

LAWS OF DELAWARE
VOLUME 83
CHAPTER 7
151ST GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 11

AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO NEW CASTLE COUNTY PROPERTY TAX RATES.

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

Section 1. Amend Subchapter I, Chapter 11, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1101A. Definitions.

For purposes of this chapter, beginning for the Fiscal Year 2023 budget:

(1) “Chief Financial Officer” means the Chief Financial Officer of New Castle County or a designee.

(2) “Fire protection” means the prevention and extinguishment of fires; maintenance of apparatus and equipment, including ambulances, rescue trucks, aerial, or platform trucks and rescue boats; provision of basic life support; and operation of stations.

(3)a. “Local service function” or “LSF” means a local governmental service, or a group of closely allied governmental services, that is all of the following:

1. A service for which, New Castle County or any municipality, as distinguished from the State, has a primary responsibility for provision and financing, under the Constitution, Code, or judicial decision.

2. Performed or financially supported by New Castle County and by at least 1 municipality, in whole or in part, instead of New Castle County.

3. Funded by New Castle County, in whole or in part, through property tax revenue.

b. “Local service function” or “LSF” may include any of the following:

1. Planning and zoning, including subdivision regulations.

2. Adoption and enforcement of ordinances for the protection of persons and property from hazards in the use, occupancy, condition, alteration, maintenance, repair, sanitation, removal, and demolition of buildings, structures, and appurtenant grounds; the operation of equipment; and outdoor signs, including codes and regulations for any of the following:

A. Zoning.

B. Building.

C. Plumbing.

D. Property maintenance.

3. Programs for redevelopment, affordable housing, and urban renewal.

4. Parks and park related activities and recreational programs.

5. Police protection.
6. Fire protection.
7. 911 communications.
8. Animal control.
9. Public works, including maintenance and operation of sanitary and storm sewers, drainage systems, sewage disposal facilities, and refuse disposal facilities, including trash and garbage collection disposal.
10. Lighting of streets, roads, alleys, and other public places.
11. Maintenance and operation of the water supply system.
12. Library system.

(4) "Municipality" means a municipal corporation located within New Castle County and incorporated by an act of the General Assembly.

(5) "New Castle County service percentage" means the degree to which New Castle County provides a local service function within a municipality, determined by subtracting the degree to which a municipality provides the local service function from 100%. The New Castle County service percentage in the unincorporated area equals 100%.

Section 2. Amend Subchapter III, Chapter 11, Title 9 of the Delaware Code by creating a new Subpart A before § 1131 of Title 9 by making deletions as shown by strike through and insertions as shown by underline as follows:

Subpart A. Local service functions.

Section 3. Amend Subchapter III, Chapter 11, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1125. Local service functions; New Castle County property tax rates in municipalities.

(a) Beginning for the Fiscal Year 2023 budget, in determining the New Castle County property tax rate for real property in a municipality, New Castle County shall consider the degree that a local service function is fully or partially performed or financially supported by the municipality instead of New Castle County under § 1102 and § 1128 of this title.

(b) Beginning for the Fiscal Year 2023 budget, New Castle County shall establish a property tax rate for real property in a municipality based on the degree of any local service function fully or partially performed or financially supported by the municipality instead of New Castle County under § 1102 and § 1128 of this title.

(c) A property tax rate for real property in a municipality does not have to be either of the following:

(1) The same as a property tax rate for property located in other municipalities or in the unincorporated area of New Castle County.

(2) The same as a property tax rate set in a prior year.

(d) New Castle County may divide a local service function into subcategories on forms used under § 1128 of this title. A subcategory of a local service function constitutes a local service function.

§ 1126. Local service functions; calculation of net county LSF cost and individual LSF tax rates.

(a) Beginning for the Fiscal Year 2023 budget, New Castle County shall calculate the net county LSF cost for each local service function. The “net county LSF cost” equals the amount in the New Castle County budget for the local service function for the next fiscal year. The “net county LSF cost” is the amount of direct and indirect costs applicable to that local service function, and excludes service charges, grants, or other revenue or funds that New Castle County directly attributes or otherwise apportions to that local service function.

(b) Except as provided for fire protection under subsection (c) of this section, beginning for the Fiscal Year 2023 budget, New Castle County shall convert the net county LSF cost for each local service function into a real property tax rate for each municipality and the unincorporated area by calculating each of the following for each municipality and the unincorporated area:

(1) The “share of New Castle County assessment”, which equals the taxable assessed value of all real property within a municipality or the unincorporated area divided by the aggregate taxable assessed value for all real property in the County.

(2) The “New Castle County service percentage” for a municipality, as determined under § 1102 and § 1128 of this title.

(3) The “weighted service share”, which equals a municipality’s or the unincorporated area’s share of New Castle County assessment multiplied by the municipality’s or the unincorporated area’s New Castle County service percentage.

(4) The “total weighted service amount”, which equals the sum of all weighted service shares.

(5) The “final service weight”, which equals a municipality’s or the unincorporated area’s weighted service share divided by the total weighted service amount.

(6) The “apportioned net LSF Cost”, which equals the municipality’s or the unincorporated area’s final service weight multiplied by the net County LSF cost.

(7) The “individual LSF tax rate”, which equals the municipality’s or the unincorporated area’s apportioned net LSF cost divided by the taxable assessed value of all real property in the respective municipality or the unincorporated area, adjusted to reflect New Castle County’s estimated level of cash receipts.

(c) For fire protection that is partially financially supported but not directly provided by New Castle County and that is also partially financially supported but not directly provided by a municipality, New Castle County shall convert the net county LSF cost into a real property tax rate for each municipality under § 1102(e) of this title.

(d) New Castle County shall adopt policies and procedures to implement this section.

§ 1128. Local service functions; determining the New Castle County service percentage and credit percentage; transition year.

