

First Reading: 02/13/13
Amended: 02/27/13
Deferred: 02/27/13
Defeated 4-5: 03/13/13

COUNTY OF LEHIGH, PENNSYLVANIA
COMMISSIONERS BILL 2013-06
SPONSORED BY COMMISSIONERS OSBORNE, DOUGHERTY &
MAZZIOTTI
REQUESTED DATE: FEBRUARY 4, 2013
ORDINANCE NO. 2013-

**APPROVING AN AMENDMENT TO THE ARTICLES OF INCORPORATION
FOR THE LEHIGH COUNTY AUTHORITY TO EXTEND THE AUTHORITY'S
TERM OF EXISTENCE FOR A PERIOD OF FIFTY YEARS**

WHEREAS, the Lehigh County Authority (the "Authority") was duly formed by the Board of Commissioners of Lehigh County (the "Board of Commissioners") under the Pennsylvania Municipality Authorities Act of 1945, approved May 2, 1945, P.L. 382, as amended and supplemented, with the Articles of Incorporation having been filed and approved by the Department of State of the Commonwealth of Pennsylvania (Department) on September 21, 1966 and amendments approved and filed with the Department on June 3, 1970, April 22, 1975 and June 9, 1999; and

WHEREAS, the Municipality Authorities Act established an initial term of existence for municipal authorities of fifty (50) years from the approval of the Articles of Incorporation, which in the case of the Authority would originally have expired on September 21, 2016; and

WHEREAS, by Ordinance No. 1999-115 the Board of Commissioners approved an amendment of the Articles of Incorporation which extended the Authority's term of existence for a period of fifty (50) years until June 9, 2049; and

WHEREAS, the Authority owns and/or operates nine (9) wastewater systems serving fourteen (14) municipalities and a water system serving approximately 20,000

customers, requiring the Authority to plan and construct numerous capital projects; and

WHEREAS, it is necessary to finance these projects, at least in part, with municipal bonds and notes; and

WHEREAS, limiting financing to the remaining Authority life will result in substantially increased costs and higher rates to the public for capital project financially; and

WHEREAS, the most appropriate and favorable financing is likely to have a term exceeding the remaining Authority life; and

WHEREAS, the Authority is also participating in a bidding process for a fifty (50) year concession and lease of the City of Allentown (the "City") water and wastewater systems; and

WHEREAS, the Authority will need to have a full fifty (50) year life to be able to enter into the necessary agreements if it is the successful bidder in the City bidding process as well as to achieve the most appropriate and favorable financing to provide for such bid; and

WHEREAS, the Authority has proposed, in accordance with the Municipality Authorities Act, 53 Pa. C.S. §5605 ("the Act"), by Resolution No. 2-2013-2, that the Authority's Articles of Incorporation be amended to include a provision extending its term of existence for a fifty-year period from the date such amendment is approved by the Department so that it may continue to provide capital improvements for the public at the most reasonable financing, a copy of which resolution is attached hereto as Exhibit "A"; and

WHEREAS, Section 5605 of the Act and Section 310 of the Lehigh County Home Rule Charter require approval by Ordinance of such extension of the term of existence of the Authority.

NOW, THEREFORE, IT IS HEREBY ENACTED AND ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LEHIGH, PENNSYLVANIA, THAT:

1. The foregoing WHEREAS clauses are incorporated herein as if set forth in their entirety.
2. The Board of Commissioners of Lehigh County hereby approves the amendment of the Lehigh County Authority Articles of Incorporation to include a provision extending its term of existence for a fifty year period from the date such amendment is approved by the Department in accordance with the Articles of Amendment, which are included as part of Exhibit "A".
3. The proper officers and other personnel of Lehigh County are hereby authorized and empowered to take all such further action, including any necessary transfers of funds, and execute additional documents as they may deem appropriate to carry out the purpose of this Ordinance.
4. The County Executive shall distribute copies of this Ordinance to the proper officers and other personnel of Lehigh County whose further action is required to achieve the purpose of this Ordinance.
5. Any Ordinance or part of any Ordinance conflicting with the provisions of this Ordinance is hereby repealed insofar as the same affects this Ordinance.

6. This Ordinance shall become effective in ten (10) days after enactment.

DEFEATED this 13th day of March, 2013, by the following vote:

<u>Commissioners</u>	<u>AYE</u>	<u>NAY</u>
Thomas C. Creighton, III		X
Percy H. Dougherty	X	
David S. Jones, Sr.	X	
Daniel K. McCarthy	X	
Vic Mazziotti		X
Brad Osborne	X	
Scott Ott		X
Lisa Scheller		X
Michael P. Schware		X

ATTEST:



CLERK TO THE BOARD OF COMMISSIONERS

DEFEATED this 13th day of March, 2013.

WILLIAM H. HANSELL
Lehigh County Executive

ENACTED this _____ day of _____, 2013.

