



SPONSOR: Sen. Hansen & Rep. Mitchell
Sen. Ennis; Reps. Brady, Briggs King

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 140

AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO WIRELESS COMMUNICATION
LEASES FOR NEW CASTLE COUNTY PARK AREAS AND OPEN SPACE.

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

Section 1. Amend § 1341, Title 9 of the Delaware Code by making deletions as shown by strikethrough and
insertions as shown by underline as follows:

§ 1341. Functions.

The Department of Special Services, managed by the general manager of the Department, who shall be qualified
for the position by education, experience and training, may perform the following functions:

(1) In cooperation with the Department of Land Use, manage and develop plans for public facilities and
infrastructure including sanitary sewers and treatment facilities, drainage systems, buildings, parks, open spaces, natural
areas and greenways for the County in accordance with, and in support of, the Comprehensive Plan.

(2) Prepare designs and specifications for all types of public facilities and infrastructure including sanitary sewers
and treatment facilities, drainage systems, buildings, parks, open spaces, natural areas and greenways, and supervise the
construction and inspection thereof.

(3) Assist the Office of Administrative Services in the tabulation of bids and in the determination of the lowest and
best bidder with respect to all public facilities and infrastructure including sanitary sewers and treatment facilities, drainage
systems, buildings, parks, open spaces, natural areas and greenways, and, upon request of the Office of Administrative
Services, with respect to materials, supplies and equipment.

(4) Manage, maintain and operate public facilities and infrastructure sanitary sewers and treatment facilities,
drainage systems, parks, open spaces, natural areas and greenways, and perform all county functions related thereto,
provided that such functions may be performed directly, by contract, or by licenses as the County Council by ordinance
may from time to time determine. This shall include the ability to execute a lease for the purpose of erecting, maintaining
and operating wireless communications facilities, for any part of park land or land held in public trust. The County may not
enter into an agreement for the purpose of erecting, maintaining and operating wireless communications facilities on park
land or land held in public trust without a bona fide commitment from a wireless service provider to occupy a facility. All

23 leases for wireless communications facilities on park land or land held in public trust must be approved by County Council
24 by resolution. All such leases must contain a provision that, upon the termination or expiration of the lease, the County may
25 require removal of such wireless communication facilities and the property returned to its previous state, consistent with
26 park and recreational purposes.

27 (5) Manage, maintain and operate any county public water supply system.

28 (6) Manage, maintain and operate all public buildings, except those which by agreement with other governmental
29 jurisdictions are to be otherwise operated and maintained and any building which shall be designated by the County
30 Executive to be excluded from the responsibility of the Department for maintenance or operation, provided that such
31 functions may be performed directly, by contract, or by licenses as the County Council by ordinance may from time to time
32 determine.

33 (7) Manage and maintain the County Fleet and operate central garages for the storage and maintenance of
34 equipment, and maintain all automotive equipment, except those that may be specified in writing by the County Executive
35 for maintenance by some other office, department or board, provided that such functions may be performed directly, by
36 contract or by licenses as the County Council by ordinance may from time to time determine.

SYNOPSIS

This Act will expand New Castle County's limited authority to lease park land or land held in public trust to include leases for erecting, maintaining and operating wireless communications facilities. State law currently limits public land leases to those for recreational purposes and related activities. At common law, the State legislature must approve transfers or changes in the use of park land; however, this function may be delegated to municipalities through legislative action.

This Act is intended to abrogate the restrictions on permitted uses for public parks, held in a public trust as provided in the common law, including the restrictions set forth in *Anderson v. Mayor and Council of Wilmington*, 137 A.2d 521 (Del. Ch. 1958) and *Lord v. City of Wilmington*, 332 A.2d 414 (Del. Ch. 1975), *aff'd*, 378 A.3d 635 (Del. 1977), and to amend state law to permit specifically a wireless communications lease on such land as minimally intrusive and with the approval of County Council.

Author: Senator Hansen