(a)(1) New Castle County will develop the forms and instructions for municipalities to request that New Castle County recognize the New Castle County service percentage for a local service function or direct contribution of funds or in-kind contribution of goods and services to a volunteer fire company. New Castle County will hold

meetings to discuss the draft forms and instructions with municipalities before the forms and instructions become final.

(2) By January 31, 2021, New Castle County shall provide to each municipality the forms and instructions under paragraph (a)(3) of this section to submit the municipality's request that New Castle County recognize the following:

a. The New Castle County service percentage for a local service function is less than 100% based on the municipality's performance or partial performance of the local service function.

b. In the case of fire protection that a municipality does not provide directly, the municipality's direct contribution of funds or in-kind contribution of goods and services to a volunteer fire company.

(3) New Castle County shall provide a copy of each of the following:

a. New Castle County's budget for the current fiscal year.

b. A standardized form listing each local service function and the documentation necessary to support a request that New Castle County recognize the degree to which the municipality performs or financially supports a local service function instead of New Castle County.

c. Contact information for appropriate representatives that a municipality may contact to discuss relevant financial information of New Castle County and the municipality, and the scope and nature of services provided by both entities.

(b)(1) By March 1, 2021, a municipality shall submit its application and supporting documentation to New Castle County if the municipality is requesting that New Castle County recognize a New Castle County service percentage less than 100% for any local service function based on the municipality's degree of performance of the local service function.

(2) By September 1, 2021, a municipality shall submit its application and supporting documentation to New Castle County if the municipality is requesting that New Castle County recognize the municipality's contribution of funds or in-kind contributions of goods and services to a volunteer fire company.

(3) New Castle County may request, and the municipality must provide, additional information that may reasonably be needed to determine the degree of performance of local service functions provided by the municipality.

(c)(1) By July 1, 2021, New Castle County shall notify each municipality of New Castle County's determination regarding the New Castle County service percentage for each local service function other than fire protection. A disagreement regarding New Castle County's calculations under this paragraph (c)(1) of this section is subject to negotiation between New Castle County and the municipality.

(2) By October 1, 2021, New Castle County shall notify each municipality of New Castle County's determination regarding the dollar amount of direct and in-kind donations that the County will recognize to calculate the individual fire protection rate. A disagreement regarding New Castle County's calculations under this paragraph (c)(2) of this section is subject to negotiation between New Castle County and the municipality.

(d)(1)a. By September 1, 2021, a municipality that is unable to reach agreement with New Castle County regarding the New Castle County service percentage for a local service function under paragraph (c)(1) of this section may provide notice to New Castle County demanding arbitration which includes the municipality's designated member of the arbitration panel under paragraph (d)(2) of this section. If the municipality does not provide such notice by September 1, 2021, New Castle County's determination is final and may not be appealed.

b. By November 1, 2021, a municipality that is unable to reach agreement with New Castle County regarding the New Castle County individual fire protection tax rate under paragraph (c)(2) of this section may provide notice to New Castle County demanding arbitration that includes the municipality's designated member of the arbitration panel under paragraph (d)(3) of this section. If the municipality does not provide such notice by November 1, 2021, New Castle County's determination is final and may not be appealed.

(2) If arbitration is demanded under paragraph (d)(1)a. of this section, an arbitration panel will be created which is comprised of 3 members, selected as follows:

a. The municipality's designee.

b. By September 10, 2021, the County Executive shall designate a member.

c. By September 20, 2021, the arbitration panel designees of the County Executive and the municipality shall jointly select the third member. If the two arbitration panel designees cannot agree on the selection of the third member by September 20, 2021, the third arbitration panel member is the Chair of the New Castle County Financial Advisory Council or the Chair's designee.

d. The arbitration hearing must occur by December 15, 2021. At the hearing, New Castle County and the municipality may present testimony, evidence, and oral argument as to the matters in dispute.

(3) If arbitration is demanded under paragraph (d)(1)b. of this section, an arbitration panel will be created which is comprised of 3 members, selected as follows:

a. The municipality's designee.

b. By November 10, 2021, the County Executive shall designate a member.

c. By November 20, 2021, the arbitration panel designees of the County Executive and the municipality shall jointly select the third member. If the two arbitration panel designees cannot agree on the selection of the third member by November 20, 2021, the third arbitration panel member is the Chair of the New Castle County Financial Advisory Council or the Chair's designee.

d. The arbitration hearing must occur by December 15, 2021. At the hearing, New Castle County and the municipality may present testimony, evidence, and oral argument as to the matters in dispute.

(4) An arbitration panel may establish rules for the arbitration hearing, including information required to be produced by a party and deadlines for the submission of evidence.

(5) An arbitration panel shall issue its decision by January 31, 2022. An arbitration panel's decision is binding and may not be appealed.

(e) Notwithstanding subsections (a) through (d) and (f) of this section, either of the following may occur:

(1) New Castle County and a municipality may enter into an agreement setting different terms or timing for negotiations, calculations, or approval of the New Castle County service percentages.

(2) New Castle County may determine New Castle County service percentages for a municipality that does not make a request in the manner required under this section. New Castle County's determination under this paragraph (e)(2) of this section is final, may not be appealed, and is not subject to arbitration under subsection (d) of this section.

(f) New Castle County shall adopt policies and procedures to implement this section.

(g) This section applies beginning for the Fiscal Year 2023 budget.

Section 4. Amend Subchapter III, Chapter 11, Title 9 of the Delaware Code by creating a new Subpart B before § 1131 of Title 9 by making deletions as shown by strike through and insertions as shown by underline as follows:

Subpart B. Budgeting.

Section 5. Amend Subchapter III, Chapter 11, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1131. Separate budgeting for local service functions performed by the ~~County outside of the limits of municipalities.~~ County.

