



SPONSOR: Sen. Ennis & Sokola & Reps. Cathcart & Hall-Long & Thornburg

Sens.	Reps.	Walls
Bunting	Carey	Lee
Venables	Carson	Lofink
Amick	Hudson	Longhurst
Still	Keeley	Outten
Copeland	Mulrooney	Valihura
	Schooley	Viola
	Spence	
	Mitchell	
	Lavelle	
	Maier	

DELAWARE STATE SENATE
144th GENERAL ASSEMBLY

SENATE BILL NO. 255

AN ACT TO AMEND TITLES 9, 22, AND 29 OF THE DELAWARE CODE RELATING TO THE TRANSFER OF DEVELOPMENT RIGHTS AND THE CREATION OF SPECIAL DEVELOPMENT DISTRICTS.

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

1 Section 1. This Act shall be known as "The Transfer of Development Rights and Special Development District
2 Act".

3 Section 2. Amend Title 9 of the Delaware Code by inserting therein a new Chapter 32 to read as follows:

4 "Chapter 32. New Castle County Special Development Districts.

5 § 3201. Definitions. In this chapter the following terms shall have the meanings indicated:

6 (a) 'Bonds' or 'bond' means a special obligation bond, revenue bond, note, or other similar instrument issued
7 by the County in accordance with this chapter.

8 (b) 'County' or 'county' means New Castle County.

9 (c) 'Cost' includes the cost of:

10 (1) Construction, reconstruction, and renovation, and acquisition of all lands, structures, real or
11 personal property, rights, rights-of-way, franchises, easements, and interests acquired or to be acquired by the
12 County for a public purpose;

13 (2) All machinery and equipment including machinery and equipment needed to expand or enhance
14 County services to the special development districts created pursuant to § 3202 of this title;

15 (3) Financing charges and interest prior to and during construction, and, if deemed advisable by the
16 County, for a limited period after completion of the construction, interest and reserves for principal and interest,

17 including costs of County bond insurance and any other type of financial guaranty, liquidity support, and costs of
18 issuance;

19 (4) Extensions, enlargements, additions and improvements;

20 (5) Architectural, engineering, financial and legal services;

21 (6) Plans, specifications, studies, surveys and estimates of cost and of revenues;

22 (7) Administrative expenses necessary or incident to determining to proceed with the infrastructure
23 improvements; and

24 (8) Other expenses authorized or incident to the construction, acquisition, financing and operation of
25 the infrastructure improvements, including administrative expenses charged to collect and/or administer the tax
26 revenues.

27 § 3202. Special taxes authorized; purpose; requirements and restrictions.

28 (a) The authority granted to the County under this Chapter is enabled by, and must be used consistently with,
29 the provisions of Title 29, Chapter 91, Subchapter IV of the Delaware Code, which requires that transfer of development
30 rights credits be utilized in order for a county government to take advantage of Special Development Districts. Subject to
31 the provisions of this Section, and for the purpose stated in subsection (b) of this Section, the County may:

32 (1) create a special development district;

33 (2) levy *ad valorem* or special taxes; and

34 (3) issue bonds and other obligations.

35 (b) The purpose of the authority granted under subsection (a) of this Section is to provide financing,
36 refinancing, or reimbursement for (1) the cost of the design, construction, establishment, extension, alteration, maintenance,
37 or acquisition of adequate storm drainage systems, sewers, water systems, roads, bridges, culverts, tunnels, streets, traffic
38 signals, signage, sidewalks, lighting, parking, parks and recreation facilities, open space, farm land preservation, fire
39 protection facilities, public safety facilities, paramedic facilities, libraries, schools, transit facilities, solid waste facilities,
40 identifying monuments, landscaping of entrances and medians, and other improvements, including infrastructure
41 improvements as authorized, whether situated within the special development district or outside the special development
42 district if the improvements, including infrastructure improvements provide service or benefit to the property within the
43 special development district, for the development and utilization of the land, each with respect to any defined geographic
44 region within the County.

45 § 3203. Issuance and sale of bonds; Section self-executing.

46 In addition to other powers the County may have, and notwithstanding the provisions of any other public local
47 law, or public general law, the County may borrow money by issuing and selling bonds for the purposes stated in § 3202(b)

48 of this Title, if a request to the County is made by the owners of at least two-thirds of the assessed valuation of the real
49 property located within the special development district.

50 This Section is self-executing and does not require the County to enact legislation to exercise the powers granted
51 under this Section.

52 § 3204. Bonds payable from special fund; complementary powers of governing body; proceeds.

53 (a) Bonds shall be payable from the special fund required under § 3205 of this Title.

54 (b) If the governing body of the County issues bonds under this chapter, the governing body may also:

55 (1) establish sinking funds;

56 (2) establish debt service reserve funds;

57 (3) pledge other assets and revenues towards the payments of the principal, premium, if any, and
58 interest; or provide for bond insurance or any other type of credit enhancement or liquidity
59 support of the bonds.

60 (c) All proceeds received from any bonds issued and sold shall be applied solely to pay costs, including:

61 (1) costs of design, construction, establishment, extension, alteration, or acquisition of
62 improvements, including infrastructure improvements;

63 (2) costs of issuing bonds;

64 (3) payment of the principal and interest on loans, development loans, money advances, or any
65 indebtedness for any of the purposes stated in §3202(b) of this title, including the refunding of bonds previously
66 issued under this chapter;

67 (4) funding of a debt service reserve fund or payment of interest prior to, during, or for a limited
68 period of time after construction; and

69 (5) purposes described in § 3202(b) of this Title.

