SPONSOR: Sen. Henry & Sen. Bushweller & Sen. Marshall & Rep. Keeley & Rep. Bolden & Rep. Scott
Sens. Blevins, Ennis, McDowell, Sokola, Townsend; Reps. Bennett, Potter, Ramone, Spiegelman, Paradee, D. Short, D.E. Williams, Wilson

DELAWARE STATE SENATE
147th GENERAL ASSEMBLY

SENATE BILL NO. 191

AN ACT TO AMEND TITLES 22, 29, 30, AND 31 OF THE DELAWARE CODE RELATING TO DOWNTOWN DEVELOPMENT DISTRICTS.

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

Section 1. Amend Title 22 of the Delaware Code by inserting a new Chapter 19 therein and by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 19. The Downtown Development Districts Act.

Subpart I. Establishment, Amendment, and Termination of Districts.

§ 1901. Purpose. Healthy and vibrant downtowns are critical components of Delaware's economic well-being and quality of life. The purpose of this chapter is to leverage the resources of state government in a limited number of designated areas in Delaware's cities, towns, and unincorporated areas in a multifaceted effort:

(a) To spur private capital investment in commercial business districts and surrounding neighborhoods;

(b) To stimulate job growth and improve the commercial vitality of such districts and neighborhoods;

(c) To help build a stable community of long-term residents in such districts and neighborhoods by improving housing opportunities for persons of all incomes and backgrounds; increasing homeownership rates; building a diverse array of successful businesses; and reducing the number of vacant houses; and

(d) To help strengthen neighborhoods, while harnessing the attraction that vibrant downtowns hold for talented young people, innovative small businesses, and residents from all walks of life.

§ 1902. Definitions. As used in this chapter:

(1) "Committee" means the Cabinet Committee on State Planning Issues established pursuant to 29 *Del.C.* §§ 9101 *et seq.*

(2) "District Plan" means the strategic plan or other detailed description of the overall strategy for the development of a proposed district submitted by the municipality or unincorporated area as part of its application for District designation.

(3) "DSHA" means the Delaware State Housing Authority.

(4) “Downtown” means that portion of a city, town, or unincorporated area that traditionally comprises its downtown or central business district, as determined by such city, town, or unincorporated area in accordance with guidelines promulgated by the Office.

(5) “Downtown Development District” or “District” means an area within a municipality or unincorporated area designated as a Downtown Development District in accordance with the provisions of this chapter.

(6) “Municipality” means any incorporated town or city of this State.

(7) “Office” means the Office of State Planning Coordination.

(8) “Unincorporated area” means an area of the State having a concentration of population that is not a municipality and that is eligible to apply for and receive District designation in accordance with rules promulgated by the Office.

§ 1903. Applications for District designation.

(a) At the request of the Governor, the Office shall solicit applications from municipalities and unincorporated areas to have an area designated as a Downtown Development District. Such application shall include a description of the area to be included; the need for District incentives; the District Plan; local incentives offered; and such other information as may be required by the Office.

(b) The Office of State Planning Coordination shall administer the application process and establish criteria to determine what areas qualify as Downtown Development Districts. The Office is authorized to take such actions as may be necessary or convenient to fulfill its responsibilities hereunder, including but not limited to promulgating rules and regulations relating to the establishment, amendment, and termination of Districts and providing assistance to municipalities and unincorporated areas in connection with the application process.

(c) The criteria for designating areas as Downtown Development Districts shall include:

(1) The need and impact of such a designation for such area, including but not limited to income, unemployment rate, homeownership rate, and prevalence of vacant or abandoned housing units in such municipality or unincorporated area. Need and impact factors shall account for at least 50 percent of the consideration given to applications for District designation;

(2) The quality of the municipality’s or unincorporated area’s District Plan;

(3) The quality of the local incentives offered; and

(4) Such other criteria as may be determined by the Office.

§ 1904. Review and approval of applications.

