

COUNTY COUNCIL
OF
DORCHESTER COUNTY, MARYLAND

2003 Legislative Session,
Legislative Day No. April 15, 2003

Introduced By: Councilmen Bramble, Flowers, Yockey and Nichols

BILL NO. 2003- 5

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY TO ADD NEW CHAPTER 133 ENTITLED "SHORE EROSION CONTROL DISTRICTS" TO THE DORCHESTER COUNTY CODE, FOR THE PROTECTION OF THE WELFARE AND HEALTH OF DORCHESTER COUNTY, THE CHESAPEAKE BAY AND THE WATERS OF THE STATE OF MARYLAND, FROM EROSION OF SHORELINES, TO RETARD EROSION AND THE DEPOSIT OF ERODED SEDIMENTS IN THE WATERS OF THE STATE AND DORCHESTER COUNTY, AUTHORIZING THE ESTABLISHMENT OF SHORE EROSION CONTROL DISTRICTS WITHIN DORCHESTER COUNTY, PROVIDING FOR PROCEDURES FOR THE ESTABLISHMENT OF SHORE EROSION CONTROL DISTRICTS, THE LEVY OF BENEFIT CHARGES AND THE LIEN THEREOF FOR PROPERTY BENEFITED, THE LEVY OF TAXES TO FINANCE SHORE EROSION CONTROL DISTRICTS, AND THE FINANCING OF SHORE EROSION CONTROL DISTRICTS AND RELATING GENERALLY TO SHORE EROSION CONTROL WITHIN DORCHESTER COUNTY.

Introduced, read first time, ordered posted on official bulletin board of County, County Office Building, 501 Court Lane, Cambridge, Maryland 21613.

Ordered publication for once a week for two successive weeks, and public hearing scheduled on Tuesday, May 6th, 2003, Room 110, County Office Building, 501 Court Lane, Cambridge, Maryland at 6:40 p.m.

By order:


Jane Baynard, County Manager

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY TO ADD NEW CHAPTER 133 ENTITLED "SHORE EROSION CONTROL DISTRICTS" TO THE DORCHESTER COUNTY CODE, FOR THE PROTECTION OF THE WELFARE AND HEALTH OF DORCHESTER COUNTY, THE CHESAPEAKE BAY AND THE WATERS OF THE STATE OF MARYLAND, FROM EROSION OF SHORELINES, TO RETARD EROSION AND THE DEPOSIT OF ERODED SEDIMENTS IN THE WATERS OF THE STATE AND DORCHESTER COUNTY, AUTHORIZING THE ESTABLISHMENT OF SHORE EROSION CONTROL DISTRICTS WITHIN DORCHESTER COUNTY, PROVIDING FOR PROCEDURES FOR THE ESTABLISHMENT OF SHORE EROSION CONTROL DISTRICTS, THE LEVY OF BENEFIT CHARGES AND THE LIEN THEREOF FOR PROPERTY BENEFITED, THE LEVY OF TAXES TO FINANCE SHORE EROSION CONTROL DISTRICTS, AND THE FINANCING OF SHORE EROSION CONTROL DISTRICTS AND RELATING GENERALLY TO SHORE EROSION CONTROL WITHIN DORCHESTER COUNTY.

SECTION ONE: Acting under Article 25A, Section 5 (A) and Section 5 (O) and Section 5 (S) and Section 5 (T) of the Annotated Code of Maryland (The "Acts") be it enacted and ordained by the County Council of Dorchester County, Maryland that new Chapter 133, entitled "Shore Erosion Control Districts" be added to the Dorchester County Code to read as follows:

CHAPTER 133

SHORE EROSION CONTROL DISTRICTS

§133-1. Property which may be formed into a shore erosion control district. Any property in Dorchester County abutting or bordering upon any body of natural or artificial water in Dorchester County (herein "District") may be formed into a shore erosion control district under the provisions of this Chapter.

§133-2. Establishment.