(a) The Chief Administrative Officer and the County Executive, in the preparation of the annual operating budget, shall divide and segregate in a separate budget, entitled Local Service Function Budget, all ~~expenditures~~ appropriations for the performance or funding of local service functions ~~which are performed by the County within the limits of municipality by New Castle County within the municipalities and the unincorporated area.~~ The Chief Administrative Officer and the County Executive, in the preparation of the Local Service Function Budget, shall specify separately the total appropriation required for the performance or funding of each local service ~~function,~~ including ~~appropriations for Supporting Services, which is not performed by the County within the limits of any municipality.~~ The County Executive, in estimating the revenues necessary for the payment of the cost of each such local service function, shall not include in the estimate any estimated revenues to be derived from ad valorem taxation of real property within any municipality which performs such function independently for its residents and pays the cost thereof out of its own revenue sources function by New Castle County.

(b) The County Executive shall submit to the County Council a proposed revenue ordinance which will achieve sufficient revenues to balance the total operating budget, including the Local Service Function Budget. The County Executive in the preparation of the proposed revenue ordinance shall may not, and the County Council and the County Executive in the enactment of the annual revenue ordinance shall may not, impose ad valorem taxation on real property within any municipality to pay the cost of New Castle County's performance or funding of any local service function ~~if such function is performed by the municipality for its residents, paid out of municipal revenues and the fact that the service is being provided is validated by County Council~~ in excess of the individual LSF tax rate or individual fire protection rate.

~~(c) The provisions of subsections (a) and (b) of this section shall not be applicable. The County Executive's proposed budget presented to the County Council shall include tables providing all of the following information:~~

~~(1) The calculation of the proposed individual LSF tax rate and individual fire protection tax rate for each local service function for each municipality and the unincorporated area.~~

~~(2) The proposed aggregate of the individual LSF tax rates and individual fire protection tax rates for each municipality and the unincorporated area.~~

~~(d) New Castle County may also impose ad valorem taxation on real property within any municipality as follows:~~

~~(1) In any instance where a municipality initiates the performance of, or exercises responsibility for, a local service function, without the affirmative action in the form of an ordinance of the County Council of New Castle County, and a local service function without the consent of New Castle County under § 1102 of this title.~~

~~(2) For the cost of operation by the County of park and recreational facilities which are not local in nature and which serve the metropolitan area; and area.~~

~~(3) To any municipality not expending funds in the previous fiscal year for the given local service function or not adequately performing the local service function.~~

~~(e)~~ The Chief Administrative Officer and the County Executive, in the preparation of the annual operating budget, shall divide and segregate in a separate budget entitled General Operating Budget all ~~expenditures~~ appropriations not properly allocable to the Local Service Function Budget or other operating budget fund. The County ~~Council~~ Council, in estimating the revenues which will be necessary for the payment of these ~~expenditures~~ appropriations, shall include the estimated revenues to be derived from county-wide ad valorem taxation of real property.

~~(f)~~ The County Executive in the preparation of the proposed revenue ordinance, and the County Council and the County Executive in the enactment of the annual revenue ordinance, shall uniformly impose ad valorem taxation on real property within the County to pay the cost of the General Operating Budget.

§ 1133. Administration and enforcement of the operating budget ordinance; adoption of operating budget; allocations and allotments; approval of allocations and allotments; revisions.

(a) The adoption of the operating budget ordinance ~~shall constitute~~ is an appropriation of the sum specified in the budget for the purpose and from the funds indicated. ~~Such appropriation shall be considered~~ The appropriation is valid only for the year for which it is made, and any part of ~~such an~~ an appropriation which is not encumbered or expended ~~shall lapse~~ lapses at the end of the year.

§ 1134. Preparation of the capital program and the capital budget; preparation by Chief Administrative Officer; recommendation by County Executive; action by County Council.

(a) The Chief Administrative Officer shall annually prepare a capital program and a capital budget under the direction of the County Executive. In the course of the preparation of the capital program, the Chief Administrative Officer shall confer with the Department of Land Use to ascertain that the proposed capital program is in accordance with the comprehensive development plan prepared by the Department of Land Use.

(b) No later than April 1 of each year, the County Executive shall recommend to the County Council, a capital program for the ensuing 6 years and a capital budget for the ensuing year. Not later than the date that the program is submitted to County Council, the County Executive shall submit ~~it~~ the capital program to the Department of Land Use for its review and recommendations to County Council. The County Executive shall also submit ~~it~~ the capital program to the Planning Board for the sole purpose of determining if it is in accordance with the comprehensive development plan.

(c) The proposed capital program, and the proposed capital budget, ~~shall~~ must have ~~such~~ the content and be in ~~such~~ the form as necessary to enable ~~action to be taken thereupon~~ by the County Council to take action as required by under § 1159 of this title.

(d)(1) The County Executive, in the preparation of the capital budget, ~~shall~~ may not include in the revenue estimates any estimated revenues to be derived from ad valorem taxation of real property within a municipality for any capital ~~expenditure~~ appropriation including debt service which is related to the performance or funding by the County of a local service function ~~which is performed by the municipality for its own residents and for which the cost is paid out of municipal revenues in excess of the individual LSF tax rate or individual fire protection rate for that local service function.~~

(2) The County Council, in the adoption of the capital budget by ordinance, ~~shall~~ may not impose ad valorem taxation on real property within a municipality for the payment of the cost of any capital ~~expenditure,~~ appropriation, including debt service, which is related to the performance or funding by the County of a local service function ~~which is performed by the municipality for its own residents and for which the cost is paid out of municipal revenues in excess of the individual LSF tax rate or individual fire protection rate for that local service function.~~

(3) The provisions of this subsection ~~shall~~ are not be applicable to capital ~~expenditures,~~ appropriations, including debt service, for the acquisition by the County of park and recreational facilities which are not local in nature and which serve the metropolitan area.

(e) The County Executive and the County Council, in the adoption of a capital budget by ordinance, shall uniformly impose ad valorem taxation on real property within the County for the payment of the cost of any capital ~~expenditure,~~ appropriation, including debt service, ~~which is not~~ except for costs related to the performance or funding by the County of a local service function ~~exclusively performed by a municipality for its own residents and for which the cost is paid out of municipal revenues in excess of the individual LSF tax rate or individual fire protection rate for that local service function.~~

Section 6. Amend Subchapter IV, Chapter 11, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1155. Consideration and adoption of the annual operating budget ordinance.

