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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 35
AS AMENDED BY
SENATE AMENDMENT NO. 2

AN ACT TO AMEND THE LAWS OF DELAWARE RELATING TO THE BOND AND CAPITAL IMPROVEMENTS ACT OF THE STATE OF DELAWARE AND CERTAIN OF ITS AUTHORITIES FOR THE FISCAL YEAR ENDING JUNE 30, 2023.

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

1 Section 1. Amend Chapter 340, Volume 83 of the Laws of Delaware by amending Section 171 by making
2 deletions as shown by strike through and insertions as shown by underline as follows:

3 **Section 171. School Safety and Security.** Section 1 Addendum of this Act makes an appropriation to the
4 Department of Education for School Safety and Security Fund. Of this amount, the Department shall provide a
5 minimum amount of \$1,000,000 to the Department of Safety and Homeland Security for school mapping, reporting
6 application, and threat assessment tools. Notwithstanding any provision or law to the contrary, school districts and
7 charter schools may use allocations from the School Safety and Security Fund for expenditures related to increased
8 safety and security personnel needs at school extracurricular events for the 2022-2023 school year.

9 Section 2. Amend Chapter 340, Volume 83 of the Laws of Delaware by amending Section 172 by making
10 deletions as shown by strike through and insertions as shown by underline as follows:

11 **Section 172. Enhanced Minor Capital Improvements.** (e) Notwithstanding any provision or law to the
12 contrary, effective July 1, 2022, reorganized school districts shall be authorized to assess a local match to provide up
13 to a 60/40 state/local share for the Enhanced Minor Capital Improvements state amounts appropriated in subsection
14 (a) of this section. This match is optional and must be used for the same purposes as state funds appropriated for

Enhanced Minor Capital Improvements. A partial local match is authorized provided the local share does not exceed 40 percent. A district may assess a match not to exceed a 60/40 state/local share all in one fiscal year or over multiple fiscal years. The match may only be provided through the original end date of the Enhanced Minor Capital Improvements appropriation and any continuations thereof.

(f) Notwithstanding any provision or law to the contrary, reorganized school districts and charter schools may utilize their respective Enhanced Minor Capital Improvements allocation for the purposes of remediating lead contaminated drinking water infrastructure without first obligating appropriations from Minor Capital Improvements funds for Fiscal 2023 and previous fiscal years. Should a district or charter school elect to utilize their Enhanced Minor Capital Improvements allocation for such remediation costs, said district or charter must submit a letter to the Secretary of Education, which shall be approved concurrently by the Director of the Office of Management and Budget and the Controller General, requesting a waiver from the provisions of subsection (c) of this section and identifying how the Enhanced Minor Capital Improvements funds will be utilized to address lead contaminated drinking water within said district or charter.

Section 3. Amend Chapter 340, Volume 83 of the Laws of Delaware by amending Section 30 by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 30. Procurement Thresholds. (a) Notwithstanding the provisions of 29 Del. C., § 6913 (e)(4), effective ~~September 1, 2021~~ February 15, 2023, the thresholds for requiring the issuance of a formal bid or formal RFP shall be as follows: For a materiel/Non-professional Services procurement: ~~\$50,000~~ 100,000, for a Public Works procurement: ~~\$150,000~~ 250,000, and for a Professional Services procurement: ~~\$100,000~~ 150,000.

Section 4. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 178 by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 178. Community Transportation Funds. Notwithstanding any provision of Title 29 of the Delaware Code to the contrary, the Department of Transportation is hereby authorized to use Community Transportation Funds for a one-time reimbursement to each of the following:

- (1) Georgetown Police Department in an amount up to \$10,000 for the purchase of an unmanned aerial vehicle.
- (2) Kent County Regional Sports Complex in an amount up to \$123,195 for the purchase of a concrete pad, concrete apron, all-terrain vehicle, and grinder pumps at DE Turf Sports Complex.

(3) New Castle County in an amount up to \$8,000 for the purchase and installation of permanent wood barricades at Oakmont Drive and Kingston Road.

(4) Parkers Run Homeowners Association in an amount of up to \$865 for the reimbursement of street signage.