70 § 3205. Actions necessary before issuing bonds.

71 (a) Before issuing bonds pursuant to this Chapter, the governing body of the county shall:

72 (1) Designate by resolution an area or areas as a special development district;

73 (2) Subject to subsection (b) of this Section, adopt a resolution creating a special fund with respect
74 to the special development district; and

75 (3) Provide for the levy of an *ad valorem* or special tax on all real property within the special
76 development district at a rate or amount designed to provide adequate revenues to pay the principal of, interest on,
77 and redemption premium, if any, on the bonds, to replenish any debt service reserve fund, and for any other
78 purpose related to the ongoing expenses of or security, including debt service coverage requirements, for the
79 bonds. *Ad valorem* taxes shall be levied in the same manner, upon the same assessments, for the same period or

80 periods, and as of the same date or dates of finality as are now or may hereafter be prescribed for general *ad*
81 *valorem* real property tax purposes within the district, and shall be discontinued when all of the bonds have been
82 paid in full. Special taxes shall be levied pursuant to § 3213 of this Title.

83 (b) The resolution creating a special fund under subsection (a)(2) of this Section shall:

84 (1) Pledge to the special fund the proceeds of the *ad valorem* or special tax to be levied as provided
85 under subsection (a)(3) of this Section and shall specify the priority of application with other *ad valorem* or special
86 taxes; and

87 (2) Require that the proceeds from the tax be paid into the special fund.

88 § 3206. When no bonds outstanding.

89 (a) When no bonds are outstanding with respect to a special development district:

90 (1) The special development district shall be terminated; and

91 (2) Any moneys remaining in the special fund on the date of termination of the special development
92 district shall be paid to the general fund of the County.

93 § 3207. Adoption of ordinance to implement authority.

94 (a) In order to implement the authority conferred upon it by this chapter to issue bonds, the governing body
95 of the County shall adopt an ordinance that:

96 (1) Specifies and describes the proposed undertaking and states that it has complied with § 3205 of
97 this Title;

98 (2) Specifies the maximum principal amount of bonds to be issued;

99 (3) Specifies the maximum rate or rates of interest for the bonds; and

100 (4) Agrees to a covenant to levy upon all real property within the special development district, *ad*
101 *valorem* taxes or special taxes in rate and amount at least sufficient in each year in which any of the bonds are
102 outstanding to provide for the payment of the principal of, premium, if any, and the interest on the bonds.

103 (b) The ordinance may specify or may authorize its finance board or department or other appropriate
104 financial officer, by resolution or ordinance, or its chief executive officer, by executive order, to specify any of the
105 following as it deems appropriate to effect the financing of the proposed undertaking;

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

107 (2) The actual rate or rates of interest for the bonds;

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

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

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

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

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

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

116 (9) Any other provisions not inconsistent with this Section as shall be determined by the governing
117 body of the county to be necessary or desirable to effect the financing of the proposed undertaking.

118 (c) An ordinance authorizing the bonds provided for under this chapter, an ordinance, resolution, or
119 executive order passed or adopted in furtherance of the required ordinance, the bonds, the designation of a special
120 development district, or the levy of a special *ad valorem* tax or special tax may not be subject to any referendum by reason
121 of any other State or local law.

122 (d) The ordinance authorizing the bonds required under this chapter, any ordinance, resolution, or executive
123 order passed or adopted in furtherance of the required ordinance, the bonds, the designation of a special development
124 district, or the levy of a special *ad valorem* tax or special tax shall be subject to the request of the landowners as specified
125 under § 3203 of this Title.

126 § 3208. Taxation of bonds.

127 The principal amount of the bonds, the interest payable on the bonds, their transfer and any income derived from
128 the transfer, including any profit made in the sale or transfer of the bonds, shall be exempt from taxation by the State and by
129 the Counties and Municipalities of the State.

130 § 3209. Bond form; signatures; maturity; manner of sale.

131 (a) All bonds shall be in fully registered form. Each of the bonds shall be deemed to be a security as defined
132 in § 8-102 of Title 6, whether or not it is either one of a class or series or by its terms is divisible into a class or series of
133 instruments.

134 (b) All bonds shall be signed manually or in facsimile by the chief executive officer of the County, and the
135 seal of the County shall be affixed to the bonds and attested by the clerk or other similar administrative officer of the
136 county. If any officer whose signature or countersignature appears on the bonds ceases to be such officer before delivery of
137 the bonds, the officer's signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as
138 if the officer had remained in office until delivery.

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

140 (d) All bonds shall be sold in the manner, either at public or private sale, and upon the terms, as the
141 governing body of the county deems best. Any contract for the acquisition of property may provide that payment shall be
142 made in bonds.

143 § 3210. Bonds issued are securities.

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

148 § 3211. Powers granted are supplemental to other laws.

149 The powers granted under this chapter shall be regarded as supplemental and additional to powers conferred by
150 other laws, and may not be regarded as in derogation of any powers now existing.

151 § 3212. Construction of Chapter.

152 This chapter, being necessary for the welfare of the State and its residents, shall be liberally construed to effect the
153 purpose stated in § 3202(b) of this Title.

154 § 3213. Special taxes on real property as alternative to *ad valorem* taxes.

