

Resolution No.: 17-127
Introduced: May 10, 2011
Adopted: May 10, 2011

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Economic Development Revenue Refunding Bonds for the Sidwell Friends School

Background

This resolution will authorize Montgomery County, Maryland, pursuant to and in accordance with the Maryland Economic Development Revenue Bond Act, to issue and sell, at one time or from time to time, as limited obligations and not upon the faith and credit of the County, its economic development revenue bonds in the approximate aggregate principal amount of, but not to exceed, \$60,000,000, and to loan the proceeds from the sale of such bonds to Sidwell Friends School, a District of Columbia non-profit corporation, to be used for the purpose of refinancing all of the outstanding Montgomery County, Maryland Variable Rate Revenue Bonds (Sidwell Friends School Facility), Series 2007 and District of Columbia Variable Rate Revenue Bonds (Sidwell Friends School Issue), Series 2005, the proceeds of which were used to finance and refinance the costs of the acquisition, construction, equipping and furnishing of certain facilities on Sidwell Friends School's campuses in Bethesda, Maryland and Washington, DC and related costs; authorizing the County Executive to specify, prescribe, determine, provide for, approve, execute and deliver any and all matters, details, forms, documents or procedures necessary or appropriate to effectuate the authorization, sale, security, issuance, delivery and payment of and for such bonds and the lending of the proceeds thereof; reserving certain rights in the County; and generally providing for and determining various matters in connection with such bonds and the lending of the proceeds of the sale thereof.

1. Title 12 of the Economic Development Article of the Annotated Code of Maryland, being the Maryland Economic Development Revenue Bond Act (the "Act") empowers any public body (as defined in the Act) to issue and sell bonds (as defined in the Act), as its limited obligations and not upon its faith and credit or pledge of its taxing power, and to loan the proceeds of the sale of such bonds to one or more facility users (as defined in the Act), to finance or refinance any costs of the acquisition (as defined in the Act) of a facility or facilities (as defined in the Act) for use by one or more facility users.

2. The Act states the declared legislative purpose of the General Assembly of Maryland to be to (1) relieve conditions of unemployment in the State of Maryland (the "State"); (2) encourage the increase of industry and commerce and a balanced economy in the State; (3) assist in the retention of existing industry and commerce and in the attraction of new industry and commerce in the State through, among other things, port development and the control, reduction or abatement of pollution of the environment and the utilization and disposal of wastes; (4) promote economic development; (5) protect natural resources and encourage resource recovery; and (6) generally promote the health, welfare and safety of the residents of each of the counties and municipalities of the State.
3. Montgomery County, Maryland (the "County"), has received a letter from Sidwell Friends School a District of Columbia non-profit corporation and a facility applicant as defined in the Act (the "Facility Applicant"), dated April 22, 2011, a copy of which is attached hereto as Exhibit A and made a part hereof (the "Letter of Intent"), requesting the County to issue and sell its bonds pursuant to the Act and to loan the proceeds of the sale thereof to the Facility Applicant for the purpose of financing and refinancing the costs of the acquisition and construction of certain facilities within Montgomery County, as hereinafter described, and certain other facilities the financing of which will benefit facilities within Montgomery County. The Facility Applicant is a facility user as defined in the Act. The Facility Applicant acknowledges in the Letter of Intent that the County reserves certain rights concerning the issuance of the bonds as provided in Section 5 of this Resolution.
4. A public hearing concerning the issuance of such bonds and the location and nature of such facilities has been held following reasonable public notice (within the meaning of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code")).
5. The facilities which the Facility Applicant has requested to be so financed and refinanced shall consist generally of: (1) refinancing a portion of the costs of the Borrower's previously completed project, consisting of the development, construction, renovation and equipping of (A) certain facilities on the Borrower's campus located at located at 5100 Edgemore Lane, Bethesda, Maryland 20814 including an athletic facility of approximately 10,000 square feet, an approximately 7,000 square feet addition to the Groome Building, and other significant renovations to the Groome Building and to the Manor House and (B) certain facilities on the Borrower's campus located at 3825 Wisconsin Avenue, N.W., Washington, D.C. (Square 1825, Lot 816) comprising approximately 64,000 square feet (above and below grade, in the aggregate, and the renovation of buildings comprising approximately 78,000 square feet in the aggregate above grade), together with the below grade parking faculties and fields, internal roads, and related infrastructure, (2) funding, to the extent financeable, of any working capital costs; (3) funding any required debt service reserve fund or capitalized interest; and (4) paying eligible swap termination fees and costs of issuance, including any bond insurance or credit enhancement costs and other related costs of the transaction (collectively, the "Facilities"). All or a portion of the Facilities were originally financed via the issuance of the Montgomery County, Maryland Variable Rate Revenue Bonds (Sidwell Friends School Facility), Series 2007 and District of Columbia Variable Rate Revenue Bonds (Sidwell Friends School Issue), Series 2005 (the "Prior Bonds"). The proceeds of the Bonds will be used to redeem all of the outstanding Prior Bonds.

