SPONSOR: Rep. Carson & Sen. Bushweller & Sen. Ennis
Reps. Bennett, Outten, Spiegelman, Yearick; Sen. Lawson

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 118
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO TAX INCREMENT FINANCING.

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

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

CHAPTER 54

KENT COUNTY TAX INCREMENT FINANCING ACT

§ 5401. Title.

This chapter shall be known as the "Kent County Tax Increment Financing Act".

§ 5402. Definitions.

As used in this chapter:

(1) "Act" means the Kent County Tax Increment Financing Act.

(2) "Adjusted assessed value" means:

a. For real property that qualifies for an agricultural, horticultural, or forest use under § 8329 of this title, the assessed value of the property without regard to its agricultural, horticultural, or forest use assessment as of January 1 of the calendar year preceding the effective date of the resolution creating the TIF District under § 5406 of this title; or

b. In the event the county grants an exemption from taxes, the original assessed value less the assessed value of property granted an exemption.

(3) "Assessed value" means the total assessed value of all real property in a TIF District subject to taxation as determined by the Assessor, with any adjustment pursuant to paragraph (2) of this section taken into account.

(4) "Assessor" shall mean the Kent County Assessment Office.

(5) "Bonds" or "bond" means any revenue or general obligation bonds or bond, notes or note, or other similar instruments or instrument issued by the county pursuant to and in accordance with this chapter.

(6) "Chief financial officer" means the Director of the Kent County Department of Finance or his/her designee designated by the Director of the Kent County Department of Finance.

(7) "County" or "county" means Kent County.

(8) "County administrator" means the Kent County Administrator or his/her designee designated by the Kent County Administrator.

(9) "Development" means new development, redevelopment, revitalization, or renovation.

(10) "Issuer" or "issuer" means the county when it acts to issue bonds.

(11) "Issuing Body" or "issuing body" means a municipality or other political subdivision, department or agency of the State (other than the county) when it acts to issue a bond, a note, or other similar instrument.

(12) "Levy Court" means Kent County Levy Court.

(13) "Original assessed value" means the assessed value as of January 1 of the calendar year preceding the effective date of the resolution creating the TIF District under § 5406(1) of this title.

(14) "Other Obligations" or "Other Obligation" means a bond, a note, or other similar instrument issued by an issuing body for any the purposes stated in § 5405 of this title.

(15) "Tax increment" means for any tax year the amount by which the assessed value as of January 1 preceding that tax year exceeds the original assessed value.

(16) "Tax year" means the fiscal year for the county.

(17) "TIF District" means an area designated by a resolution described in § 5406(1) of this title.

§ 5403. Bonds to finance development of industrial, commercial, or residential area authorized.

In addition to whatever other powers it may have, and notwithstanding any limitation of law, the county may borrow money by issuing and selling bonds, at any time and from time to time, for the purpose of financing the development of an industrial, commercial, or residential area. The issuance of general obligation bonds pursuant to this chapter shall comply with any debt limits otherwise applicable to the county.

§ 5404. Payment of bonds.

Bonds shall be payable from the special fund described in this chapter, and the Levy Court may also establish sinking funds, establish debt service reserve funds, or pledge other assets and revenues towards the payment of the principal, premium, if any, and interest, including special taxes levied and collected pursuant to Chapter 55 of this title.

§ 5405. Application of bond proceeds.

All proceeds received from any bonds issued and sold pursuant to this chapter shall be applied solely for:

(1) The cost of purchasing, leasing, condemning, or otherwise acquiring land or other property, or an interest in them, including finance charges and interest , in the designated TIF District or as necessary for rights-of-way or other easements to or from the TIF District;

(2) Demolition, debris removal, and disposal costs;

(3) Plans, specifications, studies, surveys, forecasts, and estimates of cost and revenues;

(4) Relocation of businesses or residents;

(5) Installation of utilities, construction of parks, playgrounds, recreational areas, establishment of open areas, and other improvements, including streets, roads, signage, landscaping, and pathways to, from, or within the TIF District, parking, lighting, and other facilities;

(6) Maintenance of utilities, parks, playgrounds, recreational areas, open areas, and other improvements, including streets, roads, signage, landscaping, and pathways to, from, or within the TIF District, parking, lighting, and other facilities;

(7) Construction or rehabilitation of buildings, except schools;

(8) Remediation of property, except schools;

(9) Reserves or capitalized interest;

