the county, with or without regard to improvements on the property; or

(3) In any other reasonable manner that results in fairly allocating the cost of the improvements, including infrastructure improvements.

(b) The Levy Court may provide by ordinance or resolution for:

(1) A maximum amount to be assessed with respect to any parcel or real property located within a special development district;

(2) A tax year or other date after which no further special taxes under this section shall be levied or collected on a parcel; and

(3) The circumstances under which the special tax levied against any parcel may be increased, if at all, as a consequence of delinquency or default by the owner of that parcel or any other parcel within the special development district.

(c) The Levy Court by ordinance or resolution may establish procedures allowing for the prepayment of special taxes under this section.

(d) Special taxes levied under this section shall be collected and secured in the same manner as general ad valorem real property taxes unless otherwise provided in the ordinance or resolution and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for general ad valorem real property taxes.

§ 5514. Bonds not to constitute general obligation debt.

Bonds issued under this chapter are a special obligation of the county and may not constitute a general obligation debt of the county, or a pledge of the county's full faith and credit or taxing power. Bonds are nonrecourse to property owners who purchase property in a special development district. Property owners who purchase property in a special development district shall only be responsible for the payment of ad valorem real property taxes and special taxes levied by the Levy Court pursuant to this chapter.

§ 5515. Special development district consistency with certified comprehensive plan.

The use of lands in a special development district shall be consistent with the comprehensive plan for the area as certified pursuant to § 9103(f) of Title 29.

§ 5516. Limitation on ad valorem or special taxes within Special Development District.

The levy of an ad valorem or special tax pursuant to § 5502(a)(2) or § 5513(a) of this title shall not be applicable to and shall not be imposed on special betterments property as defined in § 8101(e) of this title owned or leased by a public utility as defined in § 102(2) of Title 26.

Section 2. This Act shall become effective upon its enactment into law.

Approved May 30, 2017