

Chapter 236

(Senate Bill 457)

AN ACT concerning

Local Governments – Resilience Authorities – Authorization

FOR the purpose of authorizing a local government to create a Resilience Authority by local law; specifying certain requirements for the adoption of a local law establishing an Authority; specifying the required contents of a resolution and the articles of incorporation for an Authority; providing that certain provisions of this Act are self-executing and fully authorize the establishment of an Authority notwithstanding other provisions of law; providing that a resolution authorizing the creation of an Authority is administrative in nature and is not subject to referendum; specifying certain procedures for properly executing, filing, and recording the articles of incorporation establishing an Authority; specifying certain procedures for amending the articles of incorporation of an Authority; specifying certain procedures and requirements for altering or terminating an Authority; specifying the process for the appointment, hiring, and administration of an Authority; prohibiting the net earnings of an Authority from benefiting certain persons; specifying the powers that a local government may grant an Authority; authorizing an Authority to issue certain bonds for certain purposes; providing that bonds issued by an Authority are limited obligations and not a pledge of the faith and credit or taxing power of the incorporating local governments; establishing the process for the issuance of bonds by an Authority; authorizing a contract to provide for payment in bonds; specifying that certain findings are conclusive in a proceeding involving the validity or enforceability of a bond or security for a bond; exempting the principal of and interest on bonds, the transfer of bonds, and any income derived from bonds, including certain profits, from State and local taxes; authorizing the ~~legislative body of a local government~~ local governing body to ~~devote~~ dedicate certain revenues of the local government to the repayment of bonds for certain operations and projects of an Authority; specifying that each county or municipality that jointly establishes an Authority shall be considered an incorporating local government and file jointly certain articles of incorporation and amendment; requiring an Authority to report to its incorporating local government and certain committees of the General Assembly at certain intervals; providing for the application of this Act; defining certain terms; and generally relating to authorizing a local government to establish a Resilience Authority.

BY adding to

Article – Local Government

Section 22–101 through 22–113 to be under the new title “Title 22. Resilience Infrastructure”

Annotated Code of Maryland

(2013 Volume and 2019 Supplement)

Preamble

WHEREAS, The impacts from climate change are happening now in communities across the State of Maryland; and

WHEREAS, These impacts include rising temperatures, major rain and storm events, sea level rise, and changes in precipitation patterns; and

WHEREAS, Those things that Maryland communities depend upon and value – natural resources and ecosystems, energy, transportation, agriculture, cultural and historic resources, human health, and economic growth – are experiencing, and will continue to experience, the effects of climate changes; and

WHEREAS, Communities in coastal states account for nearly half of the nation’s population and economic activity, and that cumulative damage to property in those areas could reach \$3.5 trillion by 2060; and

WHEREAS, Local governments will bear much of the responsibility and cost required to mitigate the impacts of climate change through infrastructure investment; and

WHEREAS, Resilience financing authorities can work in partnership with local governments to accelerate infrastructure financing, reduce the cost of implementation, and mitigate and manage the risks of climate change; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Local Government

TITLE 22. RESILIENCE INFRASTRUCTURE.

22-101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) (1) “BOND” MEANS AN OBLIGATION FOR THE PAYMENT OF MONEY, BY WHATEVER NAME KNOWN OR SOURCE OF FUNDS SECURED, ISSUED BY A LOCAL GOVERNMENT OR RESILIENCE AUTHORITY UNDER STATE AND LOCAL GENERAL OR SPECIAL STATUTORY AUTHORITY.

(2) “BOND” INCLUDES A REFUNDING BOND, A NOTE, AND ANY OTHER OBLIGATION.

(C) “CAPITAL COSTS” MEANS COSTS INCURRED FOR ACQUISITION, PLANNING, DESIGN, CONSTRUCTION, REPAIR, RENOVATION, RECONSTRUCTION, EXPANSION, SITE IMPROVEMENT, AND CAPITAL EQUIPPING.

(D) “CHIEF EXECUTIVE” MEANS THE PRESIDENT, THE CHAIR, THE MAYOR, THE COUNTY EXECUTIVE, OR ANY OTHER CHIEF EXECUTIVE OFFICER OR HEAD OF A LOCAL GOVERNMENT.

(E) “CLIMATE CHANGE” INCLUDES SEA LEVEL RISE, NUISANCE FLOODING, INCREASED RAINFALL EVENTS, EROSION, AND TEMPERATURE RISE.

(F) “LOCAL GOVERNMENT” MEANS A COUNTY OR MUNICIPALITY.

~~(G) “MUNICIPALITY” MEANS A MUNICIPALITY WITH A POPULATION OF AT LEAST 30,000.~~

~~(H)~~ (G) “RESILIENCE AUTHORITY” MEANS AN AUTHORITY INCORPORATED BY ONE OR MORE LOCAL GOVERNMENTS IN ACCORDANCE WITH THIS TITLE WHOSE PURPOSE IS TO UNDERTAKE OR SUPPORT RESILIENCE INFRASTRUCTURE PROJECTS.

~~(H)~~ (H) (1) “RESILIENCE INFRASTRUCTURE” MEANS INFRASTRUCTURE THAT MITIGATES THE EFFECTS OF CLIMATE CHANGE.

(2) “RESILIENCE INFRASTRUCTURE” INCLUDES FLOOD BARRIERS, GREEN SPACES, BUILDING ELEVATION, AND STORMWATER INFRASTRUCTURE.

~~(I)~~ (I) “RESILIENCE INFRASTRUCTURE PROJECT” MEANS A PROJECT TO FINANCE OR REFINANCE THE CAPITAL COSTS ASSOCIATED WITH RESILIENCE INFRASTRUCTURE.

22-102.

(A) A LOCAL GOVERNMENT MAY CREATE A RESILIENCE AUTHORITY BY LOCAL LAW IN ACCORDANCE WITH THIS TITLE.

(B) A LOCAL LAW ADOPTED UNDER THIS SECTION:

(1) IS ADMINISTRATIVE IN NATURE; AND

(2) IS NOT SUBJECT TO REFERENDUM.

(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR CHARTER PROVISION, SUBSECTION (A) OF THIS SECTION IS SELF-EXECUTING AND FULLY AUTHORIZES A LOCAL GOVERNMENT TO ESTABLISH A RESILIENCE AUTHORITY.

(D) A LOCAL LAW ADOPTED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCLUDE PROPOSED ARTICLES OF INCORPORATION OF THE RESILIENCE AUTHORITY THAT STATE:

(1) THE NAME OF THE RESILIENCE AUTHORITY, WHICH SHALL BE “RESILIENCE AUTHORITY OF (NAME OF THE INCORPORATING LOCAL GOVERNMENT)”;

(2) THAT THE RESILIENCE AUTHORITY IS FORMED UNDER THIS TITLE;

(3) THE NAMES, ADDRESSES, AND TERMS OF OFFICE OF THE INITIAL MEMBERS OF THE BOARD OF DIRECTORS OF THE RESILIENCE AUTHORITY;

(4) THE ADDRESS OF THE PRINCIPAL OFFICE OF THE RESILIENCE AUTHORITY;

(5) THE PURPOSES FOR WHICH THE RESILIENCE AUTHORITY IS FORMED; AND

(6) THE POWERS OF THE RESILIENCE AUTHORITY, SUBJECT TO THE LIMITATIONS ON THE POWERS OF A RESILIENCE AUTHORITY UNDER THIS TITLE.

(E) (1) THE CHIEF EXECUTIVE OF THE INCORPORATING LOCAL GOVERNMENT, OR ANY OTHER OFFICIAL DESIGNATED IN THE LOCAL LAW ESTABLISHING THE RESILIENCE AUTHORITY, SHALL EXECUTE AND FILE THE ARTICLES OF INCORPORATION OF THE RESILIENCE AUTHORITY FOR RECORD WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION.

(2) WHEN THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION ACCEPTS THE ARTICLES OF INCORPORATION FOR RECORD:

(I) THE RESILIENCE AUTHORITY BECOMES A BODY POLITIC AND CORPORATE AND AN INSTRUMENTALITY OF THE INCORPORATING LOCAL GOVERNMENT; AND

(II) THE CHIEF EXECUTIVE OF THE INCORPORATING LOCAL GOVERNMENT, OR ANY OTHER OFFICIAL DESIGNATED IN THE LOCAL LAW ESTABLISHING THE RESILIENCE AUTHORITY, SHALL SUBMIT THE ARTICLES OF

INCORPORATION, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, TO:

1. THE SENATE BUDGET AND TAXATION COMMITTEE AND THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE; AND

2. THE HOUSE APPROPRIATIONS COMMITTEE AND THE HOUSE ENVIRONMENT AND TRANSPORTATION COMMITTEE.

(3) ACCEPTANCE OF THE ARTICLES OF INCORPORATION FOR RECORD BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION IS CONCLUSIVE EVIDENCE OF THE FORMATION OF THE RESILIENCE AUTHORITY.

(F) (1) THE LOCAL GOVERNING ~~AUTHORITY~~ BODY SHALL APPROVE ANY AMENDMENT TO THE ARTICLES OF INCORPORATION OF THE RESILIENCE AUTHORITY.

(2) ARTICLES OF AMENDMENT MAY CONTAIN ANY PROVISION THAT LAWFULLY COULD BE CONTAINED IN ARTICLES OF INCORPORATION AT THE TIME OF THE AMENDMENT.

(3) THE ARTICLES OF AMENDMENT SHALL BE FILED FOR RECORD WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION.

(4) THE ARTICLES OF AMENDMENT ARE EFFECTIVE AS OF THE TIME THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION ACCEPTS THE ARTICLES FOR RECORD.

(5) ACCEPTANCE OF THE ARTICLES OF AMENDMENT FOR RECORD BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION IS CONCLUSIVE EVIDENCE THAT THE ARTICLES HAVE BEEN LAWFULLY AND PROPERLY ADOPTED.

(G) (1) SUBJECT TO THE PROVISIONS OF THIS TITLE AND ANY LIMITATIONS IMPOSED BY LAW ON THE IMPAIRMENT OF CONTRACTS, THE INCORPORATING LOCAL GOVERNMENT, IN ITS SOLE DISCRETION, BY LOCAL LAW MAY:

(I) SET OR CHANGE THE POWERS, STRUCTURE, ORGANIZATION, PROCEDURES, PROGRAMS, OR ACTIVITIES OF THE RESILIENCE AUTHORITY;

(II) DETERMINE THE REVENUE SOURCES OF THE RESILIENCE AUTHORITY, INCLUDING THE USE OF GENERAL FUND REVENUE AND GENERAL OBLIGATION BONDS;

(III) ESTABLISH THE BUDGETARY AND FINANCIAL PROCEDURES OF THE RESILIENCE AUTHORITY; AND

(IV) TERMINATE THE RESILIENCE AUTHORITY.

(2) ON TERMINATION OF A RESILIENCE AUTHORITY:

(I) TITLE TO ALL PROPERTY OF THE RESILIENCE AUTHORITY SHALL BE TRANSFERRED TO AND BE VESTED IN THE INCORPORATING LOCAL GOVERNMENT; AND

(II) ALL OBLIGATIONS OF THE RESILIENCE AUTHORITY SHALL BE TRANSFERRED TO AND ASSUMED BY THE INCORPORATING LOCAL GOVERNMENT.

22-103.

(A) OFFICERS GOVERNING THE RESILIENCE AUTHORITY AND EMPLOYEES OF A RESILIENCE AUTHORITY SHALL BE APPOINTED OR HIRED AS PROVIDED BY LOCAL LAW.

(B) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE OR THE LOCAL LAW ESTABLISHING THE RESILIENCE AUTHORITY, THE PROCEDURES OF THE INCORPORATING LOCAL GOVERNMENT CONTROL ANY PERSONNEL MATTER RELATING TO THE INTERNAL ADMINISTRATION OF THE RESILIENCE AUTHORITY.

22-104.

EXCEPT AS NECESSARY TO PAY DEBT SERVICE OR IMPLEMENT THE PUBLIC PURPOSES OR PROGRAMS OF THE INCORPORATING LOCAL GOVERNMENT, THE NET EARNINGS OF A RESILIENCE AUTHORITY MAY BENEFIT ONLY THE INCORPORATING LOCAL GOVERNMENT AND MAY NOT BENEFIT ANY PERSON.

22-105.

(A) EXCEPT AS LIMITED BY THE LOCAL LAW ESTABLISHING THE RESILIENCE AUTHORITY OR ITS ARTICLES OF INCORPORATION, A RESILIENCE AUTHORITY HAS ALL THE POWERS UNDER THIS TITLE.

(B) A RESILIENCE AUTHORITY ~~MAY~~ HAS AND MAY EXERCISE ALL POWERS NECESSARY OR CONVENIENT TO UNDERTAKE, FINANCE, MANAGE, ACQUIRE, OWN, CONVEY, OR SUPPORT RESILIENCE INFRASTRUCTURE PROJECTS, INCLUDING THE POWER TO:

- (1) ACQUIRE BY PURCHASE, LEASE, OR OTHER LEGAL MEANS, BUT NOT BY EMINENT DOMAIN, PROPERTY FOR RESILIENCE INFRASTRUCTURE;
- (2) ESTABLISH, CONSTRUCT, ALTER, IMPROVE, EQUIP, REPAIR, MAINTAIN, OPERATE, AND REGULATE RESILIENCE INFRASTRUCTURE OWNED BY THE INCORPORATING LOCAL GOVERNMENT OR THE RESILIENCE AUTHORITY;
- (3) RECEIVE MONEY FROM ITS INCORPORATING LOCAL GOVERNMENT, THE STATE, OTHER GOVERNMENTAL UNITS, OR ~~NONPROFIT~~ PRIVATE ORGANIZATIONS;
- (4) CHARGE AND COLLECT FEES FOR ITS SERVICES;
- (5) SUBJECT TO THE APPROVAL OF THE LOCAL GOVERNING BODY, CHARGE AND COLLECT FEES TO BACK ITS BOND ISSUANCES;
- (6) HAVE EMPLOYEES AND CONSULTANTS AS IT CONSIDERS NECESSARY;
- (7) USE THE SERVICES OF OTHER GOVERNMENTAL UNITS; AND
- (8) ~~PERFORM CORPORATE ACTS NECESSARY TO CARRY OUT ITS PURPOSE~~ ACT AS NECESSARY OR CONVENIENT TO CARRY OUT THE POWERS GRANTED TO IT BY LAW.

22-106.

- (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A RESILIENCE AUTHORITY MAY ISSUE AND SELL BONDS PERIODICALLY:
- (1) FOR RESILIENCE INFRASTRUCTURE PROJECTS;
 - (2) TO REFUND OUTSTANDING BONDS;
 - (3) TO PAY THE COSTS OF PREPARING, PRINTING, SELLING, AND ISSUING THE BONDS;
 - (4) TO FUND RESERVES; AND
 - (5) TO PAY THE INTEREST ON THE BONDS IN THE AMOUNT AND FOR THE PERIOD THE RESILIENCE AUTHORITY CONSIDERS REASONABLE.

(B) ~~REVENUE BONDS~~ BONDS ISSUED BY A RESILIENCE AUTHORITY ARE LIMITED OBLIGATIONS AND ARE NOT A PLEDGE OF THE FAITH AND CREDIT OR TAXING POWER OF AN INCORPORATING LOCAL GOVERNMENT.

22-107.

(A) FOR EACH ISSUE OF ITS BONDS, A RESILIENCE AUTHORITY SHALL ADOPT A RESOLUTION THAT:

- (1) SPECIFIES AND DESCRIBES THE RESILIENCE INFRASTRUCTURE;**
- (2) GENERALLY DESCRIBES THE PUBLIC PURPOSE TO BE SERVED AND THE FINANCING TRANSACTION;**
- (3) SPECIFIES THE MAXIMUM PRINCIPAL AMOUNT OF THE BONDS THAT MAY BE ISSUED; AND**
- (4) IMPOSES TERMS OR CONDITIONS ON THE ISSUANCE AND SALE OF BONDS IT CONSIDERS APPROPRIATE.**

(B) A RESILIENCE AUTHORITY, BY RESOLUTION, MAY:

- (1) SPECIFY, DETERMINE, PRESCRIBE, AND APPROVE MATTERS, DOCUMENTS, AND PROCEDURES THAT RELATE TO THE AUTHORIZATION, SALE, SECURITY, ISSUANCE, DELIVERY, AND PAYMENT OF AND FOR THE BONDS;**
- (2) CREATE SECURITY FOR THE BONDS;**
- (3) PROVIDE FOR THE ADMINISTRATION OF BOND ISSUES THROUGH TRUST OR OTHER AGREEMENTS WITH A BANK OR TRUST COMPANY THAT COVER A COUNTERSIGNATURE ON A BOND, THE DELIVERY OF A BOND, OR THE SECURITY FOR A BOND; AND**
- (4) TAKE OTHER ACTION IT CONSIDERS APPROPRIATE CONCERNING THE BONDS.**

22-108.

