SPONSOR: Rep. Postles & Sen. Buckson
Rep. Harris

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 38
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND THE TOWN CHARTER OF THE TOWN OF MAGNOLIA.

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 12, Chapter 264, Volume 52, Laws of Delaware, as amended, by making insertions as shown by underlining and deletions as shown by strike through as follows:

12. Borrowing Powers.

12.1 Short-Term Borrowings by Town Council Without Voter Approval; Limit on Borrowing~~; Tax Exempt~~.

The Town Council shall have the power to borrow money on the full faith and credit of the Town without approval of the voters and without regard to the provisions of sections 12.2 and 12.3 of this Charter, such sum or sums not exceeding in the aggregate $50,000 ~~fifteen thousand dollars ($15,000.00)~~, for any municipal or public purpose as identified in section 12.3.1 when, in the opinion of the majority of the Town Council elected, the needs of the Town require it; provided, however, that any new borrowings under this section 12.1 made after the effective date of this Act shall, by their terms, be repayable in full within ~~five (5)~~ 5 years of the date of each such borrowing. Any sum or sums so borrowed shall be secured by a promissory note or notes or other evidence of indebtedness of the Town Council duly authorized by Resolution of the Town Council and signed by the Mayor and attested by the Town Clerk with the town seal affixed. Any sum(s) of money borrowed on the full faith and credit of the Town shall be paid from the general funds of the Town. The aggregate amount of outstanding principal from any such borrowing or borrowings under this section 12.1 shall at no time exceed $50,000 ~~fifteen thousand dollars ($15,000.00)~~. Town expenditures that are not general obligations of the Town secured by the full faith and credit of the Town are exempt from the borrowing provisions in this section 12.

12.2 Long-Term Borrowings Without Voter Approval; Public Hearing And Super-Majority Vote of Town Council Required.

12.2.1 Limit On Borrowing and Aggregate Indebtedness Without Voter Approval; Super-Majority Vote.

Subject to the provisions of this section 12.2, the Town Council shall have the power to borrow money on the full faith and credit of the Town for the payment of principal thereof and interest due thereon, without the approval of the voters and without regard to the provisions of Section 12.3 of this Charter, such sum or sums not exceeding in the aggregate 15% of the total assessed valuation of all real property within the corporate limits of the Town of Magnolia subject to assessment for the purpose of levying the annual town taxes as provided in this Charter, for those municipal or public purposes specified in section 12.3.1, when, in the opinion of at least 4 members of the Town Council, the needs of the Town require it; provided, however, that any new borrowings under this Section 12.2 made after the effective date of this act shall, by their terms, be repayable in full within 40 years of the date of each such borrowing. Any sum or sums so borrowed shall be

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secured by a promissory note or notes or other evidence of indebtedness of the Town Council duly authorized by Resolution adopted by at least 4 members of the Town Council and signed by the Mayor and attested by the Secretary of the Town Council with the town seal affixed. Any sum(s) of money borrowed on the full faith and credit of the Town shall be paid from the general funds of the Town. The aggregate amount of outstanding principal from any such borrowing or borrowings under sections 12.1 and 12.2 shall at no time exceed 15% of the total assessed valuation of all taxable property in the Town.

12.2.2 Procedure: Notice, Hearing. In order to proceed under the power granted in this section 12.2, the Town Council shall authorize such borrowing in the following manner:

(a) The Town Council by resolution shall give notice 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 a municipal or public purpose specified in section 12.3.1. The resolution shall state the amount of money desired to be borrowed (which may be stated as a "not to exceed" amount), the purpose for which it is desired, the manner of securing same, and such other 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, date and place for a public hearing on the said resolution.

(b) (1) Notice of the time, date, and place of the hearing on the resolution authorizing said loan shall be published in two newspapers of general circulation in the Town not less than 14 days, nor more than 60 days, prior to the date set for the public hearing. Such notice shall be in bold print or bordered in black so as to call attention thereto. In addition to the time, date, and place of the public hearing, such notices shall contain the same information as required under section 12.2.2(a) above.

