

Resolution No. 21-004 A

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES PROPOSING TO AMEND THE CHARTER FOR THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES, CHAPTER 10, VOLUME 77 LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES," RELATED TO THE EXTENSION OF UTILITY SERVICES AND POWER TO SUE AND BE SUED

WHEREAS, the present Charter for the Board of Public Works of the City of Lewes (the "Lewes BPW"), being Chapter 10, Volume 77, Laws of Delaware, as amended (the "Lewes BPW Charter") reincorporated the Lewes BPW when it became effective on August 7, 2009; and

WHEREAS, Section 4.1, *among other provisions*, of the Lewes BPW Charter grants the Lewes BPW authority, responsibility, supervision, and control over current and future utility systems established within the Lewes BPW Service Area; and

WHEREAS, Section 1 of the Lewes BPW Charter defines the Lewes BPW Service Area as "the corporate limits of the City of Lewes, the territory beyond such limits authorized in [the Lewes BPW Charter], and any franchised service area"; and

WHEREAS, Section 4.20 of the Lewes BPW Charter more specifically authorizes the Lewes BPW to supply utility services to properties located within two (2) miles of the corporate limits of the City of Lewes; and

WHEREAS, the Lewes BPW desires to amend the Lewes BPW Charter as provided herein in order to promote collaboration and dialogue between the BPW Board of Directors and the City of Lewes Mayor and City Council; and

WHEREAS, the amendments proposed herein will specifically require going forward the Mayor and City Council's prior consent for the Lewes BPW to expand utility service to any territory outside of the City of Lewes municipal limits; and

WHEREAS, the amendments proposed herein will further resolve uncertainty created by a recent Delaware Superior Court decision by expressly providing the Lewes BPW with the general power to sue and be sued, with the caveat that the Lewes BPW shall lack the ability to sue and be sued by the City of Lewes for a period of five (5) years; and

WHEREAS, the Mayor and City Council of the City of Lewes expressed its unanimous support for the amendments proposed herein as Exhibit "A" during its meeting on June 18, 2021; and

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48 **WHEREAS**, the Board of Directors deems it is in the best interests of the Lewes BPW
49 utility system and customers, both current and future, to amend the Lewes BPW Charter related to
50 the extension of utility services and the power to sue and be sued as provided herein.
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52 **NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE**
53 **LEWES BOARD OF PUBLIC WORKS, IN SESSION MET THIS 21ST DAY OF JUNE, 2021,**
54 **THAT:**
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56 **Section 1.** The Lewes BPW Charter shall be further amended as provided in Exhibit
57 "A" attached hereto and incorporated herein.
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59 **Section 2.** The General Manager be and is hereby directed to send a copy of this
60 Resolution and the Charter Amendment as provided in Exhibit "A" to the Honorable Ernesto B.
61 Lopez, Senator for District 6, and the Honorable Stephen Smyk, Representative for District 11, for
62 consideration and adoption by the Delaware General Assembly.
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64 **Section 3.** This Resolution shall take effect immediately upon its adoption by the
65 Board of Directors of the Lewes Board of Public Works.
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67 Adopted by the Board of Directors
68 of the Lewes Board of Public Works
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72 I, A. Thomas Owen, Vice President of the Board of Directors of the Board of Public Works
73 of the City of Lewes, do hereby certify that the foregoing is a true and correct copy of the
74 Resolution passed by the Board of Directors of the Lewes Board of Public Works at its meeting
75 on June 21, 2021, at which meeting a quorum was present and voting throughout and the same is
76 still in full force and effect.
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82 Vice President
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Exhibit "A"

SPONSOR:

DELAWARE
HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

BILL No. _____

AN ACT TO AMEND THE CHARTER FOR THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES, CHAPTER 10, VOLUME 77 LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO REINCORPORATE THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES", RELATED TO THE EXTENSION OF UTILITY SERVICES AND POWER TO SUE AND BE SUED

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend the Charter of the Board of Public Works of the City of Lewes, Chapter 10, Volume 77, Laws of Delaware, as amended by amending Section 4.20 with insertions as shown by underline as follows:

4.20 The BPW is hereby authorized and permitted to supply utility services of any utility system to those properties which are located within two (2) miles of the corporate limits of the City as presently constituted or hereafter extended under such terms and conditions as the Board shall deem proper. The BPW, however, shall not extend any Utility System to any property located outside of the municipal limits of the City of Lewes without obtaining the prior consent of the Mayor and City Council of the City of Lewes. The Board is hereby authorized and permitted to enact and adopt such rules and regulations as the said Board may deem proper in order to supply said utility services.

Section 2. Amend the Charter of the Board of Public Works of the City of Lewes, Chapter 10, Volume 77, Laws of Delaware, as amended by adding new "Section 4.22" with insertions as shown by underline as follows:

4.22 The BPW shall be able and capable to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended in all courts of judicature whatsoever by the corporate name of "The Board of Public Works of the City of Lewes". The BPW, however, shall lack the ability and capability to sue, and be sued by, The City of Lewes, a municipal corporation of the State of Delaware, until July 1, 2026.

Section 3. This Act shall take effect upon enactment.

Exhibit "A"

SYNOPSIS

The Delaware General Assembly incorporated the Board of Public Works of the City of Lewes (the "BPW") in 1901 when it, separate from the Charter adopted for the City of Lewes, enacted the Charter of the BPW and empowered it to establish, control, and regulate the utility system for the City of Lewes.

The BPW is a public body under the Delaware Freedom of Information Act and is subject to the obligations and requirements of a public body under Delaware's Sunshine Laws. The BPW reviews and approves budgets, contracts, and utility policies, including concerning rates, in meetings that are open to the public. The BPW Directors are directly accountable to the ratepayers who elect them to handle matters concerning utility policy.

This Act seeks to address the City's concern that it have a codified role in the extension of the Lewes utility system to property located outside of the City of Lewes municipal limits by amending the Charter of the BPW to specifically require going forward the Mayor and City Council's prior consent for the BPW to expand utility service to any territory outside of the City of Lewes municipal limits. Through this change, the Mayor and City Council will have an important role in any future expansion of the utility system, while still preserving, consistent with the Charter of the BPW, the BPW Directors' responsibility over utility policy concerning said utility system for the benefit of the ratepayers.

This Act also resolves uncertainty created by a recent Delaware Superior Court decision concluding that the BPW may only sue and be sued where specifically noted within the Charter of the BPW. The Superior Court's recent decision, for example, creates a cloud of uncertainty over whether the BPW can sue and be sued under contracts it lawfully executes in its own corporate name. This Act removes this uncertainty by expressly giving the BPW the general power to sue and be sued. To promote collaboration and dialogue between the BPW Board of Directors and the City of Lewes Mayor and City Council, this Act also prohibits each incorporated entity from suing the other entity for a period of five years.