(a) The County Council, upon receipt of the operating budget, shall immediately publish a notice in a newspaper of general circulation in the County, setting ~~forth:~~ forth all of the following:

(1) A summary of the estimated revenues and ~~expenditure;~~ appropriations.

(2) The detail of recommended new sources of revenue or increased rates of existing taxes, licenses, ~~fees~~, or other ~~revenue~~; revenue.

(3) The website address where a copy of the budget may be located and identification of the pages of the budget on which a listing of all individual LSF tax rates and individual fire protection tax rates for each municipality may be found.

(4) That copies of the budget are available upon request at the office of the Clerk of County ~~Council~~; Council.

(4)(5) The date, time, and place at which the County Council will commence its public hearings upon the proposed budget, which ~~shall~~ may not be less than 10 days after the date of publication of such notice.

(b) The County Council, upon conclusion of its public hearings but not later than June 1, shall enact the operating budget ordinance. The County Council may increase, decrease, or delete any item of appropriation recommended by the County Executive, and may add new items of appropriation.

(c) No amendment to the operating budget ordinance shall increase the aggregate of authorized ~~expenditures~~ appropriations to an amount greater than the estimate of revenue for the corresponding period.

(d)(1) The County Council, in the adoption of the annual operating budget ordinance, shall divide and segregate in a separate budget, entitled Local Service Function Budget, all ~~expenditures~~ appropriations for the performance or funding of local service functions ~~which are not performed within the limits of any municipality by New Castle County within the municipalities and unincorporated area.~~

(2) The County Council, in estimating the revenues for the payment of the cost of each such local service function, ~~shall may~~ not include in the estimate any estimated revenues to be derived from ad valorem taxation of real property within any municipality ~~which performs such function independently for its residents and pays the cost thereof out of its own revenue sources. related to the performance or funding by the County of a local service function in excess of the individual LSF tax rate or individual fire protection rate for that local service function.~~ The provisions of this subsection shall not be applicable:

(e) New Castle County may also impose ad valorem taxation on real property within any municipality as follows:

(1) In any instance where a municipality initiates the performance of ~~or exercises responsibility for a local service function or a distinct activity without the affirmative action in the form of an ordinance of the County Council of New Castle County; and a local service function without the consent of New Castle County under § 1102 of this title.~~

(2) ~~To~~ For the cost of operation by the County of park and recreational facilities which are not local in nature and which serve the metropolitan area.

(3) To any municipality not expending funds in the previous fiscal year for the given local service function or not adequately performing the local service function.

(e)(f) County Council, in the adoption of the annual operating budget ordinance, shall divide and segregate in a separate budget, entitled General Operating Budget, all ~~expenditures~~ appropriations not properly allocated to the

Local Service Function Budget or other operating budget funds. County Council, in estimating the revenues necessary for the payment of these ~~expenditures, appropriations,~~ shall include the estimated revenue to be derived from county-wide ad valorem taxation of real property.

§ 1158. Budget of revenues.

(a) The County Council, at the meeting at which the annual operating budget ordinance is adopted, and within the limits of its power and subject to other provisions of this title, shall ordain such taxes and other revenue measures as will yield sufficient revenue, which, together with any available surplus, will balance the budget.

(b) ~~Revenues~~ The County Council shall ~~be estimated~~ estimate revenues only upon the basis of the cash receipts anticipated for the fiscal year.

(c) The County Executive shall certify the estimated yield from each item of revenue and of the amounts of surplus to be used in the balancing of the budget ~~shall be certified to the County Council by the County Executive.~~ Council.

(d) The annual operating budget ordinance ~~shall~~ is not ~~become~~ effective until the County Council ~~shall have~~ has adopted revenue measures which, together with the available surplus, ~~shall~~ are in the opinion of the County ~~Executive~~ Executive, estimated to yield sums at least sufficient to balance the proposed ~~expenditures.~~ appropriations. The Office of Finance ~~shall~~ may not approve any expenditure under any portion of an annual operating budget ordinance until such balancing shall have been provided.

(e) County Council, in the enactment of the annual revenue ordinance or other revenue measures, ~~shall~~ may not impose ad valorem taxation on real property within any municipality to pay the cost of ~~any local service function~~ if such function is performed by the municipality for its residents, paid out of municipal revenues and the fact that the service is being provided is validated by County Council. New Castle County's performance or funding of any local service function in excess of the individual LSF tax rate or individual fire protection rate for that local service function.

~~The provisions of this subsection shall not be applicable:~~

(f) New Castle County may also impose ad valorem taxation on real property within any municipality as follows:

(1) ~~In any instance where a municipality initiates the performance of, or exercises responsibility for, a local service function or a distinct activity without the affirmative action of an ordinance of the County Council of New Castle County; and a local service function without the consent of New Castle County under § 1102 of this title.~~

(2) ~~To~~ For the cost of operation by the County of park and recreational facilities which are not local in nature and which serve the metropolitan area.

(3) To any municipality not expending funds in the previous fiscal year for the given local service function or not adequately performing the local service function.

(~~f~~) (g) County Council, in the enactment of the annual revenue ordinance or in the enactment of other revenue measures, shall uniformly impose ad valorem taxation on real property within the County and pay the cost of the General Operating Budget.

§ 1159. Capital program and capital budget.

(a) County Council shall adopt a capital program and adopt a capital budget before, or at the same meeting as, it adopts the annual operating budget.

(b) The capital program shall detail all permanent physical improvements, including the acquisition of real estate, that are planned to be financed, in whole or in part, from funds that are, or may become, subject to control or appropriation by the County Council during each of the ensuing 6 years. For each separate project there shall be shown the amount and the source of money that has been expended or encumbered, or is to be expended or encumbered before the next fiscal year, and also the amount and the sources of money planned to be expended during each of the ensuing 6 years.