(2) In addition to publication as herein provided, the Town Council shall, not less than 14 days nor more than 60 days prior to the date set for the hearing, cause a public notice containing the information required above to be posted in at least 5 public places in the Town. In the event the publications or postings do not appear on the same date, the date of the first publication or posting shall control.

(c) If, at any time following the public hearing, the Town Council determines to proceed with the proposed borrowing, it shall pass a second resolution, by the affirmative vote of at least 4 members of the Town Council, to proceed with the proposed borrowing.

12.2.3 Municipal or Public Purposes For Which Town Council May Make Long-Term Borrowings Without Voter Approval.

The Town Council may incur long-term indebtedness on the full faith and credit of the Town without voter approval under this section 12.2 for any municipal or public purpose identified in section 12.3.1.

~~12.2~~ 12.3 Long-Term Borrowings; Voter Approval Required.

In addition to other borrowing powers granted to the Town under this Charter or by special act, the Town Council shall have authority to borrow money for any ~~proper~~ municipal or public purpose through the issuance of bonds or certificates of indebtedness to secure the repayment thereof, on the full faith and credit of the Town for the payment of principal thereof and interest due thereon.

~~12.2.1~~ 12.3.1 Municipal or Public Purposes. ~~Proper Municipal Purpose~~.

By way of illustration and not in limitation, a municipal or public purpose ~~"any proper municipal purpose"~~ includes, but is not limited to the following:

(A) erecting, extending, enlarging, maintaining, repairing, or replacing any plant, building, structure, machinery, or equipment for the production, treatment, collection, storage, supply, distribution or disposal of water, electricity, sanitary sewage, or storm-waters, or any of them, and the condemning or purchasing of any lands, easements, and rights-of-way which may be required therefor;

(B) laying-out, constructing, paving, widening, or extending streets, lanes, alleys and public ways, curbs and gutters, including storm sewers along the same, and the condemning or purchasing of lands, easements or rights-of-way which may be required therefor;

(C) erecting, enlarging, repairing, or replacing any municipal building including, by way of example, a Town Hall, a Police Department Building, a municipal warehouse, and the condemning or purchasing of lands, easements or rights-of-way which may be required therefor;

(D) constructing, laying-out, widening, extending, repairing, and maintaining sidewalks, cross walks, or embankments, or any of them, and the condemning or purchasing of any lands, easements, or rights-of-way which may be required therefor;

(E) defraying the costs to the Town of any other municipal improvement provided for or authorized or implied by the provisions of this Charter; and

(F) paying all expenses deemed necessary by the Town Council for the issuance of said bonds or certificates of indebtedness, including bond discount and legal expenses of bond counsel.

~~12.2.2~~ 12.3.2 Limit of Aggregate Indebtedness.

In no event shall the total outstanding indebtedness of the Town of Magnolia, authorized by sections 12.1, 12.2, and 12.3 ~~and 12.2~~ at any one time exceed, in the aggregate, 25% ~~fifteen per cent (15%)~~ of the assessed valuation of all real property within the corporate limits of the Town of Magnolia and subject to assessment for the purpose of levying the annual town taxes as provided in this Charter.

~~12.2.3~~ 12.3.3 Procedure; Notice, Hearing, Election.

In order to proceed under the power granted in this section 12.3 ~~12.2~~, the Town Council shall authorize such borrowing in the following manner:

(A) The Town Council by resolution shall give notice 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 a stated municipal purpose. The resolution shall state the amount of money desired to be borrowed (which may be stated as a "not to exceed" amount), the purpose for which it is desired, the manner of securing same, and such other 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 they shall fix a time, date and place for a hearing on the said resolution.