(a) Applications for District designation shall be evaluated by the Cabinet Committee on State Planning Issues, which shall recommend to the Governor those applications with the greatest potential for accomplishing the purposes of this chapter.

(b) Upon receipt from the Committee of any recommended application, the Governor (i) may designate immediately the recommended area as a District; (ii) may designate the recommended area as a District effective one year from the date of such determination by the Governor; or (iii) may deny such application.

(c) The initial round of applications shall result in the immediate designation of at least one but no more than three Districts.

§ 1905. Designation, renewal, and amendment of Districts.

(a) No more than 15 Districts shall be designated at any one time. Designation of the first three Districts shall include one District in each county.

(b) Districts shall be designated for an initial 10-year period. Upon recommendation of the Committee, the Governor may renew Districts for up to two five-year renewal periods. Recommendations for renewals shall be based on the performance of District responsibilities by the municipality (or county in the case of an unincorporated area); the continued need for such a District; and its effectiveness in creating capital investment, increasing population, creating jobs, improving housing stock, providing enhanced retail and entertainment opportunities, and otherwise improving the quality of life within such District.

(c) Any municipality (or county in the case of an unincorporated area) having a District within its borders shall be responsible for providing the local incentives specified in its application, providing timely submission of reports and evaluations as required by rule or regulation, implementing an active local Development District program within the context of overall economic and community development efforts, and fulfilling such other responsibilities as may be required by law, rule, or regulation in connection with such District.

(d) Each District shall be required to submit regular reports and information to the Office as may be necessary to evaluate such District's effectiveness and compliance with this section.

§ 1906. Local incentives.

(a) Any municipality or unincorporated area submitting an application for District designation shall propose local incentives that address local economic and community conditions, and that will help achieve the purposes set forth in § 1901 of this chapter. Such local incentives may include but are not limited to a reduction in fees or taxes. In addition, the application may also contain proposals for regulatory flexibility, which may include but are not limited to permit process reforms, special zoning districts, or exemptions from local ordinances.

(b) All incentives proposed in the application shall be binding upon the municipality (or county in the case of an unincorporated area) upon designation of the District. The extent and duration of such incentives shall be consistent with the requirements of the Delaware Constitution and the United States Constitution.

(c) A municipality or county may establish eligibility criteria for local incentives that differ from the criteria required to qualify for the incentives provided in this chapter.

§ 1907. Amendments to District boundaries and incentives.

A municipality or county may apply to the Office to amend the boundaries of the District or to amend one or more District incentives, provided that any revised incentive proposed by the municipality or county shall be equal or superior to the incentive for which the amendment is sought. All proposed amendments are subject to approval by the Committee.

§ 1908. Formal Review and Termination of Districts.

(a) If a municipality (or a county in the case of an unincorporated area) fails to fulfill its obligations pursuant to § 1905 or as otherwise set forth in this Act, then the Office may recommend to the Committee that the District be placed under formal review or that its District designation be terminated.

(b) Except in instances where a city, town, or municipality fails to provide local incentives in accordance with § 1906 hereunder, the Office (1) may not recommend placing any District under formal review for at least 2 years following the initial designation of such District, and (2) may not recommend terminating the designation of any District for at least 1 year following the placement of the District on formal review by the Committee.

(c) In no event shall the Office recommend formal review or termination of any District without providing sufficient notice and opportunity to be heard to such District.

(d) The Committee may approve any recommendation by the Office to place a District under formal review or to terminate a District's designation upon the affirmative vote of three-fifths of the members of the Committee.

(e) The Office may promulgate regulations to authorize the continuation of previously authorized District incentives for a reasonable period following termination of the District; provided, however, that no new incentives shall be authorized for any entity after the date of termination.

Subpart II. Downtown Development District Grants.

§ 1921. Qualifications for Downtown Development District Grants.

