SPONSOR: Sen. Mantzavinos & Rep. Burns
Sens. Cruce, Hoffner, Huxtable, Lockman, Townsend, Walsh; Reps. Chukwuocha, Gorman, Harris, Minor-Brown, Morrison, Romer, Snyder-Hall, K. Williams

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

# SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 230
AS AMENDED BY
SENATE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO SUBPOENA POWER.

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

Section 1. Amend Chapter 83, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline:

§ 8304A. Subpoena power.

(a) For purposes of this section, "county authority" means the Chief Financial Officer of the Office of Finance of New Castle County, the Director of the Department of Finance of Kent County, or the Finance Director of Sussex County.

(b) Each board of assessment or Department or Office of Finance shall have the power to subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of books, papers, records, memoranda, or other evidence bearing upon the correctness of any assessed value of non-residential real property whenever the board of assessment, Department, Office of Finance, or an appealing property owner relies upon income or cost comparison approaches to determine or contest the assessed value of that non-residential real property.

(c) A subpoena issued under this section is effective throughout this State and may be enforced in other states or countries through available legal means.

(d) Service of a subpoena issued under this section may be made by the county authority, or other staff designated by the county authority, for the purpose of serving a subpoena as follows:

(1) Where the person served is an individual, by any of the following:

a. Serving the person to whom it is addressed personally.

b. Leaving it at the person's usual place of abode with an individual of suitable age and discretion residing therein.



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c. Sending it by certified mail to the last known address of the person to whom the subpoena is addressed.

(2) Where the person served is a corporate or other entity, by any of the following:

a. Serving the registered agent personally or by certified mail.

b. Serving any individual authorized to accept service on behalf of the entity personally at the individual's usual place of business, the place of business of the entity, or by certified mail.

(e)(1) If a properly served recipient of a subpoena fails or refuses to respond, the Superior Court may, upon application of the county authority, issue an order requiring the recipient of the subpoena to appear before the county authority in response to the subpoena or produce books, papers, records, memoranda, or other evidence. Failure to obey such an order may be punished by the court as a contempt thereof.

(2) Objections and exceptions to a subpoena under this section will be handled by the Superior Court according to the Superior Court's procedures and standards for the adjudication of administrative subpoenas.

(f) If any person willfully refuses to make available books, papers, records, memoranda, or other evidence for examination by the county authority as required by this section, of the county authority's representative, or willfully refuses to attend and testify as required by this section, the county authority may apply to a judge of Superior Court for an order directing such person to comply with the county authority's request for books, papers, records, memoranda, or other evidence for examination by the county authority, or for the person's attendance and testimony. If the books, papers, records, memoranda, or other evidence required by the county authority are in the custody of a corporation, the order of the Court may be directed to any principal officer of such corporation. If a person fails or refuses to obey such an order, such person shall be guilty of contempt of court.

(g) (1) Testimony given under a subpoena issued under this section must be taken in a non-public setting.

(2) A transcript or recording of testimony given under this section, and any book, paper, record, memoranda, or other evidence produced in response to a subpoena under this section, is not a public record for purposes of Chapter 100 of Title 29 (Freedom of Information Act), must be treated confidentially, and may not be used or disseminated by a county authority for any purpose other than assessment, valuation, or any proceeding related to assessment or valuation of real property under this chapter.

Section 2. This Act expires 2 years after its enactment into law, unless otherwise provided by a subsequent act of the General Assembly.

Section 3. No later than 1 year after the effective date of this Act, each county shall deliver a report to the Governor, the Secretary of the Senate for distribution to all Senators, the Chief Clerk of the House of Representatives for

distribution to all Representatives, and the Librarian and Director of Legislative Services containing the following information:

(1) How many subpoenas were issued under this Act.

(2) The rate of subpoena response.

(3) The number of subpoenas that required enforcement in Superior Court.

(4) Any difficulties encountered in implementation of this Act or Senate Substitute No. 1 for Senate Bill No. 228.

(5) Recommendations regarding continuance and/or improvement on the power granted under this Act.