(5) Rehoboth Beach Volunteer Fire Company in an amount up to \$76,000 for the reimbursement of a fire service vehicle and associated equipment.

(6) Western Sussex Boys and Girls Club in an amount of up to \$40,000 for the repair and restoration of the loading dock apron and additional parking area.

Section 5. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 179 by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 179. Criminal Legal System Imposed Debt Study Group. Amend Chapter 441, Volume 83 of the Laws of Delaware by amending Section 14 (9) and (14) by making deletions as shown by strike through and insertions as shown by underline as follows:

(9) The Study Group shall hold its first meeting no later than three months after this Act is enacted and shall meet at least ~~once each month~~ six times thereafter until the Study Group submits its final report.

(14) The Co-Chairs shall compile an interim and final report containing a summary of the Study Group's work regarding the issues assigned to it under paragraph (7) of this Section, including any findings and recommendations adopted by the Study Group. The Co-Chairs shall submit all reports to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Director and the Librarian of the Division of Research of Legislative Council, and the Delaware Public Archives. The interim report is due ~~February 1, 2023~~ May 1, 2023, and the final report is due September 1, 2023.

Section 6. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 180 by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 180. Department of Transportation Reprogramming Transfer. Notwithstanding any state law to the contrary, the Office of Management and Budget is authorized to transfer appropriation balances not in excess of the amounts below from the projects in subsection (a) Road Systems and reauthorize the funds to subsection (b) Grants and Allocations.

(a)	<u>Department, Agency Instrumentality</u>	<u>Appropriation Code</u>	<u>Amount</u>
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71	<u>Department of Transportation</u>		
72	<u>Road Systems</u>	<u>2023-55-05-00-97701</u>	<u>\$350,000</u>
73			
74	<u>Total</u>		<u>\$350,000</u>
75	(b) <u>Department, Agency Instrumentality</u>		
76			
77	<u>Department of Transportation</u>		
78	<u>Grants and Allocations</u>	<u>2023-55-05-00-95601</u>	<u>\$350,000</u>
79			
80	<u>Total</u>		<u>\$350,000</u>

81 Section 7. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 181 by
82 making deletions as shown by strike through and insertions as shown by underline as follows:

83 **Section 181. Absalom Jones Performing Arts Center.** The Office of Management and Budget is
84 authorized to utilize Absalom Jones Performing Arts Center funding, appropriated under the Section 1 Addendum of
85 this Act, to complete the facility drainage project prior to the development of the Performing Arts Center.

86 Section 8. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 182 by
87 making deletions as shown by strike through and insertions as shown by underline as follows:

88 **Section 182. Division of Communications Shelter.** The Office of Management and Budget is hereby
89 authorized to donate to the University of Delaware, the Department of Safety and Homeland Security, Division of
90 Communications shelter no longer in use and located on the University's Christiana Towers property.

91 Section 9. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 183 by
92 making deletions as shown by strike through and insertions as shown by underline as follows:

93 **Section 183. Troop 6 Project.** In accordance with funding provided under 82 Del. Laws c. 86, 83 Del.
94 Laws c. 56 and the Section 1 Addendum of this Act, the Office of Management and Budget is authorized to utilize
95 funding for planning and design, architectural and engineering, demolition and construction, and associated costs to
96 relocate the Delaware State Police offices, including costs for leasing temporary locations for housing Troop 6
97 personnel until the new facility is completed and available for occupancy.

98 Section 10. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 184 by
99 making deletions as shown by strike through and insertions as shown by underline as follows:

100 **Section 184. New Castle County Vocational Technical School District Athletic Fields.** Notwithstanding
101 any provision to the contrary, New Castle County Vocational Technical School District is hereby authorized to
102 proceed with the construction of new athletic fields as part of the Paul M. Hodgson Replacement project (CN#

2338A) using available local funds. Upon receipt of the major capital funds associated with the aforementioned certificate of necessity, the district shall recode such construction costs to the appropriate state and local major capital fund.