(B) (1) Notice of the time, date, and place of the hearing on the resolution authorizing said loan shall be published in two newspapers of general circulation in the Town not less than ~~fourteen (14)~~ 14 days, nor more than ~~sixty (60)~~ 60 days, prior to the date set for the public hearing. Such notice shall be in bold print or bordered in black so as to call attention thereto. In addition to the time, date, and place of the public hearing, such notices shall contain the same information as required under section 12.3.3(A) ~~12.2.3(A)~~ above. (2) In addition to publication as herein provided, the Town Council shall, not less than ~~fourteen (14)~~ 14 days nor more than ~~sixty (60)~~ 60 days prior to the date set for the hearing, cause a public

notice containing the information required above to be posted in at least ~~five (5)~~ 5 public places in the Town. In the event the publications ~~and/or~~ or postings do not appear on the same date, the date of the first publication or posting shall control.

(C) If, at any time following the public hearing, the Town Council determines to proceed with the proposed borrowing, it shall pass a second resolution ordering a special election to be held, upon not less than ~~fourteen (14)~~ 14 nor more than ~~sixty (60)~~ 60 days public notice, for the purpose of voting for or against the proposed borrowing. The passage of the second Resolution shall ipso facto be considered a determination by the Town Council to proceed with the matter in issue; provided however, that the Town Council may, at any time subsequent thereto, and based upon a significant change in the relevant circumstances, act by resolution to cancel the Special Election and abandon the proposed borrowing.

(D) (1) The notice of the time and place of holding the said Special Election shall be printed in two newspapers of general circulation in the Town, not less than ~~fourteen (14)~~ 14 days nor more than ~~sixty (60)~~ 60 days prior to the date set for the Special Election. In addition to the time, date and place of the election, such notice shall contain the same information as required under section 12.3.3(A) ~~12.2.3(A)~~. Such notice shall be in bold print or bordered in black so as to call attention thereto.

(2) In addition to such publication as herein provided, the Town Council shall, not less than ~~fourteen (14)~~ 14 days nor more than ~~sixty (60)~~ 60 days before the date set for the election, cause public notice, containing the information set out in subsection (D)(1) above (using date of "posting" for date of "publication"), to be posted in at least ~~five (5)~~ 5 public places in the Town. In the event the publications ~~and/or~~ or postings do not appear on the same date, the date of the first publication or posting shall control.

(E) (1) At such special election, any person(s) or artificial entity(s) (e.g. partnership, corporation, limited liability company) owning record title to real property in the Town shall be entitled to cast one vote for each separate parcel of real property (identified as such on the tax maps of the governing jurisdiction) owned (but not more than one vote shall be cast for any one property); however, the owner of more than one parcel in an unfinished subdivision where the public improvements have not been dedicated to the Town shall only have one total vote, irrespective of the number of parcels owned within the subdivision); and any resident of the Town who does not own record title to real property in the Town who would be entitled to vote in the annual town election if it were held on that day, shall be entitled to one vote. (For purposes of this section, "entitled to vote" shall include "registered to vote" if voter registration is required for the annual town election.) (2) Any natural person entitled to vote may cast his/her vote by a duly executed and acknowledged power of attorney. Any legal entity (other than a natural person) entitled to vote must cast its vote by a duly executed and acknowledged power of attorney. Such Power of Attorney shall be surrendered to the Board of Special Election which shall file same in the Office of the Town Clerk. Such Power of Attorney so filed shall constitute conclusive evidence of the right of said person to vote in the Special Election on behalf of the person or legal entity granting the power. (3) Any Special Election held pursuant to the provisions of this section shall be conducted by voting machines, electronic voting systems, or printed ballots as permitted by law which shall have the following designation:

[ ] For the proposed borrowing.

[ ] Against the proposed borrowing.

The voter shall be instructed to mark the box for which he casts his/her vote. The Town Council shall appoint ~~three (3)~~ 3 persons to act as a Board of Special Election. The polling places shall be opened for a minimum of ~~three (3)~~ 3 hours as specified by resolution of the Town Council. Persons in the polling place at the time appointed for closing of the polls shall be entitled to vote.

(F) The Board of Special Election shall be the sole and final judges of the legality of the votes offered at such special election. It shall keep a true and accurate list of all persons voting. It shall count the votes for and against the proposed borrowing 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 borrowing 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.

(G) 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 the said bonds or certificates 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.

12.4 ~~12.3~~ Refunding Bonds or Certificates of Indebtedness.