(10) Necessary costs of issuing bonds;

(11) Permissive costs of issuing and servicing bonds, which may include up to 0.5% of the bond issue as origination costs incurred by the county, and up to 2.0% of the bond debt service payments as administrative costs if administered by the county;

(12) Payment of the principal of, premium, if any, and interest on loans, money advanced, or any indebtedness incurred by the county for any of the purposes set out in this section, including the refunding of bonds previously issued under this chapter; and

(13) Any costs permitted under § 5501(3) of this title, and for any purposes described in § 5502(b)(2) of this title; provided, however, that the purpose described in § 5502(b)(2) of this title shall be with reference to the designated TIF District.

§ 5406. Conditions precedent to issuance of bonds.

Before issuing any bonds, the Levy Court shall:

(1) Designate by resolution an area within the county as a "TIF District."

(2) Receive from the Assessor a certification as to the amount of the original assessed value.

(3) Pledge that until the bonds have been fully paid, or thereafter, the property taxes on real property within the TIF District shall be divided and applied as follows:

a. That portion of the taxes which would be produced by the rate at which taxes levied each year by or for the county upon the original assessed value shall be allocated to and when collected paid into the funds of the taxing body in the same manner as taxes by or for the taxing body on all other property are paid.

b. That portion of the taxes representing the levy on the tax increment that would normally be paid to the county shall be paid into a special fund to be applied in accordance with the provisions of § 5408 of this title.

c. That portion of the taxes representing the levy on the tax increment that would normally be paid to a taxing body other than the county shall be allocated to and, when collected, paid into the funds of such taxing body in the same manner as taxes by or for the taxing body on all property are paid, or any other manner that public agencies so determine (school districts, etc.); provided, however, if such taxing body has agreed pursuant to § 5409 of this title that such taxes shall be paid into a special fund created in accordance with § 5407 of this title, then such taxes shall be paid into such special fund.

§ 5407. Resolution creating special fund.

The Levy Court may adopt a resolution creating a special fund with respect to a TIF District, even though no bonds authorized by this chapter have been issued by the county with respect to that TIF District or are then outstanding. The taxes allocated to such special fund by § 5406(3)b. or c. of this title shall thereafter be paid over to such special fund as long as such resolution remains in effect.

§ 5408. Uses of special fund.

(a) *Uses of special fund when no bonds outstanding*. – When no bonds authorized by this chapter are outstanding with respect to a TIF District created pursuant to § 5407 of this title and the Levy Court so determines, moneys in the special fund for that TIF District may be:

(1) Used for any of the purposes described in § 5405 of this title for which bond proceeds could be used;

(2) Accumulated for payment of debt service on bonds subsequently issued under this chapter;

(3) Used to pay or to reimburse the county for debt service which the county is obligated to pay or has paid (whether such obligation is general or limited) on bonds issued by the county, or any agency, department or political subdivision thereof, the proceeds of which have been used for any of the purposes stated in § 5405 of this title, or used to pay or reimburse any developer loan;

(4) Used to pay or to reimburse an issuing body for debt service which the county is obligated to pay (whether such obligation is general or limited) on Other Obligations under an agreement described in subsection (b) of this section; or

(5) Paid to the county to provide funds to be used for any legal purpose as may be determined by the county.

(b) *Pledge agreement*. – The county may pledge, by written agreement, that amounts deposited to the special fund created for the TIF District pursuant to § 5407 of this title shall be paid over to secure the payment, or reimbursement of a payment, of debt service on Other Obligations. Such agreement shall be between the county and the issuing body, and shall run to the benefit of and be enforceable on behalf of any holder, of such Other Obligations.

(c) *Restrictions on use of special funds*. – When any bonds authorized by this chapter are outstanding with respect to a TIF District and the Levy Court so determines, moneys in the special fund for that TIF District created pursuant to § 5407 of this title may be used as provided in subsection (a) or (b) of this section in any fiscal year by the county, but only to the extent that:

(1) The amount in such special fund exceeds the unpaid debt service payable on such bonds in such fiscal year and is not restricted so as to prohibit the use of such moneys;

(2) Such use is not prohibited by the ordinance authorizing the issuance of such bonds; and to the extent not prohibited by bond or loan covenants.

§ 5408.1. Pledge of revenue from taxes on tax increment into other fund.