(a) Subject to the limitations set forth in this subpart, any Qualified District Investor making a Qualified Real Property Investment in a District shall be entitled to a Grant in an amount up to 20 percent of the Qualified Real Property Investments made by such Qualified District Investor in excess of the Minimum Qualified Investment Threshold.

(b) For purposes of this chapter:

(1) "DDD Grant" or "Grant" shall mean a Downtown Development District Grant as set forth in paragraph (a) hereunder.

(2) "Facility" means a complex of buildings, co-located at a single physical location within a District, all of which are necessary to facilitate the conduct of the same residential, trade, or business use. This definition applies to new construction as well as to the rehabilitation and expansion of existing structures.

(3) "Minimum Qualified Investment Threshold" means the minimum level of Qualified Real Property Investments required to be made by a Qualified District Investor in a building or facility in order to qualify for a DDD Grant, as determined by DSHA. Notwithstanding the foregoing, for the fiscal year ending June 30, 2015, the Minimum Qualified Investment Threshold shall be $25,000 with respect to a single residential or mixed-use building or a facility. No more often than once per year, DSHA may amend the Minimum Qualified Investment Threshold with respect to uses (residential, commercial, industrial, etc.), types of projects (rehabilitation, new construction, etc.), or other criteria determined by DSHA to be necessary or convenient to accomplish the purposes of this chapter.

(4) "Qualified District Investor" means an owner or tenant of real property located within a District who expands, rehabilitates or constructs such real property for residential, commercial, industrial or mixed use. In the case of a tenant, the amounts of qualified real property investment specified in this section shall relate to the proportion of the building or facility for which the tenant holds a valid lease. In the case of an owner of an individual unit within a common interest community, as such term is defined in 25 *Del.C.* § 81-103(11), the amounts of qualified real property investments specified in this chapter shall relate to that proportion of the building for which the owner holds title and not to common elements.

(5) "Qualified Real Property Investment" means the amount in excess of the Minimum Qualified Investment Threshold that is properly chargeable to a capital account for improvements to rehabilitate, expand or construct depreciable real property placed in service during the calendar year within a District. Specific inclusions and exclusions from the definition of "Qualified Real Property Investments" shall be determined by DSHA, but such definition shall generally include expenditures associated with (i) any exterior, interior, structural, mechanical or electrical improvements necessary to construct, expand or rehabilitate a building or facility for residential, commercial, industrial, or mixed use; (ii) excavations; (iii) grading and paving; (iv) installing driveways; (v) landscaping or land improvements; and (vi) demolition. Notwithstanding the foregoing, no investment in the rehabilitation, expansion, or construction of any building or facility in a District shall be a Qualified Real Property Investment unless it is performed in accordance with the District Plan.

§ 1922. Limitations and Conditions.

(a) The availability of Downtown Development District Grants in any given year shall be subject to appropriation by the General Assembly.

(b) In addition to its other powers and responsibilities hereunder, DSHA is expressly authorized to establish such other limitations and conditions with respect to Grants as may be necessary or convenient to accomplish the purposes of this chapter, including but not limited to:

(1) Amending the Minimum Qualified Investment Threshold;

(2) Establishing caps or limits on DDD Grants available to any Qualified District Investor, alone or in combination with other local, state, or federal incentives for any individual building or facility (including but not limited to State Historic Preservation Tax Credits pursuant to Chapter 18 of Title 30);

(3) Establishing additional qualifying criteria with respect to uses (residential, commercial, industrial, etc.) or types of projects (rehabilitation, new construction, etc.);

(4) Incentivizing particular types of uses or projects in one or more Districts; and

(5) Establishing such other limitations and conditions in one or more Districts as DSHA shall determine from time to time.

(c) DSHA may establish or amend the foregoing limitations and conditions no more often than once per year.

§ 1923. Policies and procedures for allocation of Downtown Development District Grants.

(a) Qualified District Investors shall be eligible to receive DDD Grant provided for in this chapter to the extent that they apply for and are approved for grant allocations through DSHA.