(c) The County Council may not amend the capital program as submitted to it by the County Executive, until it has received from the County Executive recommendations with respect to the proposed amendment. The County Council ~~shall~~ is not be bound by ~~such~~ the County Executive's recommendations and may act without them if they are not received within 15 days from the date they are requested.

(d) The Capital Budget Ordinance shall show the total capital appropriations.

(e) Amendments to the Capital Budget Ordinance must conform to the pertinent portions of the capital program in its original or amended form.

(f)(1) The County Council, in the adoption of the Capital Budget Ordinance, ~~shall~~ may not include in the revenue estimates, any estimated revenues to be derived from ad valorem taxation of real property within a municipality for any capital ~~expenditure, appropriation,~~ including debt service, which is related to the performance or funding by the County of a local service function ~~which is performed by the municipality for its own residents, paid out of municipal revenues and the fact that the service is being provided is validated by County Council.~~ in excess of the individual LSF tax rate or individual fire protection rate for that local service function.

(2) The County Council, in the adoption of the Capital Budget Ordinance, ~~shall~~ may not impose ad valorem taxation on real property within a municipality for the payment of the cost of any capital ~~expenditure, appropriation,~~ including debt service, which is related to the performance or funding by the County of a local service function ~~which is performed by the municipality for its own residents, paid out of municipal revenues and the fact that the service is being provided is validated by County Council.~~ in excess of the individual LSF tax rate or individual fire protection rate for that local service function.

~~This subsection shall not be applicable:~~

(3) New Castle County may also impose ad valorem taxation on real property within any municipality as follows:

(1) a. In any instance where a municipality initiates the performance of, or exercises responsibility for, a local service function or a distinct activity without the affirmative action in the form of an ordinance of the County Council of New Castle County; and a local service function without the consent of New Castle County under § 1102 of this title.

~~(2) To~~ b. For capital expenditures, appropriations, including debt service, for the acquisition by the County of park and recreational facilities which are not local in nature and which serve the metropolitan area.

c. To any municipality not expending funds in the previous fiscal year for the given local service function or not adequately performing the local service function.

(g) The County Council, in the adoption of a capital budget by ordinance, shall uniformly impose ad valorem taxation on real property within the County for the payment of the cost of any capital ~~expenditure, appropriation,~~ including debt service, which is not related to the performance or funding by the County of a local service function ~~which is performed by a municipality for its own residents, paid out of municipal revenues and the fact that the service is being provided is validated by County Council.~~ in excess of the individual LSF tax rate or individual fire protection rate for the local service function.

§ 1160. ~~Unrestricted use of present revenues. [Reserved.]~~

~~(a) The government of New Castle County may use the proceeds derived from ad valorem taxation of real property within the County, including real property within municipalities, at the tax rate imposed by the Levy Court of New Castle County as of July 1, 1965, for any purpose including the payment of the cost of services included in the Local Service Function Budget.~~

~~(b) The provisions of §§ 1131, 1134(d), 1155(d) and (e), 1158(e) and (f), and 1159(f) and (g) of this title shall be subject to the provisions of subsection (a) of this section.~~

Section 7. Amend § 2515, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2515. Exceptions.

This chapter ~~shall~~ does not apply to ~~buildings~~ any of the following:

(1) A building or structures ~~structure~~ devoted to agricultural use as defined in Chapter 26 of this title, ~~nor to title.~~

(2) A properties, buildings or structures ~~property, building, or structure~~ located within ~~any incorporated city or town in New Castle County~~ a municipality unless ~~the responsibility~~ New Castle County has any responsibility for the local service function ~~has been duly transferred to New Castle County.~~ under § 1102 of this title.

Section 8. Amend § 2910, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2910. Exceptions.

This chapter ~~shall~~ does not apply to ~~properties, buildings or structures~~ a property, building, or structure located within ~~any incorporated city or town in New Castle County~~ a municipality unless ~~the responsibility~~ New Castle County has any responsibility for the local service function ~~has been duly transferred to New Castle County.~~ under § 1102 of this title.

Section 9. Amend Subpart A, Subchapter III, Chapter 11, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1129. Local service functions; Local Service Function Review Committee.

(a) New Castle County shall create the Local Service Function Review Committee (“Committee”) for the purpose of conducting an annual review of Subpart A of this subchapter. The Committee must complete the review no later than August 3.

(b) The Local Service Function Review Committee is comprised of the following representatives:

(1) The Chief Financial Officer, or a designee, who serves as chair.

(2) One member of County Council, selected by the County Council.

(3) Two members from municipal governments in New Castle County appointed by the County Council from a list of names provided by the Delaware League of Local Governments.

(4) One member who is a resident of New Castle County and who owns real property in the unincorporated area of New Castle County, appointed by the County Council.

(c)(1) The chair of the Committee must provide the Committee with administrative support, including the preparation and distribution of meeting notices, agendas, minutes, correspondence, and reports.

(2)a. A quorum of the Committee is a majority of its members.

b. Official action by the Committee requires the approval of a quorum of the Committee.

c. The Committee may adopt rules necessary for its operation and may create working subcommittees.

d. The chair of the Committee may invite individuals with relevant expertise to participate in the Committee’s discussions.

(d)(1) The Committee shall include all of the following in the annual review under subsection (a) of this section:

a. The calculation procedure under § 1126 of this title.

b. The New Castle County service percentage or credit percentage process under § 1128 of this title.

c. Changes to the service functions that are eligible for an individual LSF tax rate under § 1128 of this title.

(2) The Committee’s review must include a specific topic under paragraph (d)(1) of this section that is requested by a municipality before June 1 of the current year.

(e) The Local Service Function Review Committee must provide an annual report containing a summary of the review conducted under this section and any recommendations for improvements to all members of the County Council, each municipality in New Castle County, all members of the General Assembly who represent New Castle County, and the Division of Research by September 15 of each year.