The Town Council may, by Resolution adopted by a simple majority of the entire Town Council, authorize the issuance of bonds or other obligations under sections 12.1, 12.2, or 12.3 ~~and/or 12.2~~ for the purposes of refinancing any outstanding bonds or obligations of the Town without the necessity of a public hearing or a special election as would otherwise be required under section 12.2 or 12.3, provided that the outstanding principal amount of the refunding bonds or other evidence(s) of indebtedness does not exceed the face amount refunded, plus the cost of refunding (including all bond premiums and transaction fees), and results in a present value savings to the Town. Present value savings shall be determined by using the effective interest rate on the refunding obligations as the discount rate calculated based on the internal rate of return.

12.5 ~~12.4~~ Provision for Payment; Special Tax; Sinking Fund.

The Town Council shall provide for the payment of interest on and principal of any bonds or certificates of indebtedness issued under section 12.1, 12.2, or 12.3 ~~and/or 12.2~~ at the maturity thereof. The said Town Council is authorized and empowered, at its discretion, to levy a special tax upon all the real estate within the Town or only upon such real estate as is directly benefited by the improvements paid for by the proceeds of such borrowing to pay interest on said bonds ~~and/or~~ or principal; and at their discretion, to establish a sinking fund adequate to the redemption, at or before maturity, of all bonds or certificates of indebtedness which may be issued under the provisions of sections 12.1, 12.2, or 12.3 ~~12.1 and/or 12.2~~; provided, that the amount to be raised under any special tax for this purpose shall not in any one year exceed the total amount necessary to pay all currently due principal amounts of the bonded indebtedness together with all interest currently due thereon within that year, or such amounts as necessary to enable a sinking fund to accomplish its specified purpose. The special tax provided for in this section 12.5 ~~12.4~~ shall be collected from the owners of real estate in the same manner as the other taxes levied by the said Town Council are collected. The Town Council may also appropriate and set aside for such sinking fund so much of the general funds of said town as they may from time to time think advisable. The sinking fund provided for by this section 12.5 ~~12.4~~ shall be deposited in federally insured deposits in a bank, trust company, or other banking institution until such time as it may be needed for the redemption of the bonds.

12.6 ~~12.5~~ Full Faith and Credit Unless Otherwise Stated.

Unless any such bond(s) or certificate(s) of indebtedness shall provide otherwise, the full faith and credit of the Town of Magnolia shall deemed to be pledged for the due payment of any bonds or certificates of indebtedness and the interest thereon issued under the provisions of sections 12.1, 12.2, or 12.3 ~~and/or 12.2~~ when the same shall have been properly executed and delivered for value notwithstanding any other provision of this Charter.

12.7 ~~12.6~~ Form of Bonds.

The form of the bonds or certificates of indebtedness authorized under sections 12.1, 12.2, or 12.3 ~~and/or 12.2~~ 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 feature, the denomination, the name thereof and any other relative or appurtenant matter pertaining thereto shall all be determined by the Town Council after the final action required to authorize the issuance of such bonds or certificates of indebtedness has been completed (i.e. a majority vote of the Town Council under section 12.1 or a super-majority vote under section 12.2; or a favorable vote of those natural persons and legal entities entitled to vote following the public hearing and special election procedures under section 12.3 ~~12.2~~).

12.8 ~~12.7~~ Council Members Not Liable.

No member of the Town Council, nor any person executing any bonds or other obligations issued pursuant to sections 12.1, 12.2, or 12.3 ~~and/or 12.2~~, shall be personally liable on the bonds or other obligations, or be subject to any personal liability or accountability by reason of the issuance thereof, provided that he/she is authorized to act by Resolution of the Town Council.

12.9 ~~12.8~~ Exempt from Taxation.

All bonds or other kinds or forms of certificates of indebtedness issued by the Town pursuant to the provisions of sections 12.1, 12.2, or 12.3 ~~and/or 12.2~~, and the interest thereon, shall be exempt from taxation by the State of Delaware or by any political subdivision or agency thereof. Any property acquired and held by the Town from the proceeds of bonds or certificates of indebtedness issued pursuant to sections 12.1, 12.2, or 12.3 ~~12.1 and/or 12.2~~ shall be exempt from taxation by the State of Delaware or any political subdivision thereof.