- (a) *Petition to establish; report of Department of Natural Resources.*- The owners of seventy-five per centum (75%) of any property or seventy-five per centum (75%) of the owners of any property may present a written petition to the County Council requesting the creation of a District. The petition shall describe the boundaries of the property proposed to be created as a District, and the estimated costs for the shore erosion control project. The holders of all lien holders on the property requested to be included in the District must consent in writing to the creation of the District. Upon receiving the petition, the County Council shall refer the petition to the Department of Natural Resources. The Department shall review the petition and submit its report to the County Council containing its recommendation on the feasibility and need for a District. The report shall include the area to be included within the District, plans for erosion control and estimated costs for the erosion control projects recommended.

- (b) Public Hearing

Upon receipt of the report from the Department of Natural Resources, and unless waived by all of the property owners of the land to be included in the District, the County Council shall conduct a public hearing and give notice by publication thereon once a week for two successive weeks in a newspaper of general circulation published in Dorchester County.

- (c) Waiver of Public Hearing

The owners of all property to be included in the District may waive the requirement of a public hearing by instrument in writing.

(d) Authority of County Council

Upon receipt of the report from the Department of Natural Resources and, unless waived, after the public hearing on the petition to create a District, the County Council is authorized, by resolution, to establish the District and to designate the law and area to be included within the District.

§133-3. County Council to be the District Council; acquisition of lands.

- (a) County Council to be a District Council – The County Council is hereby authorized and empowered to act as the District Council for each District, as a special and separate taxing and assessment district and, in carrying out the provisions of this Chapter, to use all the applicable power and authority vested in the County Council by existing law and by this Chapter.
- (b) Acquisition of lands; condemnation – Whenever it shall be deemed necessary by said County Council, acting as a District Council for any said taxing and assessment Districts, to take or acquire any land, structures or buildings, as an easement for the construction, extension or maintenance of any shore erosion control works to prevent erosion by Chesapeake Bay and tributaries, or by any other stream or body of water in Dorchester County, in any of said taxing and assessment districts, it may purchase the same from the owner or owners, or, failing to agree with the owner or owners thereof, may condemn the same and any interest of any tenant, lessee or other person therein, by proceedings in the circuit court for Dorchester County as provided by Title 12 or the Real Property Article. At any time after ten days after the return and recordation of the verdict or award in said proceedings, the County Council, acting as the District Council for the taxing and assessment District, may enter and take possession of the property so condemned, upon first paying to the clerk of the court the amount of said award and all costs taxed to date notwithstanding any appeal or further proceedings upon the part of the defendant or defendants at the time of the payment, however, it shall give its corporate undertaking, acting as District Council for the District proposed to be protected by said shore erosion control works, to abide by and fulfill any judgment on appeal or on further proceedings.

§133-4. Construction of shore erosion control works; financing therefor.

- (a) Construction – After the creation of the District, the County Council, acting as District council for any of such Districts, is hereby authorized and empowered to construct shore erosion control works in said districts to prevent erosion by the Chesapeake Bay and tributaries, or by any other stream or body of water in Dorchester County.
- (c) Financing: For the purposes of financing the construction of shore erosion control works and to maintain, repair and reconstruct shore erosion control works, the County Council is authorized to borrow money as is provided for under Article 25, Sections 163 or 163-A of the Annotated Code of Maryland or under the provisions of Title 8, Subtitle 10 of The Natural Resources Article, or under any other applicable law.

§133-5. Hearing on plans; letting of contracts; waiver.

- (a) Notice of hearing sent to real property owners. – Whenever the plans and specifications for the construction of shore erosion control works, or any part thereof, for any of said assessment Districts shall have been completed, the County Council, acting as the District Council for such assessment District, shall notify the owners of real property in such District that the plans and specifications for shore erosion control works in said District have been completed, can be inspected at its office and the probable cost of such shore erosion control work, and that upon a day certain to be named therein a hearing will be granted such owners at a place designated therein. Said notice, as far as practicable, shall be mailed to each property owner in such assessment District by placing the same in an envelope addressed to his last known address and depositing the same, postpaid, in a United States post office, and by publication thereof once a week for two successive weeks in a newspaper of general circulation published in the County.
- (b) Waiver. The notice and publication requirements set forth in Section 133-5(A) may be waived by an instrument in writing executed by all of the property owners in the District.