Section 10. Amend Chapter 11, of Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1101A. Definitions.

For purposes of this ~~chapter, beginning with the Fiscal Year 2023 budget:~~ chapter:

§ 1102. ~~Transfer of functions.~~ Local service functions; subcategories; responsibility for performance.

~~(a) The term “local service function,” as used in this chapter, shall mean a local governmental service, or a group of closely allied governmental services, performed by New Castle County, or by a municipality within New Castle County, for its inhabitants and for which, under constitutional and statutory provisions and judicial interpretations, the County, or any municipality as distinguished from the State, has a primary responsibility for provision and financing. Without in any way limiting the foregoing, the following are examples of local service functions:~~

- ~~(1) Planning and zoning including subdivision regulations;~~
- ~~(2) Adoption and enforcement of ordinances and regulations for the protection of persons and property from hazards in the use, occupancy, condition, alteration, maintenance, repair, sanitation, removal and demolition of buildings and structures or any parts thereof and grounds appurtenant thereto, in the operation of equipment therein, and of outdoor signs including, but not limited to, zoning ordinances and regulations thereunder, building codes and regulations thereunder, plumbing codes and regulations thereunder or other such codes;~~
- ~~(3) Programs for redevelopment, low rent housing and urban renewal;~~
- ~~(4) Parks and park related activities and recreational programs;~~
- ~~(5) Police protection;~~
- ~~(6) Fire protection;~~
- ~~(7) Public works including, but not limited to, maintenance and operation of sanitary and storm sewers, drainage systems, sewage disposal facilities, refuse disposal facilities, including trash and garbage collection disposal;~~
- ~~(8) Lighting of streets, roads, alleys, and other public places;~~
- ~~(9) Maintenance and operation of water supply system;~~
- ~~(10) Library services.~~

New Castle County may divide a local service function into subcategories on forms used under § 1128 of this title. A subcategory of a local service function constitutes a local service function.

~~(b) The term “municipality,” as used in this chapter, shall mean any municipal corporation located within New Castle County, and incorporated pursuant to law by the General Assembly of this State, which performs for its residents any local service function and pays the cost thereof out of its own revenue sources. Responsibility The responsibility for all or part of a local service function or a distinct activity or portion thereof exercised by a municipality located within New Castle County, in a municipality is established as set forth under the approved budget enacted for Fiscal Year 2023 under § 1155 of this title, or by the later of any of the following:~~

- (1) A municipality provides timely notice of a change in degree of performance of a local service function to New Castle County under § 1127(d)(2) of this title.
- (2) New Castle County and a municipality enact ordinances transferring responsibility for performance of a local service function under subsection (c) of this section.
- (3) A service performed by a municipality is classified as a local service function under subsection (d) of this section.

(4) A new local service function is established under § 1128 of this title.

~~(c) Except as provided under subsection (e) of this section, responsibility~~ (1) Responsibility for the performance or funding of a local service function may be transferred to the County between New Castle County and a municipality by the concurring affirmative action in the form of an ordinance of enacted by the County Council of New Castle County and of the governing body of the municipality concerned. Responsibility for a local service function or a distinct activity or portion thereof not exercised by New Castle County, or by a municipality located within New Castle County, as of January 3, 1967, or exercised by New Castle County as of January 3, 1967, may be transferred to a municipality located within New Castle County by the concurring affirmative action in the form of an ordinance of the County Council of New Castle County and of the governing body of the municipality concerned.

~~(d) (2) The expression of official action ordinances~~ transferring a local service function shall make explicit: under paragraph (c)(1) of this section must explicitly state all of the following:

~~(1) a. The nature of the local service function transferred;~~ transferred.

~~(2) b. The effective date of such transfer;~~ the transfer.

~~(3) c. The manner in which affected employees engaged in the performance of the local service function will be transferred, reassigned~~ reassigned, or otherwise treated; treated.

~~(4) d. The manner in which real property, facilities, equipment~~ equipment, or other personal property required in the exercise of the local service function are to will be transferred, sold sold, or otherwise treated; treated.

~~(5) e. The method of financing to be used in the exercise of the local service function received;~~ received.

~~(6) f. Other legal, financial, and administrative arrangements necessary to effect transfer of the local service function~~ in an orderly and equitable manner.

(d)(1) If a municipality is performing a service that is included in the New Castle County General Operating Budget, the municipality may request that the service be classified as a local service function in the next fiscal year by providing a notice to New Castle County by August 1 that states all of the following:

a. The service that is included in the New Castle County General Operating Budget.

b. The degree of performance.

c. The date municipality began performing the service.

(2) New Castle County may request, and the municipality must provide, additional information that may reasonably be needed to determine the degree of performance of the service by the municipality.

(3) By November 1, New Castle County shall notify the municipality of New Castle County's determination regarding the municipality's request under paragraph (d)(1) of this section.

(4) If a municipality is unable to reach agreement with New Castle County regarding the municipality's request under paragraph (d)(1) of this section, the municipality may demand arbitration under the procedure in § 1128(d) of this title.

~~(c) Notwithstanding any other provision of law, for fire protection that is partially financially supported but not directly provided by New Castle County and that is also partially financially supported but not directly provided by a municipality, New Castle County shall convert the net County fire protection cost into a real property tax rate equivalent for each municipality and the unincorporated area that does not directly provide fire protection by calculating for each municipality and the unincorporated area under its jurisdiction that does not directly provide fire protection by calculating all of the following for each municipality and the unincorporated area:~~

~~(1) The “service area share”, which equals the taxable assessed value of real property within the municipality or the unincorporated area not directly providing fire protection divided by the sum of the taxable assessed value for all real property in the unincorporated area and all municipalities not directly providing fire protection.~~

~~(2) The “apportioned gross amount”, which equals the service area share multiplied by the net new Castle County fire protection cost for fire protection.~~

~~(3) The “net New Castle County fire protection cost”, which is New Castle County’s contribution of funds or in-kind services to volunteer fire companies within New Castle County, increased by indirect costs applicable to fire protection and decreased by service charges, grants, or other revenue that New Castle County directly attributes or otherwise apportions to fire protection.~~