(b) The accuracy and validity of information on Qualified Real Property Investments shall be subject to verification procedures in accordance with rules promulgated by DSHA on forms supplied by DSHA and in accordance with dates specified by DSHA.

§ 1924. Administration.

(a) DSHA shall have the primary responsibility for administering the DDD Grant program. In connection therewith, DHSA's powers and duties shall include but not be limited to the following:

(1) Adopting such rules and procedures as may be necessary or desirable to effectuate the provisions of this chapter;

(2) Administering, enforcing, and interpreting such rules and procedures;

(3) Allocating Grant funds in accordance with the provisions of this chapter; and

(4) Monitoring the implementation and operation of this subpart.

(b) Beginning no later than December 31, 2015, DSHA shall issue an annual report to the Governor and the General Assembly evaluating the effectiveness of the Grant program established hereunder.

(c) DSHA may delegate to, and receive assistance from, other entities including the Office, DEDO, and other state agencies in carrying out its responsibilities hereunder.

Section 2. Amend Title 29, § 9101(a) of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 9101 Cabinet Committee on State Planning Issues.

(a) A Cabinet Committee on State Planning Issues is established and shall serve in an advisory capacity to the Governor. It shall be comprised of the following members or their respective designees:

(1) The Secretary of the Department of Natural Resources and Environmental Control.

(2) The Secretary of the Department of Transportation.

(3) The Secretary of the Department of Agriculture.

(4) The Director of the Delaware Economic Development Office.

(5) The Director of the Delaware State Housing Authority.

(6) The Secretary of the Department of Safety and Homeland Security.

(7) Such others as the Governor may designate.

Section 3. Amend Title 29, § 9101(c) of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

(c) The Committee shall consider matters relating to the orderly growth and development of the State, including, but not limited to:

(4) Recommendations on land use planning actions that are subject to review and comment pursuant to Chapter 92 of this title; ~~and~~

(5) Preparing the Strategies for State Policies and Spending document and maps, which shall serve as the primary policy guide that summarizes the State's land use goals, policies and strategies and directs state spending into investment levels that support the most efficient use of state resources, be they physical, fiscal, or natural, except that county and municipal governments shall retain their existing autonomy with respect to the land use designations set forth in their proposed and/or adopted comprehensive plans. The Strategies for State Policies and Spending shall be updated at least every 5 years, provided that the Governor may extend the deadline at his or her discretion~~.~~; and

(6) Performing such other duties and responsibilities with respect to Downtown Development Districts as set forth in Chapter 19 of Title 22.

Section 4. Amend Title 29, § 9101(h) of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

The Office of State Planning Coordination shall render local planning technical assistance. The Office of State Planning Coordination may serve as the lead agency to engage other state agencies, local governments, and other governmental and nongovernmental organizations for the purposes of coordinating planning activities, promoting liaison between various state agencies and local governments, building capacity through training and sharing of digital and other information, developing infrastructure plans and master plans, addressing specific growth and design issues, and such other actions as are appropriate to achieve the purposes of this chapter. The Office of State Planning Coordination shall develop and promote cooperation and coordination among state agencies and local governments to ensure effective and efficient planning and infrastructure investment. The Office of State Planning Coordination may make grants available to county and municipal governments to assist them in achieving any of the objectives outlined in this section, provided that funded activities and deliverables are in compliance and in harmony with the Strategies for State Policies and Spending. The Office of State Planning Coordination shall further have such authority and responsibility with respect to Downtown Development Districts as set forth in Chapter 19 of Title 22.

Section 5. Amend Title 30, § 1812(6) of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows and renumbering the remaining sections accordingly:

(6) "Downtown Development District" means an area of a city or down that has been designated by the Governor as a Downtown Development District in accordance with Chapter 19 of Title 22.