155 (a) As an alternative to levying *ad valorem* taxes under this chapter the governing body of the county may
156 levy special taxes on real property in a special development district to cover the cost of infrastructure improvements. In
157 determining the basis for and amount of the tax, the cost of an improvement may be calculated and levied:

158 (1) Equally per front foot, lot, parcel, dwelling unit, or square foot;

159 (2) According to the value of the property as determined by the governing body, with or without
160 regard to improvements on the property; or

161 (3) In any other reasonable manner that results in fairly allocating the cost of the infrastructure
162 improvements.

163 (b) The governing body of the county may provide by ordinance or resolution for:

164 (1) A maximum amount to be assessed with respect to any parcel of real property located within a
165 special development district;

166 (2) A tax year or other date after which no further special taxes under this Section shall be levied or
167 collected on a parcel; and

168 (3) The circumstances under which the special tax levied against any parcel may be increased, if at
169 all, as a consequence of delinquency or default by the owner of that parcel or any other parcel within the special
170 development district.

171 (c) The governing body by ordinance or resolution may establish procedures allowing for the prepayment of
172 special taxes under this Section.

173 (d) Special taxes levied under this Section shall be collected and secured in the same manner as general *ad*
174 *valorem* real property taxes unless otherwise provided in the ordinance or resolution and shall be subject to the same

175 penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for general *ad valorem* real
176 property taxes.

177 § 3214. Bonds not to constitute general obligation debt.

178 Bonds issued under this Chapter are a special obligation of the County or Special Development District and may
179 not constitute a general obligation debt of the county, or a pledge of the county's full faith and credit or taxing power.

180 §3215. Special Development District Consistency with Certified Comprehensive Plan.

181 The use of lands in a Special Development District shall be consistent with the Comprehensive Plan for the area as
182 certified pursuant to 29 Del.C. §9103(f).”.

183 Section 3. Amend § 1801(4), Chapter 18, Title 22 of the Delaware Code by deleting § 1801(4) in its entirety and
184 substituting in lieu thereof a new § 1801(4) to read as follows:

185 “(4) ‘Municipality’ or ‘municipality’ means: 1) Any incorporated municipality in New Castle County
186 that is creating a Special Development District in compliance with the requirements of Title 29, Chapter 91,
187 Subchapter IV of the Delaware Code; 2) any municipality that has a charter which enables the use of Special
188 Development Districts as of July 1, 2007; or 3) any other town or city located in the State of Delaware with a
189 population in excess of 50,000 people.”.

190 Section 6. Amend §1802(b), Chapter 18 of Title 22 of the Delaware Code by deleting §1802(b) in its entirety and
191 replacing it with a new §1802(b) to read as follows:

192 “(b) The purpose of the authority granted under subsection (a) of this Section is to provide financing,
193 refinancing, or reimbursement for the cost of the design, construction, establishment, extension, alteration, maintenance, or
194 acquisition of adequate storm drainage systems, sewers, water systems, roads, bridges, culverts, tunnels, streets, traffic
195 signals, signage, sidewalks, lighting, parking, parks and recreation facilities, open space, farm land preservation, fire
196 protection facilities, public safety facilities, paramedic facilities, libraries, schools, transit facilities, solid waste facilities,
197 identifying monuments, landscaping of entrances and medians, and other improvements, including infrastructure
198 improvements as authorized, whether situated within the special development district or outside the special development
199 district if the improvements, including infrastructure improvements provide service or benefit to the property within the
200 special development district, for the development and utilization of the land, each with respect to any defined geographic
201 region within the municipality.”.

202 Section 4. Amend Chapter 91, Title 29 of the Delaware Code to provide for a new Subchapter III to read as
203 follows:

204 “Subchapter III. Transfer of Development Rights and Banking Program

205 §9131. Findings and Purposes.

206 The General Assembly finds that a critical need exists to provide for orderly growth that maintains a desirable quality of
207 life, to encourage well-designed and efficient communities rather than inefficient sprawl, to preserve farmland, cultural and
208 historic lands, and other sensitive lands identified by State and local governments, and to assist in the creation and
209 maintenance of a market for the sale and purchase of development rights. The adoption of a transfer of development rights
210 and banking program is a means of achieving those objectives. It is the purpose of this subchapter to establish the
211 framework, guidelines and incentives for the adoption of transfer of developments rights programs by New Castle County
212 and Municipalities that serve to direct growth and development to areas having adequate infrastructure to accommodate
213 such growth and development, while providing permanent protection to valuable agricultural lands, open space, cultural
214 and historic lands, and critical and sensitive areas. Furthermore, the purpose of this subchapter is to develop financial
215 mechanisms that will enable New Castle County and local governments to finance necessary improvements in receiving
216 areas to provide services and infrastructure to support the quality of life for Delaware residents.

217 §9132. Definitions.

218 For purpose of this subchapter the following definitions shall apply:

219 (a) 'Bank' shall mean the depository for TDR Units, which are purchased or received by the Board.

220 (b) 'Board' shall mean the TDR Banking Board established by each County under this subchapter.

221 (c) 'Special Development District' or 'SDD' or 'District' means one or more parcel(s) of land so
222 designated by a Local Government pursuant to the provisions of this chapter. Parcels of land in a District need not
223 be contiguous, but they must all be located within the same local government.

224 (d) 'County' and 'Counties' shall mean only New Castle County.

225 (e) 'Delaware Agricultural Lands Preservation Program' shall mean the program established and operated
226 by the Foundation pursuant to the provisions of Chapter 9, Title 3 of the Delaware Code.

227 (f) 'Development Unit' shall mean a residential dwelling unit or defined equivalent for nonresidential
228 uses.