Section 11. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 185 by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 185. Poultry House Demolition Assistance Program. Notwithstanding the provisions of any other state law to the contrary, the Department of Agriculture is hereby authorized to use the remaining funds appropriated in 82 Del. Laws c. 86 Section 1 for Irrigation System Conversion as reimbursement for a new poultry house demolition assistance program. The new program would provide qualifying applicants with a 50 percent reimbursement of demolition costs up to a maximum of \$10,000 per house.

Section 12. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 186 by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 186. Calculation of 3 Percent Limit to Advance Bond Proceeds. Amend 29 Del. c. § 7414(b) by making insertions as shown by underline and deletions as shown by strikethrough as follows:

§ 7414. Deposit of money; advances from funds.

(b)The State may advance money to a special fund of the State established to hold money raised or to be raised to finance costs of projects authorized to be financed with the proceeds of bonds or notes after the adoption of an authorization act but prior to the issuance of bonds or notes authorized to be issued by that authorization act. Money may be advanced, in an amount not exceeding the greater of 3 percent of ~~General Fund revenues for the coming current fiscal year, as determined by the Delaware Economic and Financial Advisory Council~~ the estimated net General Fund revenue for that fiscal year from all sources (not including unencumbered funds remaining at the end of the previous fiscal year) as determined by joint resolution approved by a majority of the members elected to each House of the General Assembly and signed by the Governor in connection with the adoption of the annual budget appropriation bill for that fiscal year, or ~~\$60,000,000~~ 150,000,000, from any other fund of the State unless prohibited by any other law. Any money advanced must be repaid at the time the money advanced is needed for the purposes for which the money was held before being advanced.

Section 13. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 187 by making deletions as shown by strike through and insertions as shown by underline as follows:

131 **Section 187. Redevelopment of Strategic Sites (Fort DuPont).** Notwithstanding the provisions of any
132 other state law to the contrary, the Fort DuPont Redevelopment and Preservation Corporation is authorized to utilize
133 funds appropriated under 83 Del. Laws c. 56 and the Section 1 Addendum of this Act for capital projects sitewide
134 which are ready to proceed.

135 Section 14. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 188 by
136 making deletions as shown by strike through and insertions as shown by underline as follows:

137 **Section 188. Municipal Infrastructure Funds – Bowers Beach.** Municipal Infrastructure Funds
138 appropriated in 82 Del. Laws c.86 to Bowers Beach for “Bowers Beach – Boatlift” may be utilized for the North
139 Bayshore Drainage Improvements project.

140 Section 15. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 189 by
141 making deletions as shown by strike through and insertions as shown by underline as follows:

142 **Section 189. Community Workforce Agreement – Office of Management and Budget.** The Office of
143 Management and Budget (OMB) is authorized to engage in a pilot program to include Community Workforce
144 Agreements as part of large public works projects. There will be two different approaches: 1) Community
145 Workforce projects and 2) Disadvantaged Business Enterprise (DBE). The pilot program shall include no more than
146 four projects.

147 For the four Community Workforce projects, the awarded contractors for the projects will be required to
148 enter into a Community Workforce Agreement with the agency. The Community Workforce Agreement shall
149 permit all contractors to subcontract project work or to retain a percentage of their current workforce in order to
150 meet the requirements of the pilot. OMB shall set the percentage of work for each project to be performed by local
151 labor organization(s) with whom the awarded contractors will either hold a separate contract containing a Collective
152 Bargaining Agreement, or the contractor may subcontract with a subcontractor that holds a Collective Bargaining
153 Agreement. In addition, the Community Workforce Agreement may include a minority workforce requirement.

154 For the Community Workforce projects, the contract award will be based on a form of best value, for
155 which, 29 Del. C. § 6962 (b) is waived. OMB will establish a best value process to include the price, schedule, and
156 method of complying with the specific requirements of the Community Workforce projects. All bids are subject to
157 an evaluation for responsiveness and responsibility.

For the purpose of this pilot, Disadvantaged Business Enterprise is defined as for-profit businesses in which at least 51 percent of the business is owned by one or more individuals who are both socially and economically disadvantaged; and whose daily operations are managed by one or more individuals who are both socially and economically disadvantaged. If the project involves a Vocational Technical school, there is a requirement to include a cooperative program in which students from Vocational Technical schools will work on the project for a set number of hours at a paid wage rate appropriate for the individual student's scope of work.