~~(4) The “credit percentage”, which equals the municipality’s actual direct contribution of funds or in-kind contributions of goods or services to a volunteer fire company in the previous year, divided by the municipality’s apportioned gross amount. The “credit percentage” may not exceed 100%. The “credit percentage” is 0% for the unincorporated area.~~

~~(5) The “New Castle County fire protection percentage”, which equals 100% minus the municipality’s or the unincorporated area’s credit percentage. The “New Castle County fire protection percentage” for the unincorporated area is 100%.~~

~~(6) The “weighted service share”, which equals the municipality’s or the unincorporated area’s service area share multiplied by the municipality’s or the unincorporated area’s New Castle County fire protection percentage.~~

~~(7) The “total weighted service amount”, which equals the sum of the weighted service shares.~~

~~(8) The “final service weight”, which equals the municipality’s or the unincorporated area’s weighted service share divided by the total weighted service amount.~~

~~(9) The “apportioned net fire protection cost”, which equals the final service weight multiplied by the net New Castle County fire protection cost for fire protection.~~

~~(10) The “individual fire protection tax rate” which equals the municipality’s or the unincorporated area’s apportioned net fire protection cost divided by the taxable assessed value of real property in the respective municipality or the unincorporated area. This calculation may be adjusted to raise sufficient revenues after accounting for the historical County-wide level of nonpayment of County real property tax. [Reserved.]~~

§ 1125. Local service functions; New Castle County property tax rates in municipalities.

(a) ~~Beginning for the Fiscal Year 2023 budget, in~~ In determining the New Castle County property tax rate for real property in a municipality, New Castle County shall consider the degree that a local service function is fully or partially performed or financially supported by the municipality instead of New Castle County under § 1102 ~~and § 1128~~ of this title.

(b) ~~Beginning for the Fiscal Year 2023 budget,~~ New Castle County shall establish a property tax rate for real property in a municipality based on the degree of any local service function fully or partially performed or financially supported by the municipality instead of New Castle County under § 1102 ~~and § 1128~~ of this title.

(d) ~~New Castle County may divide a local service function into subcategories on forms used under § 1128 of this title. A subcategory of a local service function constitutes a local service function. [Reserved.]~~

§ 1126. Local service functions; calculation of net county LSF cost and individual LSF tax rates.

(a) ~~Beginning for the Fiscal Year 2023 budget,~~ New Castle County shall calculate the net county LSF cost for each local service function. The “net county LSF cost” equals the amount in the New Castle County budget for the local service function for the next fiscal year. The “net county LSF cost” is the amount of direct and indirect costs applicable to that local service function, and excludes service charges, grants, or other revenue or funds that New Castle County directly attributes or otherwise apportions to that local service function.

(b) Except as provided for fire protection under subsection (c) of this section, ~~beginning for the Fiscal Year 2023 budget,~~ New Castle County shall convert the net county LSF cost for each local service function into a real property tax rate for each municipality and the unincorporated area by calculating each of the following for each municipality and the unincorporated area:

(2) The “New Castle County service percentage” for a municipality, as determined under § 1102 ~~and 1128~~ of this title.

(c) For fire protection that is partially financially supported but not directly provided by New Castle County and that is also partially financially supported but not directly provided by a municipality, New Castle County shall convert the net county LSF cost into a real property tax rate for each municipality ~~under § 1102(e) of this title. and the unincorporated area that does not directly provide fire protection by calculating all of the following for each municipality and the unincorporated area:~~

(1) The “service area share”, which equals the taxable assessed value of real property within the municipality or the unincorporated area not directly providing fire protection divided by the sum of the taxable assessed value for all real property in the unincorporated area and all municipalities not directly providing fire protection.

(2) The “apportioned gross amount”, which equals the service area share multiplied by the net county LSF cost for fire protection.

(3) The “net New Castle County fire protection cost”, which is New Castle County’s contribution of funds or in-kind services to volunteer fire companies within New Castle County, increased by indirect costs applicable to fire protection and decreased by service charges, grants, or other revenue that New Castle County directly attributes or otherwise apportions to fire protection.

(4) The “credit percentage”, which equals the municipality’s actual direct contribution of funds or in-kind contributions of goods or services to a volunteer fire company in the previous year, divided by the municipality’s apportioned gross amount. The “credit percentage” may not exceed 100%. The “credit percentage” is 0% for the unincorporated area.

(5) The “New Castle County fire protection percentage”, which equals 100% minus the municipality’s credit percentage. The “New Castle County fire protection percentage” for the unincorporated area is 100%.

(6) The “weighted service share”, which equals the municipality’s or the unincorporated area’s service area share multiplied by the municipality’s or the unincorporated area’s New Castle County fire protection percentage.

(7) The “total weighted service amount”, which equals the sum of the weighted service shares.

(8) The “final service weight”, which equals the municipality’s or the unincorporated area’s weighted service share divided by the total weighted service amount.

(9) The “apportioned net LSF cost”, which equals the final service weight multiplied by the net county LSF cost for fire protection.

(10) The “individual fire protection tax rate” which equals the municipality’s or the unincorporated area’s apportioned net fire protection cost divided by the taxable assessed value of real property in the respective municipality or the unincorporated area, adjusted to reflect New Castle County’s estimated level of cash receipts.

§ 1127. Local service functions; change in degree of performance; notice requirements.

(a) By August 1 of each year, a municipality shall provide notice to New Castle County if the municipality intends to begin performing, stop performing, or change the degree of performance of a local service function, other than fire protection, during New Castle County’s fiscal year beginning the following July 1.

(b) In the notice under subsection (a) of this section, the municipality shall state with specificity which of the following modifications the municipality intends to make to its performance of the local service function:

a. Initiating performance.

b. Ceasing performance.

c. Changing the degree of performance.