229 (g) 'Foundation' shall mean the Delaware Agricultural Lands Preservation Foundation.

230 (h) 'Guideline' shall mean the substantive provisions adopted by a Board, Foundation or Non-profit after
231 consultation with a County and Municipalities within such County and after public hearings to be used by
232 Municipalities and Counties in:

233 (1) developing the criteria for determining and utilizing TDR Units; and

234 (2) adopting provisions for operation of a TDR Program subject to this subchapter.

235 (i) 'Municipality' shall mean a municipal government established by the State of Delaware and having
236 defined geographic boundaries completely within New Castle County.

237 (j) 'Non-Residential Use' shall mean a commercial, industrial, or other developed land use that does not
238 involve the construction of residences for human habitation and not waived under the provisions of §9133(a)(8) of
239 this Title.

240 (k) 'Preservation District' shall mean an agricultural preservation district as referenced in Subchapter II,
241 Chapter 9, Title 3 of the Delaware Code.

242 (l) 'Preservation Easement' shall mean an easement as defined in 3 Del. C. §902(15).

243 (m) 'Receiving Parcel' shall mean the parcel of land that is subject to the transfer of TDR Units, and for
244 which the owner of the parcel is entitled to an increase in development density.

245 (n) 'Sending Parcel' shall mean the parcel of land from which TDR Units are obtained and use
246 restrictions are imposed.

247 (o) 'TDR' shall mean transfer of development rights.

248 (p) 'TDR Unit' shall mean a residential development unit or equivalent in accordance with the local
249 government's TDR program, which is acquired from the Bank or from a private property owner and utilized by the
250 owner of the Receiving Parcel to increase development density. A TDR unit shall equal one residential unit. The
251 county TDR program, as enabled by this chapter, shall determine the conversion value of a TDR unit that is to be
252 used for non-residential density transfers, which shall be between 3,000 to 6,000 square feet of building space per
253 acre of restricted land.

254 (q) 'Vacant or Undeveloped Land' shall mean lands that are currently open, fallow, in agricultural use, or
255 otherwise not fully utilized for residential, commercial or other urban land uses.

256 §9133. County and Municipal Authorization.

257 (a) Notwithstanding any provision of the law to the contrary, New Castle County, and each Municipality prior to
258 any annexation action, shall adopt as part of its Comprehensive Development Plan and subsequent land use ordinances
259 developed pursuant to the requirements of Titles 9 or 22, and certified pursuant to Chapter 91, Title 29 of the Delaware
260 Code, a TDR program which at a minimum.

261 (1) Establishes the criteria for determining the number of TDR Units available on each Sending Parcel or
262 part thereof, so that the available number of TDR Units for a parcel can be readily calculated.

263 (2) The number of TDR Units available from a parcel shall be determined through the county TDR
264 program.

265 (3) No action taken by the County or Municipality shall result in an effective downzoning as a result of
266 activities related to the TDR program.

267 (4) Any land parcel(s) annexed into a municipality which is vacant or undeveloped and larger than ten
268 acres and/or five lots shall become a receiving parcel(s). Parcels shall be annexed at existing county

269 residential density. Projects that are intended to be primarily non-residential in nature may be placed into
270 an appropriate non-residential zoning district upon annexation.

271 (5) Any parcel(s) which are part of a certified municipal annexation area, if developed by a county, shall
272 become receiving parcel(s).

273 (6) The transfer of TDR Units to parcels in areas designated by the Office of State Planning Coordination
274 as Investment Level 4 shall not be permitted unless the area becomes a designated growth area pursuant
275 to a certified local government comprehensive plan.

276 (7) As part of each receiving parcel(s), a property owner or owners must purchase or otherwise obtain
277 TDRs so that overall density of the receiving parcel(s) shall increase over the base gross density by at
278 least 2 residential units per acre and shall be at least 4 residential units per acre for the residential portion
279 of the receiving parcel(s). The property owner or owners must purchase or otherwise obtain TDRs so that
280 at least two TDR units are utilized per acre for any non-residential portion of the receiving parcel(s).
281 TDRs may be obtained through Subchapter III hereof, or by private purchase, provided that if by private
282 purchase, the property transferring development rights is restricted by preservation easement duly
283 recorded in the appropriate Recorder of Deeds Office in accordance with the applicable rules and
284 regulations of the local government in which the receiving parcel(s) are located. The restricted property
285 need not be in the same jurisdiction as the receiving parcel(s).

286 (8) Lands in municipal annexation areas or designated as receiving parcel(s) in county jurisdictions are
287 exempt from the requirement to utilize TDRs if the use of the property is to be open space; recreational
288 facilities; state, county or municipal buildings or facilities; utility facilities or structures (including
289 substations); schools; hospitals; and/or related public or private facilities essential to the public health,
290 safety and welfare of the community.

291 (b) Any TDR program which is adopted by New Castle County or a Municipality as part of a Comprehensive
292 Development Plan and subsequent land-use ordinance pursuant to the Land Use Planning Act, Chapter 92, Title 29
293 of the Delaware Code, shall be subject to review for consistency with the Guidelines under the provisions of
294 Subchapter I, Chapter 91, Title 29 of the Delaware Code.

295 (c) The use of TDR Units on any Receiving Parcel shall be subject to compliance with all other applicable federal,
296 state and local requirements, provided however, that no separate or conditional or discretionary approval shall be
297 required with respect to the application of TDR Units in accordance with a TDR program.