6. The County, based on the findings and determinations and subject to the reservation of certain rights as hereinafter set forth, has determined to issue and sell, in addition to any bonds authorized to be issued by any other act of the County, its bonds (within the meaning of the Act), at one time or from time to time, in the approximate aggregate principal amount of, but not to exceed, Sixty Million Dollars (\$60,000,000), or such lesser amount as may be specified by the County Executive of the County (the "County Executive"), hereinafter designated "Montgomery County, Maryland Economic Development Revenue Bonds (Sidwell Friends School Facility)" (the "Bonds"), and to loan the proceeds of the Bonds (the "Loan") to the Facility Applicant on the terms and conditions as hereinafter provided in order to finance, in whole or in part, the costs of the acquisition by the Facility Applicant of the Facilities, to encourage economic development and to protect the health, welfare and safety of the citizens of the State and of the County.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

Section 1. Acting pursuant to the Act, it is hereby found and determined as follows:

(a) As evidenced by the Letter of Intent, a "letter of intent" within the meaning of the Act, the issuance of the Bonds pursuant to the Act by the County, a "public body" and a "county" within the meaning of the Act, in order to loan the proceeds to the Facility Applicant, a "facility applicant" and a "facility user" within the meaning of the Act, for the sole and exclusive purpose of financing and refinancing the "acquisition", within the meaning of the Act, of the Facilities, "facilities" within the meaning of the Act, for use by the Facility Applicant, will permit the Facility Applicant to obtain favorable long-term financing for the Facilities. In turn, the availability of such financing will enable the Facility Applicant to conduct its operations in the County in a more efficient and effective manner.

(b) The accomplishment of the transactions contemplated and authorized by this Resolution, including (without limitation) the refinancing of the Facilities, will promote the declared legislative purposes of the Act by (i) creating and sustaining jobs and employment, thereby relieving conditions of unemployment in the State and in the County; (ii) encouraging the increase of industry and commerce and a balanced economy in the State and in the County; (iii) assisting in the retention of existing industry and commerce in the State and in the County; (iv) promoting economic development; and (v) generally promoting the health, welfare and safety of the residents of the County and of the State.

(c) Neither the Bonds, nor the interest thereon, shall ever constitute an indebtedness or a charge against the general credit or taxing powers of the County within the meaning of any constitutional or charter provision or statutory limitation and neither shall ever constitute or give rise to any pecuniary liability of the County. The Bonds and the interest thereon shall be limited obligations of the County, payable by the County solely from the revenues derived from Loan repayments (both principal and interest) made to the County by the Facility Applicant on account of the Loan or from any other moneys made available to the County for such purposes. No such moneys will be commingled with the County's funds or will be subject to the absolute control of

the County, but will be subject only to such limited supervision and checks as are deemed necessary or desirable by the County to ensure that the proceeds of the Bonds are used to accomplish the public purposes of the Act and this Resolution. The transactions authorized hereby do not constitute any physical public betterment or improvement or the acquisition of property for public use or the purchase of equipment for public use. The public purposes expressed in the Act are to be achieved by facilitating and expediting the acquisition of the Facilities by the Facility Applicant.

(d) The County Executive of the County is the chief executive officer of the County within the meaning of the Act and shall undertake on behalf of the County certain responsibilities described in the Act and hereinafter specified.

(e) The Bonds may be sold at either private (negotiated) sale or at public sale, and at, above or below par, in any event in such manner and upon such terms as the County Executive, in his sole and absolute discretion, deems to be in the best interests of the County.

(f) The Bonds will be “qualified 501(c)(3) bonds” within the meaning of Section 145 of the Code.