The county may pledge, by written agreement, that some or all of its property taxes levied on the tax increment shall be paid into a special fund created by an issuing body for the payment or reimbursement of the debt service on Other Obligations. Such agreement shall be between the county and such issuing body and shall run to the benefit of and be enforceable on behalf of any holder of such Other Obligations.

§ 5409. Agreements to pay revenue from taxes on tax increment into special fund.

A municipality, school district, or other taxing body that taxes property within the county which is not an issuing body may pledge, by written agreement, that some or all of its property taxes levied on the tax increment shall also be paid into a special fund created pursuant to § 5407 of this title. Such agreement shall be between the county and the taxing body and shall run to the benefit of and be enforceable on behalf of any holder of the bonds.

§ 5410. Ordinance authorizing bonds.

(a) *Mandatory provisions.* – In order to implement the authority conferred upon it by this chapter to issue bonds, the Levy Court shall adopt an ordinance that:

(1) Specifies and describes the proposed undertaking and states that it has complied with § 5406 of this title;

(2) Specifies the maximum rate or rates of interest the bonds are to bear.

(b) *Additional provisions.* – The resolution described in § 5407 of this title may itself specify and prescribe, or may authorize the chief financial officer or county administrator to specify and prescribe, any of the following as it deems appropriate to effect the financing of the proposed undertaking:

(1) The actual principal amount of the bonds to be issued;

(2) The actual rate or rates of interest the bonds are to bear;

(3) The manner in which and the terms upon which the bonds are to be sold;

(4) The manner in which and the times and places that the interest on the bonds is to be paid;

(5) The time or times that the bonds may be executed, issued, and delivered;

(6) The form and tenor of the bonds and the denominations in which the bonds may be issued;

(7) The manner in which and the times and places that the principal of the bonds is to be paid, within the limitations set forth in this chapter;

(8) Provisions pursuant to which any or all of the bonds may be called for redemption prior to their stated maturity dates; or

(9) Such other provisions not inconsistent with this chapter as shall be determined by such legislative body to be necessary or desirable to effect the financing of the proposed undertaking.

§ 5411. Exemption of bonds from taxation.

The principal amount of the bonds, the interest payable thereon, their transfer, and any income derived therefrom, including any profit made in the sale or transfer thereof, shall be exempt from taxation by the State and by the several counties and municipalities of this State.

§ 5412. Nature and incidents of bonds.

(a) *Form of bond; deemed "securities*". – All bonds shall be in fully registered form. Each of the bonds shall be deemed to be a "security" within the meaning of a § 8-102 of Title 6, whether or not it is either 1 or a class or series or by its terms is divisible into a class or series of instruments.

(b) *Signing and sealing.* – All bonds shall be signed manually or in facsimile by the county administrator, and the seal of the county shall be affixed thereto and attested by the chief financial officer or other administrative officer of the county. If any officer whose signature or countersignature appears on the bonds ceases to be such officer before delivery of the bonds, that officer's signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as if that officer had remained in office until delivery.

(c) *Maturity*. – All bonds shall mature not later than 30 years from their date of issuance.

(d) *Sale*. – All bonds shall be sold in such manner, either at public or private sale, and upon such terms as the Levy Court deems best. Any contract for the acquisition of property may provide that payment shall be made in bonds.

(e) *Bonds issued are securities*. – Bonds issued under this chapter are securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, State banks and trust companies, national banking associations, savings banks, savings and loan associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them.

§ 5413. Taxation of leased property in TIF District.

Whenever the county, as lessor, leases its property within the TIF District, the property shall be assessed and taxed in the same manner as privately owned property, and the lease or contract shall provide that the lessee shall pay taxes or payments in lieu of taxes upon the assessed value of the entire property and not merely the assessed value of the leasehold interest.

§ 5414. TIF District consistency with certified comprehensive plan.

The use of lands in a TIF District shall be consistent with the comprehensive plan for the area as certified pursuant to a § 9103(f) of Title 29.

§ 5415. Referendum.

Neither the ordinance authorizing the bonds referred to herein, nor any ordinance, resolution or order passed or adopted in furtherance thereof, nor the bonds themselves or the designation of a TIF District, shall be subject to any referendum by reason of any other State or local law.

§ 5416. Construction of chapter.

This chapter, being necessary for the welfare of the State and its residents, shall be liberally construed to effect the purpose of this chapter.

Section 2. This Act shall become effective upon its enactment into law.