

SENATE BILL 457

L6, M3

0lr1554
CF HB 539

By: **Senators Elfreth, Hester, Augustine, Beidle, Eckardt, Feldman, Guzzone, Hershey, Kagan, Lam, Pinsky, Rosapepe, Waldstreicher, Washington, Young, and Zucker**

Introduced and read first time: January 27, 2020

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Local Governments – Resilience Authorities – Authorization**

3 FOR the purpose of authorizing a local government to create a Resilience Authority by local
4 law; specifying certain requirements for the adoption of a local law establishing an
5 Authority; specifying the required contents of a resolution and the articles of
6 incorporation for an Authority; providing that certain provisions of this Act are
7 self-executing and fully authorize the establishment of an Authority
8 notwithstanding other provisions of law; providing that a resolution authorizing the
9 creation of an Authority is administrative in nature and is not subject to referendum;
10 specifying certain procedures for properly executing, filing, and recording the articles
11 of incorporation establishing an Authority; specifying certain procedures for
12 amending the articles of incorporation of an Authority; specifying certain procedures
13 and requirements for altering or terminating an Authority; specifying the process for
14 the appointment, hiring, and administration of an Authority; prohibiting the net
15 earnings of an Authority from benefiting certain persons; specifying the powers that
16 a local government may grant an Authority; authorizing an Authority to issue
17 certain bonds for certain purposes; providing that bonds issued by an Authority are
18 limited obligations and not a pledge of the faith and credit or taxing power of the
19 incorporating local governments; establishing the process for the issuance of bonds
20 by an Authority; authorizing a contract to provide for payment in bonds; specifying
21 that certain findings are conclusive in a proceeding involving the validity or
22 enforceability of a bond or security for a bond; exempting the principal of and interest
23 on bonds, the transfer of bonds, and any income derived from bonds, including
24 certain profits, from State and local taxes; authorizing the legislative body of a local
25 government to devote certain revenues of the local government to certain operations
26 and projects of an Authority; specifying that each county or municipality that jointly
27 establishes an Authority shall be considered an incorporating local government;
28 requiring an Authority to report to its incorporating local government and certain
29 committees of the General Assembly at certain intervals; providing for the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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) “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.

(I) (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.

(J) “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, THE RESILIENCE AUTHORITY BECOMES A BODY POLITIC AND CORPORATE AND AN

1 INSTRUMENTALITY OF THE INCORPORATING LOCAL GOVERNMENT.

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

5 (F) (1) THE LOCAL GOVERNING AUTHORITY SHALL APPROVE ANY
6 AMENDMENT TO THE ARTICLES OF INCORPORATION OF THE RESILIENCE
7 AUTHORITY.

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

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

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

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

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

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

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

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

30 (IV) TERMINATE THE RESILIENCE AUTHORITY.

31 (2) ON TERMINATION OF A RESILIENCE AUTHORITY, TITLE TO ALL

1 PROPERTY OF THE RESILIENCE AUTHORITY SHALL BE TRANSFERRED TO AND BE
2 VESTED IN THE INCORPORATING LOCAL GOVERNMENT.

3 22-103.

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

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

11 22-104.

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

16 22-105.

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

20 (B) A RESILIENCE AUTHORITY MAY:

21 (1) ACQUIRE BY PURCHASE, LEASE, OR OTHER LEGAL MEANS, BUT
22 NOT BY EMINENT DOMAIN, PROPERTY FOR RESILIENCE INFRASTRUCTURE;

23 (2) ESTABLISH, CONSTRUCT, ALTER, IMPROVE, EQUIP, REPAIR,
24 MAINTAIN, OPERATE, AND REGULATE RESILIENCE INFRASTRUCTURE OWNED BY
25 THE INCORPORATING LOCAL GOVERNMENT OR THE RESILIENCE AUTHORITY;

26 (3) RECEIVE MONEY FROM ITS INCORPORATING LOCAL
27 GOVERNMENT, THE STATE, OTHER GOVERNMENTAL UNITS, OR NONPROFIT
28 ORGANIZATIONS;

29 (4) CHARGE AND COLLECT FEES FOR ITS SERVICES;

30 (5) CHARGE AND COLLECT FEES TO BACK ITS BOND ISSUANCES;

1 **(6) HAVE EMPLOYEES AND CONSULTANTS AS IT CONSIDERS**
2 **NECESSARY;**

3 **(7) USE THE SERVICES OF OTHER GOVERNMENTAL UNITS; AND**

4 **(8) PERFORM CORPORATE ACTS NECESSARY TO CARRY OUT ITS**
5 **PURPOSE.**

6 **22-106.**

7 **(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A RESILIENCE**
8 **AUTHORITY MAY ISSUE AND SELL BONDS PERIODICALLY:**

9 **(1) FOR RESILIENCE INFRASTRUCTURE PROJECTS;**

10 **(2) TO REFUND OUTSTANDING BONDS;**

11 **(3) TO PAY THE COSTS OF PREPARING, PRINTING, SELLING, AND**
12 **ISSUING THE BONDS;**

13 **(4) TO FUND RESERVES; AND**

14 **(5) TO PAY THE INTEREST ON THE BONDS IN THE AMOUNT AND FOR**
15 **THE PERIOD THE RESILIENCE AUTHORITY CONSIDERS REASONABLE.**

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

19 **22-107.**

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

22 **(1) SPECIFIES AND DESCRIBES THE RESILIENCE INFRASTRUCTURE;**

23 **(2) GENERALLY DESCRIBES THE PUBLIC PURPOSE TO BE SERVED AND**
24 **THE FINANCING TRANSACTION;**

25 **(3) SPECIFIES THE MAXIMUM PRINCIPAL AMOUNT OF THE BONDS**
26 **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

1 LEGISLATIVE BODY OF A LOCAL GOVERNMENT MAY DEVOTE ANY REVENUES OF THE
2 LOCAL GOVERNMENT TO SUPPORT THE OPERATIONS OR RESILIENCE
3 INFRASTRUCTURE PROJECTS OF A RESILIENCE AUTHORITY.

4 **22-111.**

5 IF MULTIPLE COUNTIES OR MUNICIPALITIES ESTABLISH A RESILIENCE
6 AUTHORITY, EACH SHALL BE CONSIDERED AN INCORPORATING LOCAL
7 GOVERNMENT.

8 **22-112.**

9 NOTHING IN THIS TITLE MAY BE CONSTRUED TO:

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

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

14 **22-113.**

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

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

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

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

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

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

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

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

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
8 1, 2020.