- (c) Procedure for letting contracts after hearing. – After affording such hearing or after waiver of notice and hearing, the County Council, acting as the District Council for such District, shall determine whether or not to proceed with such shore erosion control works. In the event it shall determine to proceed therewith, it shall advertise, once a week for two successive weeks, in such newspaper, newspapers and technical press as it may deem proper, for bids for the construction of such shore erosion control works, in part or as a whole as in its judgment may appear advisable. The contract shall be let to the lowest responsible bidder, County Council reserving the right to reject any and all bids and to readvertise for bids in accordance with and subject to the provisions of this Chapter. Before letting any such contract, the County Council shall require a bond, approved by it, from the successful bidder in such penalty as the County Council shall determine, conditioned for the completion of said work in accordance with said contract plans and specifications with the time limited in said contract and for the payment of all supplies and labor furnished by the contractor in the construction of said erosion prevention works. Said bond shall be enforceable in any court having jurisdiction.

§133-6. Levy of benefit charges; lien thereof. – waiver.

- (a) Levy made after hearing for owners on notice thereof. – After the costs of the construction of the shore erosion control works have been fixed and ascertained, but before any construction commences, the County Council, acting as District Council for the District, is empowered and directed to fix and levy a benefit charge upon all real property in the District benefited by the shore erosion control works. Before proceeding to assess such benefits, the County Council, unless waived, shall first notify the owners of real property in the District that it proposes to make an assessment of benefit against their real property for such shore erosion control works, and that upon a day certain to be named therein a hearing will be granted such owners at a place designated therein. Said notice of the proposed assessment, as far as practicable, shall be mailed to each property owner in the District by placing the same in an envelope addressed to the property owners last known address and depositing the same, postpaid, in a United States post office, and by publication thereof once a week for two successive weeks in a newspaper of general circulation published in Dorchester County.
- (b) Assessment of benefits after hearing; lien thereof. – After said hearing has been granted or waived, the County Council, acting as such District Council, shall determine the benefits accruing to each of the lots or parcels of land in the District from the construction of shore erosion control works and shall fix and levy a benefit charge upon each lot or parcel of land in the taxing and assessment district to the extent it is benefited by the construction of the shore erosion control works, or part thereof. Said benefit charge shall be a lien upon the real property against which it is assessed and shall be paid annually as county taxes are required to be paid, by all such lots or parcels of land in such District for a period of years coextensive with the period of maturity of the notes, certificates or indebtedness or bonds out of the proceeds of which such shore erosion control work was done.
- (c) The requirement of notice and public hearing set forth in Section 133-6 (A) and Section 133-6 (B) may be waived by an instrument in writing executed by all of the property owners in the District.
- (d) Assessments paid in annual installments, personal obligation of owner, first lien on property benefited priority of lien.
- (1) The annual benefit assessments levied in accordance with this Chapter shall be payable in annual installments over a period of 25 years or any shorter time as directed by the County Council.
 - (2) Annual installments shall be a personal obligation of the owner of a benefited property at the time the installments become due.
 - (3) (i) Any annual installments in default shall be a first lien on the benefited property, subject only to prior State, county, municipal real property taxes. The outstanding balance of a benefit charge shall be given normal lien priority.
 - (ii) The sale of a benefited property does not extinguish the lien assessed against the benefited property.
 - (iii) The purchaser of a benefited property shall:
 - i. Take ownership of the property subject to any outstanding balance of the total benefit charge unpaid at the conclusion of the sale; and

- ii. Be required to meet the same annual installments as were being paid by the previous owner of the benefited property.
- (iv) For the purposes of §3-104(b) of the Real Property Article, relating to the payment of taxes as a prerequisite to recording any transfer of property, it is sufficient that all current annual installments of any benefit charge levied under this subtitle have been paid.

§133-7. Levy of taxes to pay for interest and principal of bonds, etc.; expenses, etc.