298 (d) In special circumstances a waiver from the requirements of §9133 (a) (7) of this Title for a particular project or
299 parcel may be granted by the Cabinet Committee on State Planning Issues and the legislative body of the local
300 government. In the case of parcels proposed for annexation, the local government shall be that of the municipality

301 that is considering the annexation request. These circumstances may include, but are not limited to, projects which
302 will provide an extraordinary benefit to the State and the local jurisdiction through economic development, job
303 creation, educational opportunities, public services or facilities, agricultural preservation or protection and
304 enhancement of the natural environment. In order to grant such a waiver, a simple majority of both the Cabinet
305 Committee on State Planning Issues and the legislative body of the local government must vote affirmatively for
306 the requested waiver. Upon granting such a waiver, both the Cabinet Committee and the local legislative body
307 shall provide the applicant a written notice which shall include an explanation of the findings and reasoning which
308 led to the approval of the waiver.

309 (e) Notwithstanding any language to the contrary, receiving parcels shall not be required to maintain greater than
310 10 percent of total area as open space.

311 §9134. Private TDR Transactions.

312 (a) Nothing in this Title shall be construed to prohibit the private sale of Transfer of Development Rights credits
313 between willing buyers and willing sellers. Private TDR transactions are not required to utilize any TDR
314 banking program established under this Title.

315 (b) All private transactions shall adhere to requirements of the relevant local government's TDR program and
316 ordinances.

317 (c) TDR credits purchased from a private property owner may not be resold or sold to other third parties, but
318 TDR credits may be sold or resold to the bank at a price not to exceed the original purchase price.

319 §9135. TDR Banking Board.

320 (a) Each County may establish a TDR Bank and a TDR Banking Board. In lieu of establishing a TDR Banking
321 Board, a County may authorize the Foundation or other non-profit entity to administer the TDR program in
322 accordance with §9139 of this Title.

323 (b) Should a County establish a Board, the Board shall have at least 7 but no more than 9 members, and shall
324 include at least one member or representative as follows:

325 (1) A representative from the Office of State Planning Coordination shall serve as an ex-officio
326 member, to be selected by the Governor;

327 (2) An active, full-time farmer land-owner nominated by the County Farm Bureau;

328 (3) A representative of the home building industry, to be nominated by the Delaware
329 Homebuilders Association from the county establishing the Board;

330 (4) A representative of the Delaware League of Local Governments, to be selected by the
331 Delaware League of Local Governments from the county establishing the Board; and

332 (5) A representative from the Delaware Agricultural Lands Preservation Foundation, to be
333 selected by the Secretary of Agriculture.

334 (c) Each Board shall be empowered:

335 (1) To adopt procedural rules to conduct its affairs and carry out and discharge its powers,
336 duties, functions, and select a chairperson.

337 A simple majority of the Board shall be required for all actions by the Board. Two-thirds of the
338 total members of the entire Board shall constitute a quorum.

339 (2) To adopt substantive rules and regulations, after public hearing to carry out and discharge its
340 powers, duties and functions.

341 A simple majority of the Board shall be required for all actions by the Board.

342 (3) To enter into agreements for consultant, appraisal, legal, accounting, audit and other services
343 deemed advisable or necessary in the exercise of its purposes and powers and upon such terms as it
344 deems appropriate, subject to available funding.

345 (4) To establish the criteria for the purchase and sale of TDR Units, which may include
346 transactions that do not involve the TDR Bank.

347 (5) To purchase or receive, by gift or otherwise, and retain if desired, TDR Units under such
348 terms and conditions deemed appropriate.

349 (6) To sell TDR Units under such terms and conditions as deemed appropriate.

350 (7) To develop and utilize documents as desirable or necessary to engage in TDR transactions.

351 (8) To enter into agreements with Counties and Municipalities, State agencies, Authorities,
352 Foundations and instrumentalities of the State and adopt guidelines for participation and operation of the
353 TDR program.

354 (9) To receive, deposit, withdraw and expend monies from dedicated State accounts for the
355 purpose of engaging in and completing TDR transactions, including the payment of transaction costs
356 related thereto.

357 (10) To establish use restrictions on Sending Parcels as deemed desirable and necessary, which
358 restrictions shall not, at a minimum, prohibit any agricultural uses, including but not limited to crops or
359 the breeding and boarding of horses.

360 (11) To do all acts and things reasonable and necessary or convenient to carry out its functions
361 and operations of the TDR and Bank program.

362 (d) Each Board shall act in accordance with adopted local land use plans and ordinances.

363 (e) The members of a Board shall receive no compensation from the Bank but may be reimbursed for travel, out
364 of pocket expenses, and other expenses related to the performance of duties as Board members at the established
365 federal rates.

366 (f) Term lengths for members of a Board shall be established by each County, but no term shall be more than
367 three years and no Board member shall serve for more than six consecutive years.

368 §9136. Reports.

369 Each Board shall make an annual report to the Governor, the General Assembly, and local jurisdiction setting forth its
370 operations and transactions, and may make such other additional reports from time to time as it desires.

371 §9137. Tax Status.

372 (a) The powers and functions exercised by a Board are and will be in all respects for the benefit of the people of
373 the State. A Board will exercise essential governmental functions. To this end no Board shall be required to pay any taxes
374 on assessments or charges of any character, including, without limitation, real property taxes, real estate transfer taxes,
375 taxes on any of its property used, leased or exchanged, or any income or revenue derived from its activities, including,
376 without any limitation, any profit from any sale or exchange of TDR Units. Nothing in this Section shall be construed to
377 mean that a tax parcel resulting from a TDR unit, once recorded, is exempt from taxes.

378 (b) There shall be no real estate transfer tax levied on the purchase, transfer, exchange or sale of any TDR Unit.

379 (c) Land subject to a preservation easement shall be taxed according to the farmland assessment provisions
380 codified in 9 Del. C. §8335, or its successor.

381 (d) There shall be no recording fee or cost charged for the recording of documents relating to the transfer of TDR
382 units from Sending Parcels.

383 (e) The Tax Assessment Office, the Planning and Zoning Offices and the Recorder of Deeds office for each
384 County shall cooperate and assist each Board and the Foundation in effectuating the provisions of this subchapter.

385 §9138. TDR Bank.

386 (a) Except for private, property owner to property owner transactions, all TDR Units acquired by purchase,
387 transfer, donation or otherwise shall be held in the TDR Bank for sale and use in TDR programs adopted by Counties and
388 Municipalities under this subchapter.

389 (b) The proceeds from the sale of TDR Units shall be used to purchase TDR Units and pay for the transaction
390 costs related thereto.

391 (c) TDR Units may be transferred within any part of the same County (and/or any Municipality in the County).

392 (d) TDR Units shall be sold on a 'first come/first serve' basis. At the time of purchase, the purchaser shall
393 designate by right the Receiving Parcel or Receiving Parcels for which the TDR Units are intended. Unused TDR Units
394 purchased from a Bank may not be resold or sold to other third parties or transferred to other TDR parcels not identified at

395 the time of the original purchase. Unused TDR Units purchased from a Bank may be resold back to a Bank at their original
396 purchase price. The Bank shall be required to repurchase the same. This Section shall not be construed to allow the
397 property owner to purchase the development rights back at the original price.

398 §9139. Administration of Voluntary TDR Program and Banking System

399 (a) The administration of the TDR bank and voluntary program may be conducted in lieu of a Board: (i) by the
400 Foundation under the terms and conditions of a Memorandum of Agreement between the County and the Foundation; or (ii)
401 by another non-profit entity selected by a County, under the terms and conditions of a Memorandum of Agreement between
402 the County and such entity and provided such entity is approved by the Office of State Planning. In the event a non-profit
403 entity administers the TDR bank, the portion of the meetings of the board of directors or other governing body of such
404 entity dealing with the TDR program shall be open to the public as if the entity were subject to Chapter 100 of this Title.

405 (b) The Foundation, Board or other authorized non-profit entity as the case may be shall be authorized and
406 responsible for monitoring compliance and enforcing use restrictions imposed on Sending Parcels.

407 (1) The Foundation, Board or other authorized non-profit entity shall be entitled to take action in any court of
408 competent jurisdiction to enforce any restrictions or requirements imposed under this chapter, duly adopted
409 regulations and binding legal instruments. In any such action the Foundation, Board or authorized non-profit
410 entity shall, if it prevails, be entitled to recover its reasonable costs and expenses, including reasonable attorney's
411 fees.

412 (2) The Foundation, Board or authorized non-profit entity shall also be entitled to recover in any such action
413 all tax benefits conferred under this chapter, plus one and one-half percent per month of tax benefit amounts
414 computed on a compound basis from the date the tax benefit was first realized to the date of judgment.

415 (3) Any person who violates the requirements imposed by this chapter shall after notification and failure to
416 correct the violation, be subject to a civil penalty of not less than \$50 but not more than \$200 for each completed
417 violation. If the violation continues for a number of days, each day of such violation shall be considered a
418 separate violation. Unless joined to an action under subsection (1) of this Section, a civil penalty claim hereunder
419 shall be filed in any Court of Common Pleas. Any civil penalties recovered shall be paid to the Foundation,
420 Board or authorized non-profit entity.

421 (c) The sale and purchase of TDR Units shall be on a voluntary basis, and the Foundation, Board or other
422 authorized non-profit entity shall not be required to purchase TDR Units from eligible landowners. Eligible landowners
423 shall not be required to sell TDR Units to the Board, or to the Foundation or other authorized non-profit entity acting on
424 behalf of the County.

425 (d) A Board may join with the Foundation and/or the Open Space Council in the funding of purchases of both
426 TDR units under this Subchapter, and Preservation Easements under the Foundation's purchase program.

427 (e) In the event that a property on which a TDR preservation easement exists is incorporated in a designated
428 growth zone in a certified county or municipal comprehensive plan, or is designated as Investment Level 1, 2 or 3 as part of
429 a future update of the Strategies for State Policies and Spending, the property owner may petition the board, foundation or
430 non-profit entity to re-purchase their development rights. The bank shall be obligated to sell the development rights back to
431 the property owner at the market value of the TDRs on the date of repurchase. This Section shall not be construed to allow
432 the property owner to purchase the development rights back at the original price.

433 §9140. Additional Benefits.

434 Municipalities and Counties with TDR programs certified pursuant to 29 Del. C. §9103(f) shall be entitled to seek
435 priorities in participation in available State grant and funding programs, including programs which provide local assistance
436 for infrastructure improvements.

437 §9141. Saving.

438 (a) Transfer of development rights programs adopted by Municipalities and Counties and existing at the time of
439 enactment of this subchapter shall remain in force and effect until modified or abolished, and any transaction, determination
440 or approval which has occurred or which may occur in the future involving an existing transfer of developments rights
441 program shall not be affected by this subchapter.

442 (b) The provisions of this subchapter and any TDR program adopted by a County or Municipality shall have no
443 effect on the right of such property owner to develop the property consistent with relevant codes and ordinances governing
444 land use and development.

445 (c) any provision of this subchapter or the application thereof to any person or circumstance if held invalid, such
446 invalidity shall not affect other provisions or applications of the subchapter which can be given effect without the invalid
447 provision or application, and, to that end, the provisions of this subchapter are declared to be severable."

448 Section 5. Amend Chapter 91, Title 29 of the Delaware Code to provide for a new Subchapter IV to read as
449 follows:

450 "Subchapter IV. Special Development Districts

451 §9150. Findings and Purposes.

452 The General Assembly finds that in order to better coordinate development, encourage well-designed and efficient
453 communities rather than inefficient sprawl, and to better provide for infrastructure needed for development, a better
454 mechanism needs to be created for the coordination between the state, local governments, and local property owners.
455 Special Development Districts are hereby authorized pursuant to the terms and conditions of this chapter.

456 §9151. Definitions.

457 For purpose of this subchapter the following definitions shall apply:

458 (a) 'Bonds' or 'bond' means a special obligation bond, revenue bond, note or other similar instrument issued by any
459 county or municipality in accordance with this subchapter.

460 (b) 'Special Development District' or 'SDD' or 'District' means a parcel or parcels of land so designated by a Local
461 Government pursuant to the provisions of this chapter. Parcels of land in a District need not be contiguous, but they must
462 all be located within the same Local Government.

463 (c) 'Cost' or 'Costs' includes the cost of:

464 (1) Construction, reconstruction and renovation, and acquisition of all lands, structures, real or personal
465 property, rights, rights-of-way, franchises, easements and interests acquired or to be acquired by a municipality for
466 a public purpose;

467 (2) All machinery and equipment including machinery and equipment needed to expand or enhance
468 municipal services to the Special Development Districts created pursuant to § 9152 of this Title;

469 (3) Financing charges and interest prior to and during construction, and, if deemed advisable by the
470 municipality, for a limited period after completion of the construction, interest and reserves for principal and
471 interest, including costs of municipal bond insurance and any other type of financial guaranty, liquidity support
472 and costs of issuance;

473 (4) Extensions, enlargements, additions and improvements;

474 (5) Architectural, engineering, financial and legal services;

475 (6) Plans, specifications, studies, surveys and estimates of cost and of revenues;

476 (7) Administrative expenses necessary or incident to determining to proceed with the infrastructure
477 improvements; and

478 (8) Other expenses as may be necessary or incident to the construction, acquisition, financing and
479 operation of the infrastructure improvements including administrative expenses charged to collect and/or
480 administer the tax revenues.

481 (d) 'County', 'county' or 'Counties' means New Castle County only.

482 (e) 'Investment Level' means a designation by the Office of State Planning Coordination regarding planned
483 infrastructure and state investment in the area so designated and ranging from level 1 through level 4.

484 (f) 'Local Government' means New Castle County or a Municipality in New Castle County.

485 (g) 'Special Development District Master Plan' or 'SDDMP' or 'Master Plan' means a document and maps
486 prepared to guide the implementation of a Special Development District. The purpose of the SDDMP is to define
487 infrastructure needs for the SDD area (including, but not limited to: sewer; water; transportation; and stormwater
488 management) as well as to define financing mechanisms and the percentage of contributions required from each

489 parcel participating in the SDD. The SDDMP shall consider land use and the cumulative impacts and
490 infrastructure needs of existing and planned development in the area in order to define the maximum permissible
491 development potential and the resulting infrastructure requirements for all parcels participating in the SDD.

492 (h) 'Municipality' means any town or city located within New Castle County.

493 (i) 'TDR' shall mean transfer of development rights.

494 (j) 'TDR Unit' shall mean a residential development unit or equivalent in accordance with the local government's
495 TDR program, which is acquired from the Bank or from a private property owner and utilized by the owner of the
496 Receiving Parcel to increase development density. A TDR unit shall equal one residential unit. The county TDR
497 program, as enabled by this chapter, shall determine the conversion value of a TDR unit that is to be used for non-
498 residential density transfers, which shall be between 3,000 to 6,000 square feet of building space per acre of
499 restricted land.

500 §9152. Creation of Special Development Districts.

501 A Special Development District may be created by ordinance of a Local Government in (1) any growth zone in
502 New Castle County or Municipal comprehensive plan that has been certified in accordance with Chapter 91, Title 29 of the
503 Delaware Code; or (2) any parcel(s) in a county or municipality as consistent with the certified comprehensive plan and
504 the Strategies for State Policies and Spending.

505 §9153. Base Density and TDRs.

506 (a) Notwithstanding any other regulation or restriction of a Local Government, all Special Development Districts
507 shall have a base gross density (calculated based upon the total acreage of the site) as follows:

508 (1) As part of the Special Development District, the base density shall be the existing county residential
509 density, regardless of whether the parcel remains in the county jurisdiction or is annexed into a
510 municipality. Projects that are intended to be primarily non-residential in nature may be placed into an
511 appropriate non-residential zoning district.