For projects that are part of the DBE pilot program, the contract award will be based on a form of best value, for which, 29 Del. C. § 6962 (d)(13)a.4. is waived. The agency will establish a best value process to include the price, schedule, and method of complying with the specific requirements of the pilot project whether it is for DBE. All bids are subject to an evaluation for responsiveness and responsibility.

To assist the agency in evaluating the success of these pilot programs, the agency shall establish reporting requirements for the contractors on each project to be included in the awarded contract.

The Office of Management and Budget shall report annually on or before January 1st to the Joint Committee on Capital Improvement their assessment of the pilot, including, but not limited to, employee hiring statistics, cost savings, project quality, worker safety, and the effectiveness of contracting disadvantaged businesses, including but not limited to, subcontractors.

Section 16. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 190 by making deletions as shown by strike through and insertions as shown by underline as follows:

Section 190. Community Workforce Agreement – Department of Transportation. The Department of Transportation (the Department) is authorized to engage in a Community Workforce Agreement for no more than two large public works projects. The projects will be awarded in accordance with 29 Del. C. § 6962. The awarded contractor for the projects will be required to enter into the Community Workforce Agreement with the Department and a local labor organization(s). To assist the agency in evaluating the success of the pilot program, the agency shall establish reporting requirements for the contractor on the projects to be included in the awarded contract.

For Community Workforce Agreement projects, the Community Workforce Agreement shall require the prime contractor to become party to the Community Workforce Agreement and shall permit them to retain a percentage of their current workforce. In addition, the Community Workforce Agreement may include a minority workforce requirement.

186 The Department of Transportation shall report annually on or before January 1st to the Joint Committee on
187 Capital Improvement their assessment of the pilot including, but not limited to, employee hiring statistics, cost
188 savings, project quality, and worker safety.

189 Section 17. Amend Chapter 340, Volume 83 of the Laws of Delaware by adding a new Section 191 by
190 making deletions as shown by strike through and insertions as shown by underline as follows:

191 **Section 191. State Facilities Market Pressure Contingency.** Section 1 Addendum of this Act makes an
192 appropriation to the Office of Management and Budget for State Facilities Market Pressure Contingency. The
193 Director of the Office of Management and Budget shall provide a report on the projects funded, expenditure details,
194 and balance remaining in this appropriation to the Joint Committee on Capital Improvement by May 15.

SYNOPSIS

This Act amends the Fiscal Year 2023 Bond and Capital Improvements Act to (1) authorize the use of School Safety and Security Funds for school extracurricular activities; (2) authorize local funding to support Enhanced Minor Capital Improvements and the remediation of lead contaminated drinking water infrastructures; (3) adjust the procurement thresholds for the issuance of formal bids or RFPs; (4) authorize the Department of Transportation to use Community Transportation Funds for one-time reimbursements for various projects; (5) make changes to the Criminal Legal System Imposed Debt Study Group; (6) authorize the Department of Transportation Reprogramming Transfer; (7) authorize funding to complete the facility drainage project of Absalom Jones Performing Arts Center; (8) authorize the donation of the Division of Communications Shelter to the University of Delaware; (9) authorize the use of funding until the new Troop 6 facility is complete and available for occupancy; (10) allow New Castle County Vocational School District to proceed with construction of new athletic fields; (11) authorize the use of Irrigation System Conversion funds to reimburse a new poultry house demolition assistance program; (12) clarify the calculation of 3% limit of GF net revenue estimate for finance capital projects is applied to revenues identified in the revenue resolution for the fiscal year of the budget being adopted; (13) authorize Fort DuPont Redevelopment and Preservation Corporation to use funds for capital projects; (14) authorize Municipal Infrastructure Funds to be used for the North Bayshore Drainage Improvements; (15) authorize the Office of Management and Budget to engage in a pilot program to include Community Workforce Agreements; (16) authorize the Department of Transportation to engage in a Community Workforce Agreement for no more than two large public works projects; and (17) require a report from the Office of Management and Budget regarding State Facilities Market Pressure.

AUTHOR: Joint Committee on Capital Improvement