Section 2. This Resolution is intended to be, and shall constitute, evidence of the present intent of the County to issue and deliver the Bonds authorized hereby in accordance with the terms and provisions hereof, for the purpose of materially inducing the Facility Applicant to acquire the Facilities. Notwithstanding the foregoing, nothing in this Resolution shall be deemed to constitute (a) an undertaking by the County to expend any of its funds (other than the proceeds from the sale of the Bonds, revenues derived from Loan repayments made to the County on account of the Loan, and any other moneys made available to the County for such purpose) to effect the transactions described herein or (b) an assurance by the County as to the availability of one or more ready, willing and able purchasers for the Bonds to whom the Bonds may lawfully be sold under, among others, applicable federal and state securities and legal investment laws.

The County and the Facility Applicant contemplate that the Facility Applicant may proceed with the acquisition of the Facilities prior to the issuance, sale and delivery of the Bonds; provided, however, that if the Facility Applicant proceeds with such acquisition prior to the determination of the County Executive as provided in Section 5 of this Resolution, it does so at its own risk.

Section 3. As described in the Letter of Intent, the County will not incur any liability, direct or indirect, or any cost, direct or indirect, in connection with the issuance and sale of the Bonds, the making of the Loan or the acquisition of the Facilities, and the Facilities will be acquired so as to conform to the requirements of the Facility Applicant; accordingly, the Facility Applicant shall (i) negotiate and approve all financing arrangements in connection with the acquisition of the Facilities, and (ii) pay all costs incurred by or on behalf of the County in connection with the issuance and sale of the Bonds, the making of the Loan, including the administration thereof, and in connection with the acquisition of the Facilities, including (without limitation) all costs incurred in connection with the development of the appropriate legal documents necessary to effectuate the proposed financing, refinancing and acquisition, including (without limitation) the fees of bond counsel, and compensation to any other person (other than

full-time employees of the County) performing services by or on behalf of the County in connection with the transactions contemplated by this Resolution, whether or not the proposed financing and acquisition are consummated.

Section 4. In addition to any bonds authorized to be issued by any other act of the County, the issuance, sale and delivery by the County of the Bonds, at one time or from time to time, and in one or more series or subseries, in an approximate aggregate principal amount of, but not to exceed, Sixty Million Dollars (\$60,000,000), or such lesser amount as may be specified by the County Executive, are hereby authorized, subject to the provisions of the Act and this Resolution. The proceeds of the Bonds will be loaned to the Facility Applicant, as permitted by the Act, pursuant to the terms and provisions of a loan agreement to be entered into between the County and the Facility Applicant (the "Loan Agreement"), to be used by the Facility Applicant for the sole and exclusive purpose of financing the costs of the acquisition of the Facilities, within the meaning of the Act, and paying related costs. The Bonds and the interest thereon shall be limited obligations of the County, repayable by the County solely from the revenue derived from Loan repayments (principal and interest) made to the County by the Facility Applicant and from any other moneys made available to the County for such purpose. The maximum principal amount of Bonds which may be issued, sold and delivered pursuant to this Resolution is Sixty Million Dollars (\$60,000,000), unless such amount shall be increased by a resolution supplemental hereto.

Section 5. The County reserves the right, in its sole and absolute discretion, to take any actions which it may deem necessary in order to ensure that the County (a) complies with all federal and State laws, whether proposed or enacted, which may restrict the issuance of its economic development revenue bonds and (b) issues such bonds to finance facilities which the County determines, in its sole and absolute discretion, will provide the greatest benefit to the County. Specifically, the County reserves the right to choose to issue its economic development revenue bonds for facilities other than the Facilities, and to issue or not to issue such bonds at such times and in order of priority which the County Executive, in his sole and absolute discretion, may determine.

Section 6. The Bonds shall each be designated "Montgomery County, Maryland Economic Development Revenue Bonds (Sidwell Friends School Facility)." The Bonds may be further identified by the year of issue or such other appropriate designation as the County Executive may approve.

The Bonds shall be dated and shall bear interest at an annual rate or rates, payable at such times, all as approved by the County Executive.

The Bonds shall mature on such date or dates as may be approved by the County Executive, but the last maturity of the Bonds shall in no event exceed a period of thirty (30) years from the date of issuance of the Bonds.