RESOLUTION No. 2-2013-2

(Duly adopted 11 February 2013)

A RESOLUTION PROPOSING AMENDMENT OF THE AUTHORITY'S ARTICLES OF INCORPORATION TO EXTEND THE AUTHORITY'S TERM OF EXISTENCE FROM 9 JUNE 2049 FOR A FULL ADDITIONAL FIFTY YEARS PERIOD

WHEREAS, the Lehigh County Authority (the "Authority") was duly formed by the Board of Commissioners of Lehigh County (the "Board of Commissioners") under the Pennsylvania Municipality Authorities Act, with the Articles of Incorporation having been filed and approved by the Department of State of the Commonwealth of Pennsylvania (the "Department") on 21 September 1966 and amendments approved and filed with the Department on 3 June 1970, 22 April 1975 and 9 June 1999; and

WHEREAS, the Municipality Authorities Act establishes an initial term of existence for municipal authorities of fifty years from the approval of the Articles of Incorporation, which in the case of the Authority would have expired on 21 September 2016, but to accommodate financing of capital improvements for its systems, the date was extended by the 9 June 1999 Amendment until 9 June 2049; and

WHEREAS, the Authority continues to have the need to arrange financing for capital improvements to its many water and wastewater systems serving twelve municipalities; and

WHEREAS, limiting financing to the remaining Authority life will result in substantially increased costs and higher rates to the public for capital project financing; and

WHEREAS, the Authority is also participating in a bidding process for a fifty year concession and lease of the City of Allentown (the "City") water and wastewater systems; and

WHEREAS, the Authority will need to have a full fifty year life to be able to enter into the necessary agreements if it is the successful bidder in the City bidding process as well as to achieve the most appropriate and favorable financing to provide for such bid;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Authority proposes that its Articles of Incorporation be amended to include a provision extending its term of existence for an additional fifty year period from the date such amendment is approved by the Department so that it may continue to

EXHIBIT

A

provide capital improvements for the public with the most reasonable and favorable financing rates and participate in the bidding process for the City water and wastewater system concession proposals. The form of the Articles of Amendment is attached hereto as Exhibit A and thereby made a part hereof.

2. This Resolution, and its proposal, be presented to the Board of Commissioners for their consideration and adoption.

3. Upon adoption by the Board of Commissioners, the Articles of Amendment are to be executed and verified by two officers of the Authority, advertised in accordance with the Municipality Authorities Act, and submitted to the Department for approval in accordance with the time frame necessary for the City concession documentation and/or any Authority financings.

On motion of _____, seconded by _____
this resolution was adopted the 11th day of February 2013.

ARTICLES OF AMENDMENT

TO: SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA

In compliance with requirements of the Pennsylvania Municipality Authorities Act and pursuant to a resolution duly adopted by the Board of Lehigh County Authority proposing an amendment to the Articles of Incorporation of the Authority, which proposed amendment has been submitted and adopted and approved by the Board of County Commissioners of the County of Lehigh, Pennsylvania (the governing authority of the municipality forming the Authority) by an ordinance duly adopted, the Authority does file these Articles of Amendment to its Articles of Incorporation and does certify:

1. The name of the Authority is LEHIGH COUNTY AUTHORITY and the registered office of the Authority presently is 1053 Spruce Street, Wescosville, Pennsylvania, with a mailing address of P.O. Box 3348, Allentown, Pennsylvania 18106-0348.

2. The Authority has been duly formed under the Pennsylvania Municipality Authorities Act, the Articles of Incorporation having been filed and approved by the Pennsylvania Department of State of on 21 September 1966, with Articles of Amendment filed and approved by the Department on 3 June 1970, 22 April 1975 and 9 June 1999.

3. A copy of the ordinance by the Board of Commissioners of the County of Lehigh, Pennsylvania, duly certified by the Chief Clerk of said Board of County Commissioners, adopting the amendment herein set forth, is attached hereto as Appendix I and thereby is made a part of these Articles of Amendment.

4. A copy of the resolution by the Board of the Lehigh County Authority, proposing the amendment herein set forth, is attached hereto as Appendix II and thereby is made a part of these Articles of Amendment.

5. The amendment proposed by the Board of the Authority and adopted and approved by the Lehigh County Board of Commissioners, is to amend the Articles of Incorporation of the Authority as follows:

"The Authority shall have a term of existence continuing through and until the date fifty years after the date of Pennsylvania Department of State approval of the Authority's fourth Articles of Amendment."

IN WITNESS WHEREOF, the Lehigh County Authority has caused these Articles of Amendment to be executed and verified by two of the Authority officers and its official seal to be affixed hereunto and attested by its Secretary or Assistant Secretary, all as of the _____ day of _____ 2013.

Attest:

LEHIGH COUNTY AUTHORITY

Name
Office

By: _____
Name:
Office:

Name
Office

By: _____
Name:
Office: