

INTRODUCED 10/05/09
PUBLIC HEARING 10/19/09
COUNCIL ACTION 10/26/09
EXEC. ACTION 10/27/09
EFFECTIVE DATE 10/27/09

County Council of
Howard County, Maryland

2009 Legislative Session

Legislative Day No. 13

Bill No. 55-2009

Introduced by: The Chairperson at the request of the County Executive

AN ACT to authorize and empower Howard County, Maryland to borrow, on its full faith and credit, up to \$3,530,000 from the Maryland Water Quality Financing Administration (the "Administration"), and to issue and sell its installment bonds to the Administration, the proceeds thereof to be used to pay costs of Capital Project S6175 (Little Patuxent Parallel Sewer), and to pay all related costs; and to levy taxes upon the assessable property within the County sufficient, together with benefit assessments, ad valorem taxes levied upon assessable property in the Metropolitan District and other available funds, to pay the debt service on such bonds; authorizing the County to enter into one or more Loan Agreements with the Administration to effect and further evidence such borrowing; making certain findings and determinations; and declaring this Act to be an emergency measure.

Introduced and read first time October 5, 2009. Ordered posted and hearing scheduled.

By order Stephen M. LeGendre
Stephen LeGendre, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on October 19, 2009 and concluded on October 19, 2009.

By order Stephen M. LeGendre
Stephen LeGendre,
Administrator

This Bill was read the third time on October 26, 2009 and Passed ☒ Passed with amendments _____, Failed _____.

By order Stephen M. LeGendre
Stephen LeGendre,
Administrator

Sealed with the County Seal and presented to the County Executive for approval this 26th day of October, 2009 at 5:00 a.m./p.m.

By order Stephen M. LeGendre
Stephen LeGendre,
Administrator

Approved by the County Executive Oct 27, 2009

Ken Ulman
Ken Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN ALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

Pursuant to and in accordance with the Maryland Water Quality Financing Administration Act, Sections 9-1601 to 9-1622 of the Environment Article, Annotated Code of Maryland, as amended (the “MWQFA Act”), the Maryland Water Quality Financing Administration (the “Administration”) is authorized to issue its bonds to provide moneys for deposit into the Maryland Water Quality Revolving Loan Fund (the “Fund”) to be used to make loans to “local governments” for the purpose of financing all or a portion of the cost of a “wastewater facility”. Any loan from the Administration is evidenced by one or more bonds or other obligations issued by a local government to the Administration.

Section 9-1606 of the MWQFA Act provides as follows:

(a) *Loan Agreement.* A loan made by the Administration shall be evidenced by a loan agreement. Loans made from the Water Quality Fund, except for loans made in accordance with §9-1605(d)(9) of this subtitle, shall be subject to the provisions of §9-1605(d)(1) of this subtitle. Loans made from the Drinking Water Loan Fund, except for loans made in accordance with §9-1605.1(d)(10) of this subtitle, shall be subject to the provisions of §9-1605.1(d)(1) of this subtitle. Subject to the provisions of any applicable bond resolution, the Administration may consent to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, security, or any other term of any loan agreement or loan obligation. In connection with any security received by or owned by the Administration, including any loan obligations, the Administration may commence any action to protect or enforce the rights conferred upon it by any law or loan agreement or loan obligation.

1
2 (b) *Issue and sale of loan obligations by borrower.*
3 Notwithstanding any other provision of public general or public
4 local law, charter, or ordinance, a borrower may issue and sell loan
5 obligations to the Administration:
6

7 (1) At private sale, without public bidding;
8

9 (2) Without regard to any limitations on the
10 denomination of such obligations; and
11

12 (3) At any interest rate or cost or at any price that the
13 borrower considers necessary or desirable.
14

15 (c) *Payment of fees or charges by borrower.* A
16 borrower may pay any fees or charges necessary to enable the
17 Administration to sell its bonds, including any fees for the
18 insurance of its loan obligations or bonds of the Administration, or
19 to provide any other guarantee, credit enhancement, or additional
20 security for any such loan obligations or bonds.
21

22 (d) *Pledge of moneys borrower is entitled to receive*
23 *from State.* Notwithstanding any other provision of public general
24 or public local law, charter, or ordinance, a borrower may agree
25 with the Administration to pledge any moneys that the borrower is
26 entitled to receive from the State, including the borrower's share of
27 the State income tax, to secure its obligations under a loan
28 agreement. The State Comptroller and the State Treasurer shall
29 cause any moneys withheld under such a pledge to be paid to, or
30 applied at the direction of, the Administration.
31

32 (e) *Loan obligation cancelable only upon repayment*
33 *in full.* Each loan agreement shall contain a provision whereby the
34 borrower acknowledges and agrees that the borrower's loan
35 obligation is cancelable only upon repayment in full and that
36 neither the Administration, the Secretary, nor the Board is
37 authorized to forgive the repayment of all or any portion of the
38 loan, except for loans to disadvantaged communities, pursuant to
39 the federal Safe Drinking Water Act, and loans made in accordance
40 with §§9-1605(d)(9) and 9-1605.1(d)(10) of this subtitle.
41

42 (f) *Default on loan obligation –* In the event of a default on a
43 loan obligation by a borrower other than a local government, the
44 Administration may place a lien against property of the borrower
45 securing the loan which, subject to the tax liens of the federal,
46 State, and local governments, shall have the same priority and
47 status as a lien of the State for unpaid taxes under §§ 14-804 and
48 14-805 of the Tax - Property Article. The Administration may
49 exercise the same rights and powers in enforcing such lien and
50 collecting funds for the payment of amounts in default under the
51 loan obligation as the State may exercise in collecting unpaid taxes
52 under Title 14, Subtitle 8 of the Tax - Property Article.”

1 Section 9-1605(d)(9) of the MWQFA Act provides that amounts in the Fund may be used
2 “[t]o provide financial assistance in the form of grants, negative interest loans, forgiveness of
3 principal, subsidized interest rates, and any other form of financial assistance as authorized or
4 required by the American Recovery and Reinvestment Act of 2009, as may be amended or
5 supplemented.” Section 9-1605(d)(1) of the MWQFA Act provides that annual principal and interest
6 payments will commence not later than one year after completion of any wastewater facility and all
7 loans will be fully amortized not later than 20 years after project completion, and that a local
8 government borrower will establish a dedicated source of revenue for repayment of loans.

9 The Administration has indicated that the Project is eligible for loan financing in an amount
10 not to exceed \$3,530,000 from moneys made available to the Administration pursuant to the ARRA
11 at an interest rate of one percent (1%) per annum, provided that construction commences by
12 December 31, 2009 and loan closing occurs by December 31, 2009 or such later date as to which the
13 Administration may agree, within its sole discretion.

14 The Department of Finance estimates that loan funding provided by the Administration for
15 Project purposes pursuant to the ARRA will save the County an estimated \$40,000.00 in interest
16 payments annually over the life of the bond funding, as compared to any Metropolitan District bond
17 financing issued by the County for Project purposes.

18 On the date of final consideration hereof, but prior hereto, the Council has passed Transfer of
19 Appropriation Ordinance No. 2 Fiscal Year 2010, which will transfer \$3,530,000 in Water Quality
20 State Bond Loan funding from Project S6214 (Sewer Contingency Fund) to Project S6175 (Little
21 Patuxent Parallel Sewer), and such TAO is intended to be presented to the County Executive for
22 approval prior hereto.

23 As a part of the Capital Budget, as modified by the transfer of appropriation referred to
24 hereinabove, it is necessary that the County borrow a sum not exceeding \$3,530,000, the proceeds
25 thereof to be used to pay a portion of the costs of the Project and costs of issuance of any obligations
26 issued to evidence such borrowing.

27 Accordingly, pursuant to Section 209(d) of the Howard County Charter, this matter is an

1 immediate emergency affecting the public health, safety, or welfare because, without the
2 Administration loan or loans authorized by this Act, which must close within the time period
3 mandated by the Administration, the County will not realize the substantial interest rate savings over
4 the life of the bonds made available due to the ARRA, nor will such funds be available to create
5 additional employment, thereby affecting the fiscal health of Howard County and failing to stimulate
6 the economy of the County.

7 **Now therefore,**

8 **Section 1. Be it enacted by the County Council of Howard County, Maryland, That all**
9 **terms used herein with an initial capital letter and defined in the Recitals hereof shall have the**
10 **meanings given such terms therein, unless the context clearly indicates a contrary meaning.**

11 **Section 2. Be it further enacted by the County Council of Howard County, Maryland,**
12 **(a) That the County is hereby authorized and empowered to borrow, on its full faith and credit, an**
13 **amount not exceeding \$3,530,000 from the Administration and to issue and sell one or more**
14 **installment bonds (each, a "Bond") to the Administration, at one time or from time to time within**
15 **four years from the effective date of this Act, pursuant to and in accordance with the Howard County**
16 **Charter and the MWQFA Act, the proceeds thereof to be used for payment of costs of the Project, as**
17 **more particularly specified and described in Appendix I hereto and in the County's Capital Budget**
18 **for the fiscal year ending June 30, 2010, and for payment of all related costs, including, without**
19 **limitation, the costs incurred by the County in connection with the issuance of the Bond or Bonds to**
20 **the Administration, and the costs of planning, construction, improvements, renovation, rehabilitation,**
21 **equipping, engineering and architect's services, surveys, studies, landscaping, site development and**
22 **land acquisition, to the extent permitted under the MWQFA Act.**

23 **(b) Each Bond shall constitute a "loan obligation" within the meaning of the**
24 **MWQFA Act.**

25 **(c) The County is further authorized to enter into a Loan Agreement with the**
26 **Administration (each, a "Loan Agreement") to effect and evidence each loan from the**

1 Administration.

2 **Section 3. Be it further enacted by the County Council of Howard County, Maryland,**
3 That, for each Bond issued under this Act, the County Council, by an ordinance or ordinances
4 adopted from time to time in accordance with Sections 606 and 618 of the Howard County Charter,
5 the MWQFA Act, and other applicable provisions of law, shall provide for (a) the issuance and sale
6 of such Bond to the Administration, (b) the designation, form, tenor, maximum principal amount
7 (and the formula for computing the final principal amount), denomination and maturity (not
8 exceeding 20 years after Project completion), (c) the amortization schedule of such Bond (or the
9 formula for computing such schedule, subject to any limitations contained in the MWQFA Act and
10 any program requirements of the Administration), (d) the interest rate (or the method of determining
11 such rate) payable on such Bond, and (e) the form and terms and conditions of the Loan Agreement.

12 **Section 4. Be it further enacted by the County Council of Howard County, Maryland,**
13 That for the purpose of paying the principal of and interest on the Bonds as the same shall become
14 payable, the County Council shall levy annually ad valorem taxes upon the assessable property in
15 Howard County sufficient, together with benefit assessments, ad valorem taxes levied upon
16 assessable property in the Metropolitan District and other available funds, to pay the principal of and
17 interest on the Bonds until the entire principal amount of the Bonds shall mature and be redeemed.

18 **Section 5. Be it further enacted by the County Council of Howard County,**
19 **Maryland,** That the County anticipates that a portion of the costs of the Project will be paid prior
20 to the issuance of the Bonds. The amount of such costs so paid will depend on various factors,
21 including, without limitation, the timing and speed of progress on the Project, the availability of
22 other funds to pay such costs on an interim basis, bond and money market conditions and
23 compliance with federal and State laws and regulations.

1 Accordingly, the County reasonably expects to reimburse costs of the Project (as described
2 herein) with proceeds of the Bonds, such Bonds to be issued by the County in the maximum
3 principal amount of \$3,530,000.

4 **Section 6. Be it further enacted by the County Council of Howard County, Maryland,**
5 That this Act is hereby declared to be an emergency measure and necessary to meet an immediate
6 emergency affecting the public health, safety, or welfare because, without the Administration loan or
7 loans authorized by this Act, which must close within the time period mandated by the
8 Administration, the County will not realize the substantial interest rate savings over the life of the
9 bonds made available due to the ARRA, nor will such funds be available to create additional
10 employment, thereby affecting the fiscal health of Howard County and failing to stimulate the
11 economy of the County and, and, having been passed by the affirmative vote of two-thirds of the
12 members of the Council, shall be effective upon its enactment.

Appendix I
Council Bill No. 55-2009

| Project Description | Amount to be Borrowed |
|---|--------------------------------------|
| S6175 FY2001 LITTLE PATUXENT PARALLEL SEWER A project for the study, design and construction of the Little Patuxent Parallel Sewer to meet the existing and projected sewage flows of Little Patuxent (LP) Sewer service area as outlined in approved Master Plan for Water and Sewerage. | \$3,530,000 |

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on October 27, 2009.

Stephen M. LeGendre
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on _____, 2009.

Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on _____, 2009.

Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on _____, 2009.

Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on _____, 2009.

Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on _____, 2009.

Stephen M. LeGendre, Administrator to the County Council