SPONSOR: Rep. Collins & Sen. Hocker

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 313
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND THE CHARTER OF THE TOWN OF MILLSBORO RELATING TO THE POWER TO BORROW MONEY AND ISSUE BONDS, AND ANNUAL AUDIT.

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 Section 24 of the Charter of the Town of Millsboro by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 24.

At the annual meeting hereinbefore provided, the Mayor, with the advice and consent of a majority of the elected members of the Town Council, shall appoint an accountant to be the auditor of accounts of The Town of Millsboro. It shall be the duty of the auditor to audit the accounts of the Town and all its officers whose duty involves the collection, custody and payment of moneys to the Town. The auditor shall audit the books of the Alderman and the Assistant Alderman of The Town of Millsboro the records of all fines, penalties, costs imposed or collected by him pursuant to any judgment, order or decree made. The auditor shall, ~~on or before the expiration of ninety (90) days from the end of the fiscal year~~ by the date of the January regular Council meeting following the end of the fiscal year, annually make and deliver a detailed report of any and all accounts, records, and books by them examined and audited which report under his hand and seal shall be printed in a newspaper having a general circulation in the Town in the issue immediately preceding the annual report. The auditor, in the performance of his duties, shall have access to all records and accounts of the offices of the Town Council and he is hereby authorized and empowered to employ such clerks as in his judgment may be necessary in the proper performance of his duties.

Section 2. Amend Section 34 of the Charter of the Town of Millsboro by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 34.

~~(A)~~ (a) The Town Council may borrow money and issue bonds or certificates of indebtedness to secure the repayment thereof on the faith and credit of The Town of Millsboro to provide funds for the erection, extension, enlargement, purchase or the repair of any plant, machinery, appliances, or equipment for the supply, or the manufacture

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and distribution of electricity or gas for light, heat or power purposes; for the furnishing of water to the public, for the construction, repair and improvements of highways, streets or lanes or the paving, curbing or erection of gutters and curbs along the same; for the purchase of real estate for any municipal purpose; for the construction or repair of sewage disposal equipment; or to defray the cost or the share of the Town of the costs of any permanent municipal improvements; provided however that the borrowing of money therefor shall have been authorized for the Town Council in the manner following:

(1) The Town Council by resolution shall propose to the residents and property owners of the Town that the Town Council proposes to borrow a sum of money, not to exceed a stated amount for any of the purposes above stated. The resolution shall state the amount of money desired to be borrowed, the purpose for which it is desired, the manner of securing the same, and all other pertinent facts relating to the loan which are deemed pertinent by the Town Council and in their possession at the time of the passage of the resolution 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 or distributed in circular form at least one week before the time set for the public 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 nor more than sixty (60) days after the said public hearing to borrow the said money, the said special election to be for the purpose of voting for or against the proposed loan. The passing of the second resolution calling a special election shall ipso facto be considered the determination of the Town Council to proceed with 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 of Millsboro within thirty (30) days prior to the said special election or distributed in circular form at least fifteen (15) days prior to the special election, or both, at the discretion of the Town Council.

(5) At the said special election, every citizen of The Town of Millsboro shall have one vote and, in addition, every person who is an owner of real property within the corporate limits of the Town of Millsboro shall also have one vote. No vote shall be cast by a partnership except by a partner presenting notarized certification of said partnership authorizing the partner named therein to cast the vote of the partnership and no vote shall be cast by an association, corporation, limited liability company, trust or other legally constituted entity except by a person presenting notarized certification or certified copy of a resolution of said entity authorizing the person named therein to cast the vote of said entity. The Board of Special Elections shall be the sole and final judge of the legality of the votes offered at such special election.

(6) The Town Council shall cause to be prepared, printed and have available for distribution a sufficient number of ballots not less than five (5) days prior to the said special election. The special election may, at the discretion of the Town Council, be conducted by the use of voting machines or by paper ballot. The Mayor of The Town of Millsboro, by and with the advice and consent of the majority of the Town Council shall appoint three (3) persons to act as a Board of Special Election. The polling places shall be opened from 1:00 in the afternoon prevailing time until 7:00 in the evening prevailing time, on the date set for the special election.