(A) THE PRINCIPAL OF AND INTEREST ON BONDS, THE TRANSFER OF BONDS, AND ANY INCOME DERIVED FROM THE BONDS, INCLUDING PROFITS MADE IN THEIR SALE OR TRANSFER, ARE FOREVER EXEMPT FROM STATE AND LOCAL TAXES.

(B) A CONTRACT FOR A RESILIENCE INFRASTRUCTURE PROJECT MAY PROVIDE THAT PAYMENT SHALL BE MADE IN BONDS.

(C) A BOND IS NOT SUBJECT TO THE LIMITATIONS OF §§ 19-205 AND 19-206 OF THIS ARTICLE.

22-109.

A FINDING BY THE LOCAL GOVERNING AUTHORITY OR THE BOARD OF DIRECTORS OF A RESILIENCE AUTHORITY AS TO THE PUBLIC PURPOSE OF AN ACTION TAKEN UNDER THIS TITLE, AND THE APPROPRIATENESS OF THAT ACTION TO SERVE THE PUBLIC PURPOSE, IS CONCLUSIVE IN A PROCEEDING INVOLVING THE VALIDITY OR ENFORCEABILITY OF A BOND, OR SECURITY FOR A BOND, ISSUED UNDER THIS TITLE.

22-110.

NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR CHARTER, ~~THE LEGISLATIVE BODY OF A LOCAL GOVERNMENT~~ LOCAL GOVERNING BODY MAY ~~DEVOTE~~ DEDICATE ANY REVENUES OF THE LOCAL GOVERNMENT FOR REPAYMENT OF BONDS AND TO SUPPORT THE OPERATIONS OR RESILIENCE INFRASTRUCTURE PROJECTS OF A RESILIENCE AUTHORITY.

22-111.

IF MULTIPLE COUNTIES OR MUNICIPALITIES ESTABLISH A RESILIENCE AUTHORITY⁵:

(1) EACH SHALL BE CONSIDERED AN INCORPORATING LOCAL GOVERNMENT; AND

(2) THE COUNTIES OR MUNICIPALITIES SHALL FILE JOINTLY ARTICLES OF INCORPORATION OR ARTICLES OF AMENDMENT IN ACCORDANCE WITH § 22-102 OF THIS SUBTITLE.

22-112.

NOTHING IN THIS TITLE MAY BE CONSTRUED TO:

(1) PROHIBIT THE LOCAL GOVERNMENTS OF MULTIPLE COUNTIES OR MUNICIPALITIES FROM ESTABLISHING THROUGH JOINT ACTION A RESILIENCE AUTHORITY IN ACCORDANCE WITH THIS TITLE; OR

(2) AUTHORIZE A RESILIENCE AUTHORITY TO LEVY A TAX.

22-113.

(A) ON A DATE AND IN A FORMAT DESIGNATED BY THE INCORPORATING LOCAL GOVERNMENT, A RESILIENCE AUTHORITY SHALL, AT LEAST ANNUALLY, REPORT TO THE INCORPORATING LOCAL GOVERNMENT ON THE ACTIVITIES OF THE RESILIENCE AUTHORITY.

(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ON OR BEFORE THE JANUARY 1 AFTER A RESILIENCE AUTHORITY IS ESTABLISHED BY A LOCAL GOVERNMENT IN ACCORDANCE WITH THIS TITLE, AND ON OR BEFORE JANUARY 1 EACH YEAR THEREAFTER, THE RESILIENCE AUTHORITY SHALL SUBMIT A REPORT IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE TO:

(I) THE SENATE BUDGET AND TAXATION COMMITTEE AND THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE; AND

(II) THE HOUSE APPROPRIATIONS COMMITTEE AND THE HOUSE ENVIRONMENT AND TRANSPORTATION COMMITTEE.

(2) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE, AT A MINIMUM:

(I) A COPY OF THE REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION;

(II) A DESCRIPTION OF THE RESILIENCE INFRASTRUCTURE PROJECTS FUNDED BY THE RESILIENCE AUTHORITY; AND

(III) THE SOURCES OF REVENUE FOR THE RESILIENCE INFRASTRUCTURE PROJECTS UNDERTAKEN BY THE RESILIENCE AUTHORITY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2020.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 8, 2020.