Section 6. Amend Title 30, § 1816(a) of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

(a) The maximum amount of credit awards under this chapter in any fiscal year shall not exceed $5,000,000. One hundred thousand dollars of the credit awards in a fiscal year must be reserved for distribution to qualified resident curators. If in any fiscal year there are insufficient qualified resident curators to exhaust this allotment, the unused credit amount will be available in the next fiscal year for award to persons qualifying under § 1813(a)(1) or (2) of this title. In any ~~1~~ one year, ~~$2,000,000~~ $1,500,000 of tax credits shall be reserved for projects receiving a credit of not more than $300,000. In addition, in any one year, $1,500,000 of tax credits shall be reserved for projects located in Downtown Development Districts, of which $500,000 shall be reserved for projects in such Districts receiving a credit of not more than $300,000. On April 1 of each year, any unused balance of the ~~$2,000,000 pool~~ foregoing pools of tax credits shall be available to any eligible project. However, should a credit award exceed the actual credit claimed, the amount of the excess credit award shall not be available for a subsequent award.

Section 7. Amend Title 31, § 4002(a) of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4002 Purpose.

(a) It is the purpose of this chapter that DSHA have the authority and capacity to:

(9) Advise and inform the Governor and the public on the affairs and problems relating to housing and community development and revitalization, and make recommendations to the Governor for proposed legislation pertaining thereto; ~~and~~

(10) Administer such provisions of the Downtown Development District Act as set forth in Chapter 19 of Title 22; and

(11) Operate DSHA's financial affairs in a prudent and sound manner.

Section 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application; and, to that end, the provisions of this Act are declared to be severable.

SYNOPSIS

Healthy and vibrant downtowns are critical components of Delaware's economic well-being and quality of life. The Downtown Development Districts Act is intended to leverage state resources to spur private investment in commercial business districts and surrounding neighborhoods; to improve the commercial vitality of our downtowns; and to increase the number of residents from all walks of life in downtowns and surrounding neighborhoods.

This Act establishes "Downtown Development Districts," a small number of areas in our cities, towns, and unincorporated areas that will qualify for development incentives and other state benefits. Municipalities must apply for District designation. In the case of unincorporated areas, counties must apply. Applications will be evaluated by the Cabinet Committee on State Planning Issues, which will make recommendations to the Governor. Following the initial round of applications, the Governor must designate at least 1 but no more than 3 Districts. Designation of the first 3 Districts must include 1 District in each county. Under the Act, no more than 15 Districts may be designated at any one time.

As part of the application process, municipalities or counties must offer local incentives. The factors to be considered by the Committee when evaluating applications include, among others, (1) the municipality's or unincorporated area's need for District designation; (2) the quality of the District Plan; and (3) the quality of the local incentives offered. The Office of State Planning Coordination will prepare applications, establish criteria to determine what areas qualify as DDDs, and provide assistance to municipalities and counties during the application process.

Under the Act, investors (both non-profit and for-profit) who make qualified real estate improvements in a District would be entitled to receive Downtown Development District (DDD) Grants of up to 20 percent of their "hard costs" such as exterior, interior, and structural improvements. The incentive is modeled after a similar program in Virginia, which has been extremely successful in leveraging significant amounts of private capital in under-served areas. Investors would need to invest at least $25,000 in a building or facility to qualify, and the 20 percent incentive would only qualify with respect to investments above $25,000. For example, an investor making $45,000 worth of qualifying investments in a District would be entitled to a DDD Grant of up to $4,000 (*i.e.,* 20% of $20,000). The Act gives DSHA the authority to cap the amount of Grants and to establish further conditions and limitations.

In addition, because Delaware's Historic Preservation Tax Credit Program has proven to be a powerful tool both in preserving important historic structures and revitalizing neighborhoods, the Act also provides that 30% of the state's yearly allocation of HPTCs will be reserved for projects in Downtown Development Districts. If by April 1 of each year any such credits are not allocated to projects in DDDs, such credits will be made available to any eligible project statewide.

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