

CHAPTER 25
FORMERLY
SENATE BILL NO. 63

AN ACT TO AMEND THE CHARTER OF THE TOWN OF FENWICK ISLAND, DELAWARE, CHAPTER 302, VOLUME 49, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO INCORPORATE THE TOWN OF FENWICK ISLAND, DELAWARE", TO AMEND SECTION 33, AUTHORIZING THE BORROWING OF MONEY AND ISSUING OF BONDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend the Charter of the Town of Fenwick Island, Delaware, Chapter 302, Volume 49, Laws of Delaware, as amended, Section 33, Subparagraph B, C, and D, by striking said subparagraphs in their entirety and substituting in lieu thereof the following:

“Section 33. Authorizing the Borrowing of Money and Issuing of Bonds.

B. Procedure.

(1). Town Council, by resolution, shall propose to the electors of the Town of Fenwick Island, Delaware, that a sum of money not to exceed a stated principal amount, shall be borrowed for any or all of the above purposes; the resolution shall state the maximum principal amount of money desired to be borrowed, the purpose for which it is desired, the manner of securing same, and other pertinent facts relating to the loan which are deemed pertinent by the Town Council and in their possession, and shall fix a time and place for a hearing on the said resolution.

(2). Notice of the time and place of the hearing on the resolution authorizing said loan shall be printed in a newspaper having a general circulation in the Town and/or in the discretion of the Town Council, posted in at least five (5) public places at least one (1) week before the time set for said hearing.

(3). Following the public hearing, a second resolution shall then be passed by the Town Council ordering a Special Election to be held not less than thirty (30) days and not more than sixty (60) days after said public hearing to borrow said money for the purpose of voting for or against the proposed loan. The passing of the second resolution calling the Special Election shall ipso facto be considered Council’s determination to proceed in the matter in issue.

(4). The notice of the time and place of holding the said Special Election shall be printed in two (2) issues of a newspaper having a general circulation in the Town within the thirty (30) days immediately prior to the special election and/or, in the discretion of the Town Council, posted in five (5) public places at least fifteen (15) days prior to the special election.

(5). Voting.

(a) At such special election, any person who is entitled to vote in the annual Town election if it were held on that day, shall be entitled to vote (For purposes of this section, “entitled to vote” shall include “registered to vote” if voter registration is required for the annual Town election).

(b) These provisions shall be construed so as to permit only one-person, one vote. Where a voter is entitled to vote by virtue of both residence and ownership of property, that voter shall be entitled to only one vote; where a voter is entitled to vote by ownership of two or more properties, that voter shall be entitled to only one vote.

(c) The Registration books of the Town shall be conclusive evidence of the right to vote at the Special Election.

(d) A qualified voter may cast his, her or its ballot by absentee ballot if such person is unable to appear in person pursuant to the absentee ballot procedures established by the Town.

(6) Any Special Election held pursuant to the provisions of this section shall be conducted by voting machines, an electronic voting system or printed ballots as permitted by law which shall, at a minimum, have the following designation:

For the proposed borrowing

Against the proposed borrowing

(7) Board of Special Election.

(a) The Mayor, by and with the advice and consent of a majority of the Town Council, shall appoint three (3) persons, who may or may not be registered and qualified voters in the Town to act as a Board of Special Election. The polling places shall be open for a minimum of six (6) hours as specified by the resolution of the Town Council. Persons in the polling place at the time appointed for closing of the polls shall be entitled to vote. The Board of Special Election shall be the sole and final judges of the legality of the votes offered at such Special Election and shall keep a true and accurate list of all persons voting.

(b) The Board of Election shall count the votes for and against the proposed loan and shall announce the result thereof, shall make a certificate under their hands of the number of votes cast for and against the proposed loan and shall deliver the same of the Town Council, and the original shall be filed with the papers of the Town Council.

(8) Bonds; evidence of borrowing.

(a) If a majority of the votes cast at such Special Election shall be in favor of such borrowing, the Town Council shall proceed with the issuance of said bonds or other indebtedness; provided, however, that the Town Council may, by resolution, at any time prior to entering into a binding agreement for the public or private sale of such bond(s) or other indebtedness, abandon the proposed borrowing. The Town Council shall prepare and cause to be advertised, within thirty (30) days following the date of receipt by the Town Council of the certificate of the Board of Special Election, a Notice of Adoption described in Subsection 11 hereof, in two (2) issues of a newspaper having general circulation in the Town.