(7) The Board of Special Elections shall count the votes for and against the proposed loan and shall announce the result thereof. The Board of Special Election shall make a certificate under their Hands of the number of votes cast for and against the proposed loan and the number of void votes and shall deliver the same to the Town Council which said certificate shall be retained by the Town Council with the other papers of the Town Council.

(8) ~~(a)~~ (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 evidences of indebtedness; provided, however, that the Town Council may, at any time prior to entering into a binding agreement for the public or private sale of such bond(s) or evidence(s) of indebtedness, abandon the proposed borrowing.

~~(b)~~ (B) The form of the bond or certificate of indebtedness, the interest rate, the time or times of payment of interest, the classes of the bond, the time or times of maturity, and the provisions as to registration shall be determined by the Town Council after the said special election.

~~(c)~~ (C) Bond Anticipatory Notes. In anticipation of the issuance of said bonds at any time after a special election resulting in a vote in favor of the bond issue, the Town Council may issue and sell bond anticipatory notes of the Town at either public or private sale for not less than par and accrued interest. 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 total amount of said notes outstanding at any one time shall not exceed the amount for which a special election resulted in a favorable vote. Said notes shall be redeemed at par and accrued interest 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 anticipatory notes shall not be subject to taxation by the state of Delaware or any political subdivision thereof.

(9) The bonds may be sold at either public or private sale. If it is determined to sell the bonds at public sale, the bonds shall be offered for sale to the best and most responsible bidder therefor after advertisement in a manner to be prescribed by the Town Council.

(10) The Town Council shall provide in its budget and in the fixing of the rate of tax for the payment of interest on and principal of the said bonds at the maturity thereof.

(11) The faith and credit of The Town of Millsboro shall be deemed to be pledged for the due payment of the bonds and interest thereon issued pursuant to the provisions hereof when the same had been properly executed and delivered for value.

(12) Statute of Limitations, 60 days. No action contesting any proceedings conducted, or action taken, by the Town Council hereunder regarding the authorization of any bonds or certificates of indebtedness issued under this Section shall be brought after the expiration of sixty (60) days from the publication of a notice in two (2) issues of a newspaper having general circulation in the Town of Millsboro, which notice shall announce the following information.

~~(a)~~ (A) That the Town Council has determined to borrow a certain sum of money and to issue bonds or certificates of indebtedness therefor;

~~(b)~~ (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)~~ (C) The amount of money to be borrowed;

~~(d)~~ (D) The purpose for which it is to be borrowed;

~~(e)~~ (E) That any person desiring to challenge the authorization of such bond(s) or certificate(s) of indebtedness must bring his or her action within sixty (60) days from the date of publication of such notice or forever be barred from doing so;

~~(f)~~ (F) Such notice shall be in bold print or bordered in black in such manner to call attention thereto.

~~(B)~~ (b) The bonded indebtedness shall not at any time exceed in the aggregate the total sum of twenty-five (25) percent of the value of real property situate within the limits of The Town of Millsboro shown by the last assessment preceding the creation of the said indebtedness.

(c) Notwithstanding subsection (a) of this section, on the Town receiving notice of being granted 100% principal loan forgiveness from a federal, state or local government funding source, a vote at a special election is not required for the municipal project under this section. The Town Manager or designee shall proceed with the resolutions required under this section 34 and public hearing on the project. If the Town is required to expend any funds on the project over the principal forgiveness value, the amount of expenditure and source of payment must be detailed in the resolutions required under this section.

(d) Notwithstanding subsection (a) of this section, on the Town receiving notice that a portion of an existing federal, state or local government loan is being granted 100% principal loan forgiveness, such principal forgiveness value

shall not be included in or count toward the aggregate limit of any borrowing authorization previously approved by a vote at a special election pursuant to this section.

~~(C)~~ (e) 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 procedure set out in subsection (a) of this ~~Section 34 (a)~~ section so long as the outstanding principal amount of the refunding bonds or other evidence of indebtedness does not exceed the face amount refunded, plus the cost of refunding, and shall be enacted by resolution of the Town Council.