

CHAPTER 149
FORMERLY
SENATE BILL NO. 93

AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATED TO STORMWATER MAINTENANCE DISTRICTS.

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

Section 1: Amend Title 9 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

Chapter 52 – Stormwater Management

§ 5201. Definitions.

As used in this chapter:

(1) "Stormwater management" means:

a. For water quantity control, a system of vegetative, structural, and other measures that controls the volume and rate of stormwater runoff which may be caused by land disturbing activities or activities upon the land; and

b. For water quality control, a system of vegetative structural, and other measures that control adverse effects on water quality that may be caused by land disturbing activities or activities upon the land.

(2) "Stormwater maintenance district" means an area in Kent County, within ascertainable boundaries, and which is in the opinion of the county government susceptible of efficient and economical stormwater maintenance pursuant to the procedures of this subchapter.

§5202. Establishing a stormwater maintenance district.

(1) Real property owners of any area in Kent County contained within ascertainable boundaries may petition the Kent County government to declare the area a stormwater maintenance district. The petition shall set forth the boundary lines of the proposed stormwater maintenance district and be submitted according to the criteria established by the county government.

(2) Any new applicable subdivision or land development approved following the adoption of Kent County's implementing ordinance shall establish a stormwater maintenance district as a condition of approval. Fees for the district shall not be incurred until the subdivision or land development is complete and the stormwater infrastructure approved by the appropriate regulating agency.

(3) Kent County may establish a stormwater maintenance district within an incorporated area using the same submission process only with the concurrence of the local governing body.

§5203. Public hearing.

Upon receipt of the petition, the county government shall hold a public hearing, notice of which shall be published at least once in a newspaper published within the County. Said notice shall be published not more than 21 and at least 10 days before the public hearing and shall contain a description of the boundaries of the proposed stormwater maintenance district and a statement that the county government will hold a hearing to consider whether or not to create the proposed district. The notice shall also state that in the event the county government decides to create the proposed stormwater maintenance district, the county government will assess the unit costs of stormwater maintenance against each unit of real property used or intended for residential purposes within the stormwater maintenance district.

§ 5204. Creation of stormwater maintenance district.

(a) If the county government determines, after a public hearing, that it is in the public interest to create the proposed stormwater maintenance district, it shall pass a resolution to that effect.

(b) The creation of a stormwater maintenance district and the resulting infrastructure maintenance managed by the County shall take precedence over any homeowner obligation for stormwater management included in declarations of restrictions or similar development agreements. Any common open space or infrastructure within a community not maintained as part of a stormwater maintenance district shall remain the responsibility of the homeowners.

§5205. Agreements for stormwater maintenance authorized.

The county government may enter into an agreement with the Kent Conservation District or other government, nonprofit, or for-profit agency or organization to maintain the stormwater infrastructure of each stormwater maintenance district.

§5206. Award of contracts.

Either Kent County or the Kent Conservation District may enter into contracts for maintenance of stormwater infrastructure that cannot be completed by existing staff. All such contracts shall follow applicable state and local laws and policies.

§5207. Levy and collection of stormwater maintenance fee.

(a) In order to fund the annual and long-term costs for each stormwater maintenance district, the county government shall establish a fee structure for each district and divide the annual cost, plus a pro rata administrative cost as determined by the county government, by the number of dwelling units within the stormwater maintenance district to arrive at the annual unit cost. The annual unit cost shall then be assessed against each unit located within the boundaries of the stormwater maintenance district. No parcel of real estate shall be exempt from paying its annual unit cost. The established fee structure need not be uniform among districts.

(b) The annual unit cost assessed against each unit shall be levied and collected by the Board of Assessment and county government at the same time and in the same manner as other county taxes and shall be a lien on real property the same as other county taxes. The fee shall be included on the county tax bills under the heading "stormwater maintenance fee."

§5208. Administration of funds.

All amounts collected pursuant to this subchapter shall be paid into the general fund of Kent County and all payments for stormwater maintenance shall be paid out of the general fund of Kent County. Should Kent County fail in any 1 year to collect all of the taxes in the stormwater maintenance district necessary to pay the price for stormwater maintenance in any year, the county government may pay the deficit out of the general fund pending enforcement of the tax lien. The county government may make payments out of the general fund in anticipation of collection of the stormwater maintenance tax.

§5209. Continuation and termination of contracts; consolidation of stormwater maintenance districts.

The county government may determine not to continue stormwater maintenance for any stormwater maintenance district at the expiration of any agreement entered into pursuant to this subchapter. The county government may, without further public hearings, consolidate 2 or more stormwater maintenance districts into a single district.

§5210. Annual budgeting.

(a) The annual amounts required for stormwater maintenance pursuant to the provisions of this subchapter shall be included in the annual budget under separate headings for each stormwater maintenance district. After levying the stormwater maintenance fee, the county government shall deliver a separate fee collection warrant together with a list of taxables for each stormwater maintenance district to the County Finance Director commanding him or her to collect from the persons named in the said list their stormwater maintenance fee and its amount.

(b) Should a stormwater maintenance district be formed after the commencement of any fiscal year, the county government shall include in the next annual budget an amount sufficient to reimburse the general fund for the expenditure during the last fiscal year as well as an amount sufficient to pay the cost for the coming fiscal year.

Approved July 31, 2013