512 (2) As part of each Special Development District, a property owner or owners must purchase or
513 otherwise obtain TDRs so that overall density of property in the District shall increase over the base
514 gross density by at least 2 residential units per acre and shall be at least 4 residential units per acre for the
515 residential portion of the SDD. The property owner or owners must purchase or otherwise obtain TDRs
516 so that at least two TDR units are utilized per acre for any non-residential portion of the receiving
517 parcel(s). TDRs may be obtained through subchapter III hereof, or by private purchase, provided that if
518 by private purchase, the property transferring development rights is restricted by preservation easement
519 duly recorded in the appropriate Recorder of Deeds Office in accordance with the applicable rules and

520 regulations of the Local Government in which the SDD is located. The restricted property need not be in
521 the same jurisdiction as the SDD.

522 (b) A Special Development District shall include both residential and non-residential uses.

523 §9154. Infrastructure Master Plan for Special Development Districts.

524 Property in a Special Development District shall be developed in accordance with a Master Plan adopted by the Local
525 Government at the time of the creation of the SDD. The Master Plan shall set forth the maximum permitted development
526 for each parcel in the SDD and, based upon such development, the amount of infrastructure resources and/or improvements
527 (sewer, highway and road capacity, water, and other utilities) needed for the development of such SDD. The Master Plan
528 shall also set forth the percentage contribution each parcel owner is to pay towards the cost of the infrastructure resources
529 and improvements. To the extent infrastructure improvements will alleviate existing shortfalls or provide excess capacity
530 beyond that required by the parcels making up the SDD, the cost of such alleviation or excess capacity shall be paid by the
531 Local Government (in the case of services provided by the Local Government such as sewer) or by the Delaware
532 Department of Transportation (in the case of road and highway improvements). The Master Plan shall be required to
533 address existing infrastructure shortfalls but the SDD shall only be required to fund additional infrastructure necessary for
534 the planned development of the District. The Master Plan shall allow for multi-jurisdictional funding of infrastructure
535 through the use of memoranda of agreements. The Infrastructure Master Plan shall be required to be reviewed through the
536 pre-application review process described in Chapter 92, Title 29 of the Delaware Code.

537 §9155. Infrastructure Development Agreements and Special Development Districts.

538 (a) The cost of the infrastructure improvements called for in the Master Plan for a Special Development District
539 may be paid for in one of two ways:

540 (1) pursuant to a private agreement (such as multi-jurisdictional memoranda of agreements) entered into
541 between all of the property owners and the Local Government(s) and, to the extent road or highway improvements
542 to any roads which are the responsibility of the Department of Transportation; or,

543 (2) For purposes of this subchapter and the creation of SDDs, any Local Government is hereby
544 authorized to develop financial mechanisms for infrastructure funding as described in Title 9, Chapters 32, 54, or
545 71 or in Title 22, Chapter 18.

546 (b) At the time of creation of the Special Development District by the Local Government, each property owner in
547 the District shall sign an agreement (the "Infrastructure Development Agreement") with the Local Government.
548 The Infrastructure Development Agreement shall set forth the infrastructure required by the Master Plan (if
549 known) or the process by which the infrastructure needs will be determined. It shall also set forth the manner of
550 payment for such infrastructure. Where the financing option set forth in subsection (a)(1) above is to be used, the
551 Infrastructure Development Agreement shall also set forth the timing and method for payments required for the

552 infrastructure to be built. Where a Special Development District is to be used, the Infrastructure Development
553 Agreement shall so state and the requirements of 22 Del. C. §1803(a)(2) are deemed waived. The agreement (or a
554 memorandum thereof) shall be recorded with the appropriate Recorder of Deeds and shall bind future property
555 owners.

556 (c) As part of the Infrastructure Development Agreement, a property owner or property owners may agree to
557 construct all or a portion of the infrastructure called for under the Master Plan, and shall receive a credit against
558 payments for infrastructure, the terms and conditions thereof to be set forth in the agreement.

559 §9156. Land Use Approval Process in a Special Development District.

560 Notwithstanding the requirements of a Local Government which might otherwise be applicable, no proposed
561 development for a parcel in a Special Development District which does not exceed the development permitted for such
562 parcel in the Master Plan shall

- 563 (i) be subject to pre-application review process under Chapter 92, Title 29 of the Delaware Code;
- 564 (ii) be required to prepare or submit a traffic impact study; and
- 565 (iii) be subject to any limitations on the amount of development otherwise applicable to the proposed development
566 due to limited amounts of infrastructure or utility capacity. Development within a SDD may be phased.

567 §9157. Conflict with Existing Charters.

568 To the extent a municipal charter is in conflict with the provisions of Subchapter IV of this Chapter as of July 1, 2007, the
569 municipal charter shall be controlling as applied to that particular municipality. This subchapter as applied to all other
570 municipalities shall remain in effect and shall be applicable to all projects initiated after July 1, 2007.”.

571 Section 6. Amend §2653(a)(3), Chapter 26, Title 9 of the Delaware Code by deleting the following from the
572 second sentence therein: “;provided in the case of New Castle County, that such receiving districts, zones or areas are
573 within the same planning district as defined by the county.”

SYNOPSIS

This Bill provides two major components for better land use planning and development in New Castle County and the municipalities within New Castle County. First, the Bill sets up a process for the transfer of development rights (“TDR”) and sets up a TDR bank. Second, the Bill provides for the creation of Special Development Districts—districts which are created to provide for financing of infrastructure needed for the development of the District and which must utilize TDRs. These two components working together should address several problems. They will help save open space by encouraging the transfer of development rights and by providing for higher density where development does occur. They will also provide more funding for the construction of needed infrastructure so that this burden does not fall entirely on existing property owners.

Author: Sen. Ennis