Each of the Bonds shall be executed in the name of the County and on its behalf by the manual or facsimile signature of the County Executive and the manual or facsimile signature of the Director of Finance of the County. The seal of the County or a facsimile thereof shall be affixed to each of the Bonds, and attested by the manual or facsimile signature of the Clerk of the Council. If deemed appropriate by the County Executive, each of the Bonds may also be

authenticated by the manual or facsimile signature of a trustee, registrar or paying agent. At least one of such signatures on each Bond shall be a manual signature.

Section 7. If deemed advisable by the County Executive, the County will enter into an indenture of trust (the "Indenture") for the protection of the holders of the Bonds with a bank having trust powers or a trust company (the "Trustee") to be approved by the County Executive and, pursuant to the Indenture, the County will assign to the Trustee (among other things) all of the County's right, title and interest in and to the Loan Agreement, including (without limitation) the receipts and revenues of the County from the Loan (excepting only certain reserved rights of the County to indemnification by the Facility Applicant, taxes paid by the Facility Applicant to the County, the obligation of the Facility Applicant to make certain payments required by the Code, and payments to the County for the County's administrative fees and expenses and the like).

Section 8. In connection with the transactions described herein, the County Executive is hereby authorized and empowered, by executive order or otherwise:

(a) to accept the Letter of Intent, in order to further evidence the present intent of the County to participate in the financing of the costs of the acquisition of the Facilities;

(b) to approve the form and provisions of, execute and deliver the Bonds, the Loan Agreement and the Indenture (if any);

(c) if appropriate, to approve the form and provisions of any Preliminary Official Statement, final Official Statement or other offering document with respect to the Bonds;

(d) if necessary, to appoint a trustee or trustees, a bond registrar and paying agent or agents for the Bonds;

(e) to provide for the direct payment by the Facility Applicant of all costs, fees and expenses incurred by or on behalf of the County in connection with the issuance, sale and delivery of the Bonds, including (without limitation) costs of printing (if any) and issuing the Bonds, legal expenses (including the fees of bond counsel) and compensation to any person (other than full-time employees of the County) performing services by or on behalf of the County in connection therewith;

(f) to specify, prescribe, determine, provide for, approve, execute and deliver (where applicable) such other matters, details, forms, documents, or procedures, including (without limitation) trust indentures, bond purchase agreements, placement agreements, letters of credit, letter of credit agreements, remarketing agreements, deeds of trust, assignments and financing statements, as are necessary or appropriate to consummate the authorization, sale, security, issuance, delivery or payment of or for the Bonds and the making of the Loan; and

(g) to authorize the Director of Finance to execute agreements (including, without limitation, the Loan Agreement and the Indenture, if any) for and on behalf of the County in connection with the issuance of the Bonds

Section 9. The terms, provisions, form and substance of any and all documents and instruments to be executed or entered into by or for the benefit of the County in connection with the transactions authorized by this Resolution, including all customary closing certificates and documents, shall also be subject to the approval of the County Attorney or the County Attorney's designee prior to the execution and delivery thereof by the appropriate official of the County.

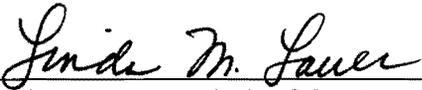
Section 10. In satisfaction of the requirements of Section 147(f) of the Code, the County hereby approves the Facilities and the Bonds.

Section 11. The members of the County Council, the County Executive, the Chief Administrative Officer of the County, the County Attorney, the Director of Finance of the County and the Clerk of the Council, for and on behalf of the County, are hereby authorized and empowered to do all things, execute all instruments, and otherwise take all such actions as the County Executive may determine by executive order or otherwise to be necessary, proper or expedient to carry out the authority conferred by this Resolution, including (without limitation) the execution of a Certificate of the County pursuant to Section 148 of the Code and the U.S. Treasury Regulations prescribed thereunder, subject to the limitations set forth in the Act and this Resolution.

Section 12. Unless previously exercised, the authority to issue the Bonds as part of a common plan of finance contained in this Resolution shall expire on the date which is three (3) years from the effective date of this Resolution, unless such authority shall have been extended by a resolution supplemental hereto approved by the County Executive.

Section 13. In accordance with the Act, this Resolution shall take effect upon approval by the County Council.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council