- (a) Annual levy; amount. – For the purpose of providing additional funds to pay the semiannual interest on such notes, certificates of indebtedness or bonds, and the principal thereof, of each of said Districts, when and as they mature, and providing all the funds necessary to pay the costs and expenses of each District to carry into effect the provisions of this Chapter and the entire cost of repairing and keeping in repair each District and the shore erosion control works constructed therein, the County Council, acting as District Council for each District, shall annually levy against all assessable property in each District so improved, a tax which, with the money collected from the benefit charges, will be sufficient to meet the interest on said notes, certificates of indebtedness or bonds as it becomes due, the principal thereof when and as they mature, and to pay the entire cost of all necessary expenses of each District to carry into effect the provisions of this subtitle and the entire cost of repairing and keeping in repair the shore erosion control works constructed in each District, including reimbursement to the County Council, acting as District Council for each District, of the expenses incurred by the County annually, in the inspection of the various bulkheads, and in the performance of other duties required in the administration of the provisions of this Chapter. The County Council acting as District Council for each District, shall, each year, prior to its annual levy, determine the number of cents per one hundred dollars necessary to raise the amount of money so required, and each year, in its annual levy shall levy the tax above-mentioned until all of said notes, certificates of indebtedness or bonds, and the interest thereon, and all other indebtedness incurred in carrying into effect the provisions of this Chapter, shall have been paid. Thereafter, it shall levy a tax sufficient only to keep in repair the shore erosion control works.
- (b) Method of making levy; disposition of proceeds. – Said tax shall be levied and collected as County taxes now are, or may hereafter be, by law levied and collected, and shall have the same priority rights, bear the same interest and penalties and in every respect be treated the same as County taxes. The taxes so levied shall be collected by the taxing authority of the County and every sixty days he shall remit the whole amount of taxes so collected from each District to the County Council, acting as District Council for such District. The money so received shall be deposited in such bank or banks in the County as the County Council shall determine, to the credit of the County Council as District Council for the District from which said moneys were collected at the rate of interest paid for County funds. Out of the benefit charges and taxes so collected, the County Council, acting as District Council for the District paying said benefit charges and taxes, shall first pay the interest on the notes, certificates of indebtedness or bonds issued for the benefit of said District as it matures, and such notes, certificates of indebtedness or bonds when and as they mature. Out of the remaining money so collected by taxes, the County Council shall then pay all other indebtedness incurred in carrying out the provisions of this Chapter and the cost of keeping in repair the erosion prevention works in such District.
- (c) Deficiencies added to levy of following year; penalty for failure to perform duties. – Should receipts from said benefit charges and taxes for any District be inadequate to meet said payments in any year by reason of default or otherwise, such deficiency shall be added to the next year's tax levy for such district, but nothing herein contained shall be construed to release the County, guaranteeing any bonds hereunder, from its obligation under such guaranty to levy ad valorem taxes upon assessable property within the County sufficient in rate and amount at any time to pay the maturing principal and interest of any such bonds, should the aforementioned benefit charges and District taxes prove insufficient for said purpose for any reason. In order that the prompt payment of interest on such notes, certificates of indebtedness or bonds and the prompt payment of interest on said notes, certificates of indebtedness or bonds as they shall mature, shall be assured, the prompt and proper performance of the respective acts and duties heretofore defined is specifically enjoined, and any failure upon the part of any person, persons, body corporate or agency, to perform the necessary acts and duties in this Chapter set

SECTION THREE: BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY that this Bill shall be known as Bill No. 2003- 5 of Dorchester County, Maryland and shall take effect sixty (60) days after its final passage.

PASSED this 6th day of May, 2003.

ATTEST:

COUNTY COUNCIL OF DORCHESTER COUNTY

BY: Jane Baynard
Jane Baynard, County Manager

Effie M. Elzey
Effie M. Elzey, President

APPROVED this 6th day of May, 2003.

ATTEST:

COUNTY COUNCIL OF DORCHESTER COUNTY

BY: Jane Baynard
Jane Baynard, County Manager

Effie M. Elzey
Effie M. Elzey, President

Elzey aye
Bramble aye
Flowers aye
Nichols aye
Yockey aye

FILED

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forth and to pay over said funds as required, or the use of said funds or any part thereof for any other purpose than is required by this Chapter is hereby declared a crime and, upon indictment and conviction in the circuit court for the county, shall be punishable by a fine not exceeding one thousand dollars or imprisonment not exceeding three years, or both, in the discretion of the court.

§133-8. Duties of County Council as to records, deposits, etc.

The County Council shall keep a separate record of its proceedings as District Council for each taxing and assessment District; shall deposit all money received by it on account of each District to the credit of the County Council as District Council for such District.

SECTION TWO: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY that General Code Publishers is directed to codify new Chapter 133, Shore Erosion Control Districts, in the Dorchester County Code accordingly.