12.10 ~~12.9~~ Public or Private Sale.

Any bonds or certificates of indebtedness authorized under sections 12.1, 12.2, or 12.3 ~~and/or 12.2~~ may be sold or issued at either public or private sale. If the bonds shall be offered for public sale they shall be sold to the best and most responsible bidder(s) therefore after advertisement in a manner to be prescribed by the Town Council for at least ~~fifteen (15)~~ 15 days before offering the same for sale. All bonds or certificates of indebtedness issued pursuant to section 12.1, 12.2, or 12.3 ~~and/or 12.2~~ shall be deemed to be legal investments by any bank, trust company, insurance company, executor, administrator, curator, trustee, or other fiduciary.

12.11 ~~12.10~~ Statute of Limitations.

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 12 shall be brought after the expiration of ~~sixty (60)~~ 60 days from the publication of a notice in at least two newspapers, one of which shall be of general circulation in the Town of Magnolia and one of which shall be of general circulation in the State of Delaware, which notice shall announce the following information:

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

(B) That the proposal has been approved (as appropriate) by a majority of the Town Council (if the borrowing has proceeded under section 12.1), by a super-majority of the Town Council (if the borrowing has proceeded under section 12.2), or 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 (if the borrowing has proceeded under section 12.3 ~~12.2~~.)

(C) The amount of money to be borrowed, which may be stated as a "not-to-exceed" amount.

(D) The purpose for which it is to be borrowed.

(E) The security for such borrowing.

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

Such notice shall be in bold print or bordered in black in such manner as to call attention thereto. In addition to publication as herein provided, the Town Council shall cause a public notice, containing the information set out in subsections (A) through (F) above (using date of "posting" for date of "publication") to be posted in at least ~~five (5)~~ 5 public places in the Town. In the event the publications ~~and/or~~ or postings do not appear on the same date, the date of the first publication or posting shall control.

Section 2. Amend Section 9 of the Town Charter of the Town of Magnolia by making deletions as shown by strike through and insertions as shown by underline as follows:

9. Taxation; Tax Limit.

9.1 Taxation.

The Town Council is authorized to levy and collect from the taxables of the Town, according to the terms and provisions of this Act, such sum of money as may be deemed by the Town Council as necessary and proper for the general municipal needs of the Town, including sufficient monies to pay interest and principal on any municipal bond issued by the Town pursuant to sections ~~12.1 and/or 12.2~~ 12.1, 12.2, or 12.3 of this Charter, or pursuant to any special act of the General Assembly.

9.4 Limitation on Taxes.

The total amount of money to be raised by real property taxes and utility fixture taxes shall in no year exceed ~~two percent (2%)~~ 2% of the total assessed valuation of all taxable real estate (and improvements thereon) in the Town; provided, however, that this limit on taxes for general Town purposes shall not limit or prohibit the Town from levying and collecting such further and additional taxes or sums of money in any year as may be necessary or expedient to pay the interest on, or to retire the principal of, any bonds or certificates of indebtedness issued by the Town pursuant to sections ~~12.1 and/or 12.2~~ 12.1, 12.2, or 12.3 of this Charter as the same become due, or before they become due; or to create an adequate sinking fund reserve for the retiring of such indebtedness either before or at the time they become due.

Section 3. Amend Section 10 of the Town Charter of the Town of Magnolia by making deletions as shown by strike through and insertions as shown by underline as follows:

10. Collection of Taxes.

10.6 Applicability to Taxes.

The provisions of this section and of section 11 of this Charter apply to all taxes levied by the Town Council of the Town of Magnolia, pursuant to section ~~12.4~~ 12.5 of this Charter, provided that all references in this section and in section 11 to an Annual Tax List or Taxes shall, for all purposes relating to such special taxes, be deemed to refer to the tax list showing the amounts of special taxes levied against the real property.