(c) New Castle County may request, and the municipality must provide, additional information that may reasonably be needed to understand the municipality’s proposed modification.

(d)(1) A municipality must initiate or cease performance of a local service function under § 1102(c) of this title.

(2) A municipality may change the degree of performance of a local service function that the municipality already performs by providing notice to New Castle County under subsection (a) of this section.

§ 1128. Local service functions; determining the New Castle County service percentage and credit percentage; transition year. percentage.

~~(a)(1) New Castle County will develop the forms and instructions for municipalities to request that New Castle County recognize the New Castle County service percentage for a local service function or direct contribution~~

~~of funds or in-kind contribution of goods and services to a volunteer fire company. New Castle County will hold meetings to discuss the draft forms and instructions with municipalities before the forms and instructions become final.~~

~~(2) By January 15, 2021, July 1 of each year,~~ New Castle County shall provide to each municipality the forms and instructions under paragraph ~~(a)(3)~~ (a)(2) of this section to submit the municipality's request that New Castle County recognize the following:

~~(3)(2)~~ New Castle County shall provide a copy of each of the following:

~~(b)(1) By March 1, 2021,~~ September 1 of each year, a municipality shall submit its application and supporting documentation to New Castle County if the municipality is requesting that New Castle County recognize ~~a~~ either of the following:

a. New Castle County service percentage less than 100% for any local service function based on the municipality's degree of performance of the local service function.

~~(2) By September 1, 2021, a municipality shall submit its application and supporting documentation to New Castle County if the municipality is requesting that New Castle County recognize b. In the case of fire protection that a municipality does not provide directly,~~ the municipality's contribution of funds or in-kind contributions of goods and services to a volunteer fire company.

~~(3)~~ (2) New Castle County may request, and the municipality must provide, additional information that may reasonably be needed to determine the degree of performance of local service functions provided by the municipality.

~~(c)(1) By July 1, 2021,~~ By November 1 of each year, New Castle County shall notify each municipality of New Castle County's determination regarding the New Castle County service percentage for each local service ~~function other than fire protection.~~ function and the dollar amount of direct and in-kind donations that the County will recognize to calculate the individual fire protection rate. A disagreement regarding New Castle County's ~~calculations~~ determination under this paragraph ~~(e)(1) of this section~~ subsection (c) is subject to negotiation between New Castle County and the municipality.

~~(2) By October 1, 2021, New Castle County shall notify each municipality of New Castle County's determination regarding the dollar amount of direct and in-kind donations that the County will recognize to calculate the individual fire protection rate. A disagreement regarding New Castle County's calculations under this paragraph (e)(2) of this section is subject to negotiation between New Castle County and the municipality.~~

~~(d)(1)a.~~ By September 1, 2021, By December 1 of each year, a municipality that is unable to reach agreement with New Castle County regarding the New Castle County service percentage for a local service function or individual fire protection tax rate under ~~paragraph (e)(1)~~ subsection (c) of this section may provide notice to New Castle County demanding arbitration that includes the municipality's designated member of the arbitration panel under paragraph ~~(d)(2)~~ of this section. If the municipality does not provide such notice by ~~September 1, 2021,~~ by December 1, New Castle County's determination is final and may not be appealed.

~~b. By November 1, 2021, a municipality that is unable to reach agreement with New Castle County regarding the New Castle County credit percentage for fire protection under paragraph (c)(2) of this section may provide notice to New Castle County demanding arbitration which includes the municipality's designated member of the arbitration panel under paragraph (d)(3) of this section. If the municipality does not provide such notice by December 1, New Castle County's determination is final and may not be appealed.~~

(2) If arbitration is demanded under paragraph (d)(1)a- (d)(1) of this section, an arbitration panel will be created which is comprised of 3 members, selected as follows:

a. The municipality's designee.

b. By ~~September 10, 2021,~~ December 10, the County Executive shall designate a member.

c. By ~~September 20, 2021,~~ December 20, the arbitration panel designees of the County Executive and the municipality shall jointly select the third member. If the two arbitration panel designees cannot agree on the selection of the third member by ~~December 20, 2021,~~ December 20, the third arbitration panel member is the Chair of the New Castle County Financial Advisory Council or the Chair's designee.

~~d. The arbitration hearing must occur by December 15, 2021. At the hearing, New Castle County and the municipality may present testimony, evidence, and oral argument as to the matters in dispute.~~

(3) ~~If arbitration is demanded under paragraph (d)(1)b. of this section, an arbitration panel will be created which is comprised of 3 members, selected as follows:~~

~~a. The municipality's designee.~~

~~b. By November 10, 2021, the County Executive shall designate a member.~~

~~c. By November 20, 2021, the arbitration panel designees of the County Executive and the municipality shall jointly select the third member. If the two arbitration panel designees cannot agree on the selection of the third member by November 20, 2021, the third arbitration panel member is the Chair of the New Castle County Financial Advisory Council or the Chair's designee.~~

~~d. The arbitration hearing must occur by December 15, 2021. At the hearing, New Castle County and the municipality may present testimony, evidence, and oral argument as to the matters in dispute. The arbitration panel may establish rules for the arbitration hearing, including information required to be produced by a party and deadlines for the submission of evidence.~~

(3) The arbitration hearing must occur by January 31. At the hearing, New Castle County and the municipality may present testimony, evidence, and oral argument as to the matters in dispute.

~~(4) The arbitration panel may establish rules for the arbitration hearing, including information required to be produced by a party and deadlines for the submission of evidence.~~

~~(5) The arbitration panel shall issue its decision by January 31, 2022. February 15. The arbitration panel's decision is binding and may not be appealed.~~

~~(g) This section applies beginning for the Fiscal Year 2023 budget. [Reserved.]~~

Section 11. Sections 1 through 4 of this Act are effective immediately.

Section 12. Sections 5 through 9 of this Act are effective January 1, 2022.

Section 13. Section 10 of this Act is effective July 1, 2022.

Approved February 23, 2021