

LAWS OF DELAWARE  
VOLUME 83  
CHAPTER 133  
151st GENERAL ASSEMBLY  
FORMERLY  
SENATE BILL NO. 10

AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO STORMWATER MANAGEMENT DISTRICTS IN NEW CASTLE COUNTY.

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

Section 1. Amend Part II, Title 9 of the Delaware Code by creating a new Chapter 34 by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 34. Stormwater Management

§ 3401. Definitions.

For purposes of this chapter:

(1) “Stormwater maintenance district” means an area in New Castle County, created under this chapter, that has ascertainable boundaries and provides efficient and economical stormwater maintenance.

(2) “Stormwater management” means a system of vegetative, structural, and other measures that does all of the following:

a. For water quantity control, controls the volume and rate of stormwater runoff which may be caused by land disturbing activities or activities upon the land.

b. For water quality control, controls adverse effects on water quality that may be caused by land disturbing activities or activities upon the land.

§ 3402. Establishing a stormwater maintenance district.

(a) County government shall adopt an ordinance implementing this chapter, that provides the procedures and criteria for the establishment and operation of stormwater maintenance districts.

(b) Subdivisions and land developments approved after [the implementation date of this Act]. Any new subdivision or land development in any unincorporated area in New Castle County that is approved after [the implementation date of this Act], shall establish a stormwater maintenance district, as required by the ordinance adopted under subsection (a) of this section, as a condition of plan approval. Fees for the district must not be incurred until the subdivision or land development is complete and the stormwater infrastructure is approved by the appropriate regulating agency.

(c) Subdivisions and land developments established before [the implementation date of this Act]. Any subdivision or land development established before [the implementation date of this Act], in any unincorporated area in New Castle County contained within ascertainable boundaries, may petition county government under the ordinance adopted under subsection (a) of this section to declare the area a stormwater maintenance district.

(d) The county government may establish a stormwater maintenance district within an incorporated area of the County under subsection (a) of this section, but only with the concurrence of the local governing body.

§ 3403. Public hearing.

(a) Upon receipt of a petition under § 3402(c) of this title from an existing subdivision or land development, the county government shall hold a public hearing on the petition. The notice of the public hearing must be published at least once in a newspaper published within New Castle County. The notice must be published between 10 and 21 days before the public hearing and must contain all of the following:

(1) A description of the boundaries of the proposed stormwater maintenance district.

(2) A statement that the county government will hold a hearing to consider whether or not to create the proposed district.

(3) A statement 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 within the stormwater maintenance district.

(b) Any new subdivision or land development required to establish a stormwater maintenance district under § 3402 of this title is also subject to all hearing procedures and all requirements for a proposed plan as established under the New Castle County Code.

§ 3404. Creation of stormwater maintenance district.

(a) If the county government determines, after the public hearing required under § 3403 of this title, that it is in the public interest to establish the proposed stormwater maintenance district under the ordinance adopted under § 3402(a) of this title, county government shall adopt an ordinance establishing the stormwater maintenance district.

(b) Except as provided under the ordinance adopted under § 3402(a) of this section, the establishment of a stormwater maintenance district and the resulting infrastructure maintenance managed by New Castle County takes 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 remains the responsibility of the homeowners.

§ 3405. Agreements for stormwater maintenance authorized.

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

§ 3406. Award of contracts.

Either county government or the New Castle Conservation District may enter into contracts for maintenance of stormwater infrastructure that cannot be completed by existing staff. All contracts entered under this section must follow applicable state and local laws and policies.

§ 3407. 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 total number of applicable units within the stormwater maintenance district to arrive at the annual unit cost. The annual unit cost shall be assessed against each unit located within the boundaries of the stormwater maintenance district. No parcel of real estate may be exempt from paying its annual unit cost. The established fee structure does not need to be uniform among districts.

(b) County government shall levy and collect the annual unit cost assessed against each unit in a stormwater maintenance district at the same time and in the same manner as other New Castle County taxes and the annual unit cost is a lien on real property the same as other New Castle County taxes. The county government shall include this fee on tax bills under the heading “stormwater maintenance fee.”

§ 3408. Administration of funds.

All amounts collected under this chapter shall be paid into a fund of New Castle County as provided under the ordinance adopted under § 3402(a) and all payments for stormwater maintenance shall be paid out of this fund. Should New Castle County fail in any one year to collect all of the fees 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 this fund pending enforcement of the lien. The county government may make payments out of this fund in anticipation of collection of the stormwater maintenance fee.

§ 3409. 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 under this chapter. The county government may, without further public hearings, consolidate 2 or more stormwater maintenance districts into a single district.

§ 3410. Annual budgeting.

(a) The annual amounts required for stormwater maintenance under this chapter must be included in the annual budget under separate headings for each stormwater maintenance district. County expenditures related to stormwater maintenance districts will be available for public review on the county government website.

(b) After levying the stormwater maintenance fee, the county government shall deliver a separate fee collection warrant, together with a list of charges in each stormwater maintenance district, to the County Chief Financial Officer and shall command that the County Chief Financial Officer collect from the persons named in the list their stormwater maintenance fee and its amount.

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

Section 2. This Act is effective immediately and implemented as follows:

(1) The Clerk of New Castle County Council shall provide notice, published in the Register of Regulations, that the ordinance required under § 3402(a) of Title 9 has been adopted by county government and the date this ordinance was adopted.

(2) The implementation date is the date the ordinance required under § 3402(a) of Title 9 was adopted, as provided under paragraph (1).

Approved September 10, 2021