(b) The form of the bonds or certificates of indebtedness and the thereunto attached coupons, if any, the time or times of payment, the interest rate, the classes, the series, the maturity, the registration, any callable or redeemable features, the denomination, the name thereof and any other relative or appurtenant matter thereto shall all be determined by the Town Council after said Special Election.

(c) The bonds may be sold at either public or private sale as determined by the Town Council. If the bonds shall be offered for public sale, the Town Council, shall first advertise a notice of sale inviting bids thereon, in a manner to be prescribed by the Town Council, at least five (5) days before the date of sale, on which date of sale bids therefor will be accepted. The bonds shall be sold to the winning bidder whose bid offers the lowest true interest cost to the Town out of all bids timely submitted.

(d) With respect to its budget, and in fixing the rate of tax, the Town Council shall provide a sinking fund for the payment of interest and principal of said bonds or other indebtedness at the maturity or maturities thereof.

(e) The faith and credit of the Town shall be deemed to be pledged for the due payment of the bonds or other indebtedness and interest thereon issued under the provision hereof, when the same have been properly executed and delivered for value and there shall be no limitation upon the amount of taxes which may be raised by taxation for the payment of interest on and principal of any bonded indebtedness of the Town, whether incurred before or after the passage of this Act.

(9) The bonded indebtedness shall not at any time exceed in the aggregate the total sum of twenty-five per centum (25%) of the value of the real property situate within the limits of the Town as shown by the last assessment preceding the creation of the said indebtedness. There shall be no limitation upon the amount of ad valorem taxes

collected to pay the principal of and interest on any bonded indebtedness incurred pursuant to the provisions of this section.

(10) In anticipation of the issuance of said bonds at any time after a Special Election approving the bond issue, the Town Council may issue and sell bond anticipation notes of the Town at either public or private sale for not less than par plus accrued interest, if any. Said notes may be renewed from time to time by the issuance of and sale of new notes. Said notes shall bear interest at a rate determined by the Town Council to be fair and reasonable. All such notes shall mature and be paid not later than two (2) years from the date of issuance. The aggregate principal amount of all notes outstanding at any one time shall not exceed the aggregate principal amount of the notes authorized by the Special Elections approving such notes. Said notes shall be redeemed at par plus accrued interest, if any, prior to their maturity if the Town Council shall have reserved the right to do so by an express provision in the note or notes. The principal and any interest due on said notes may be paid from the proceeds of the sale of the bonds authorized by this section. Both interest on and principal of any bond anticipation notes shall not be subject to taxation by the state of Delaware or any political subdivision thereof.

(11) No action contesting any proceedings conducted, or action taken, by the Town Council hereunder regarding the authorization of any bonds or other indebtedness issued under this Section shall be brought after the expiration of twenty (20) days from the publication of a Notice of Adoption in two (2) issues of a newspaper having general circulation in the Town, which Notice of Adoption shall announce the following information:

- (a) That the Town Council has determined to borrow a sum of money not to exceed a stated amount and to issue bonds or other indebtedness therefor;
- (b) That the proposal has been approved by a majority of those casting votes at a Special Election in the Town, called for the purpose of voting for or against the borrowing;
- (c) The maximum principal amount of money to be borrowed and any other details of the bonds or such other indebtedness, to the extent such details are known at the time of the advertisement of such notice;
- (d) The purpose for which such amount of money is to be borrowed; and
- (e) That any person desiring to challenge the authorization of such bond(s) or other indebtedness must bring his, her or its action within twenty (20) days from the date of publication of such notice or forever be barred from doing so.

(12) The Town Council may refund any or all outstanding bonds or other indebtedness of the Town at the maturity thereof or in accordance with any callable feature or provision contained therein but refunding of such bonds or other indebtedness of the Town shall not require the procedures set out in this Section 33 so long as the outstanding principal amount of the refunding bonds or other indebtedness does not exceed the aggregate principal amount, plus accrued interest and redemption premium, if any, of the outstanding bonds or indebtedness to be refunded, plus the costs of the refunding, and shall be enacted by resolution of the Town Council.”

Approved May 14, 2009