



## Legislation Details (With Text)

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**Type:** Ordinance      **Status:** Passed

**File created:** 11/23/2009      **In control:** Budget and Fiscal Management Committee

**On agenda:**      **Final action:** 12/14/2009

**Enactment date:** 12/21/2009      **Enactment #:** 16720

**Title:** AN ORDINANCE amending certain provisions of Ordinance 14172 of the county, passed on May 7, 2001, which authorized the issuance of \$50,000,000 aggregate principal amount of junior lien variable rate demand sewer revenue bonds to finance capital improvements to the county's sewer system; and amending Ordinance 14172, Section 4.03, Ordinance 14172, Section 4.04, Ordinance 14172, Section 4.05 and Ordinance 14172, Section 5.02.

**Sponsors:** Larry Gossett, Larry Phillips

**Indexes:** Bonds

**Code sections:**

**Attachments:** 1. 16720.pdf, 2. 2009-0635 fiscal note.xls, 3. 2009-0635 Transmittal Letter.doc, 4. Staff Report 12-09-09, 5. 2009-0635 Am1 12-14-09.pdf

| Date       | Ver. | Action By                              | Action                      | Result |
|------------|------|--|-----------------------------|--------|
| 12/14/2009 | 1    | Metropolitan King County Council       | Passed as Amended           | Pass   |
| 12/14/2009 | 1    | Metropolitan King County Council       | Hearing Held                |        |
| 12/9/2009  | 1    | Budget and Fiscal Management Committee | Recommended Do Pass Consent | Pass   |
| 11/23/2009 | 1    | Metropolitan King County Council       | Introduced and Referred     |        |

AN ORDINANCE amending certain provisions of Ordinance 14172 of the county, passed on May 7, 2001, which authorized the issuance of \$50,000,000 aggregate principal amount of junior lien variable rate demand sewer revenue bonds to finance capital improvements to the county's sewer system; and amending Ordinance 14172, Section 4.03, Ordinance 14172, Section 4.04, Ordinance 14172, Section 4.05 and Ordinance 14172, Section 5.02.

**PREAMBLE:**

Pursuant to Ordinance 14172 of the county, passed by the county council on May 7, 2001, the county has issued and currently has outstanding its Junior Lien Variable Rate Demand Sewer Revenue Bonds, Series 2001B (the "Bonds") in the aggregate principal amount of \$50,000,000.

The Bonds provide low cost borrowing for the capital needs of the county's Sewer System.

To maintain the rating on the Bonds, Standard & Poor's Ratings Services has requested that the county amend Ordinance 14172 to permit the county to make certain payments of principal of and interest on the Bonds in accordance with the ordinance if the bank providing a letter of credit fails to honor a proper draw on the letter of credit for such payments. Sections 7.07(f) and 7.09 of Ordinance 14172 permit such an amendment without the consent of owners of the Bonds, with the consent of the bank that provides the letter of credit for the Bonds.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

**SECTION 1. Definitions.** Unless otherwise defined in this Article I, capitalized terms used in this ordinance have the meaning given such terms in Ordinance 14172. Ordinance 14172 is hereby amended by the addition of the following term with the following meaning to Section 1.01 of the ordinance:

***County Purchase Subaccount*** means the subaccount by that name created within the Purchase Account in accordance with Section 4.04 hereof.

**SECTION 2. Amending the Source of Payment Provisions.** Ordinance 14172, Section 4.03, is hereby amended to read as follows (deletions are stricken and additions are underscored):

**Remarketing and Purchase.**

(a) ***Remarketing of Tendered Bonds.*** Unless otherwise instructed by the county, with the consent of the Bank, the Remarketing Agent shall use its best efforts to remarket Bonds or portions thereof for which notice of tender has been received pursuant to Section 4.01(b) or that are subject to mandatory tender on a Mandatory Purchase Date (other than a Default Tender Date). The terms of any remarketing by the Remarketing Agent shall provide for the payment of the full Purchase Price for tendered Bonds by the purchaser to the appropriate DTC Participant in immediately available funds at or before 12:00 noon, New York City time, on the Purchase Date. The Remarketing Agent shall not remarket any Bonds to the county. The Remarketing Agent shall not sell any Bond as to which a notice of Mode Change Date or notice of redemption has been given by the Registrar unless the Remarketing Agent has notified the Person to whom the sale is made

of the conversion or redemption. Bank Bonds may not be remarketed (delivered to new purchasers) unless the Registrar has received written confirmation by Electronic Means from the Bank to the effect that the "Principal Portion" and the "Interest Portion" as defined in the Credit Facility has been fully reinstated with respect to such Bank Bonds or will be upon the remarketing of the Bonds.

(b) *Purchase of Tendered Bonds.*

(1) Notice. Not later than 12:00 p.m., New York City time, on any Purchase Date or Mandatory Purchase Date, as the case may be, the Remarketing Agent shall give notice by telephone or Electronic Means to the Registrar of the principal amount of tendered Bonds that were remarketed and those that were not remarketed, if any. Not later than 12:15 p.m., New York City time, on the Purchase Date or the Mandatory Purchase Date, the Registrar shall give notice to the county and the Bank or the issuer of the Credit Facility by telephone or Electronic Means, specifying the principal amount of tendered Bonds as to which the Remarketing Agent has not remarketed. Not later than 1:00 p.m., New York City time, on the Purchase Date or the Mandatory Purchase Date, the Remarketing Agent shall give notice to the Registrar by telephone (promptly confirmed in writing or by Electronic Means) of the names, addresses and taxpayer identification numbers of the purchasers, the denominations of Bonds to be delivered to each purchaser and, if available, payment instructions for regularly scheduled interest payments, or of any changes in any such information previously communicated.

(2) Sources of Payments. The Remarketing Agent shall direct to be paid on the Purchase Date all amounts representing proceeds of the remarketing of such Bonds, such payments to be made in the manner and at t\_\_4.03(a) above. If such amounts are not sufficient to pay the Purchase Price, the Registrar shall immediately notify the county and the Bank or the issuer of the Credit Facility of any deficiency (but no later than 12:30 p.m., New York time). Pursuant to the Credit Facility, the Bank shall, following receipt of purchase notices and transfer instructions from the Registrar in the name of the Bank, on the Purchase Date, purchase such tendered Bonds by delivering to (or at the direction of) the Registrar for the tendered Bonds the

Purchase Price therefor in immediately available funds in an amount equal to such deficiency prior to 2:30 p.m., New York City time, on the Purchase Date or the Mandatory Purchase Date. If the Bank fails to provide funds equal to such deficiency, the county may, but is not obligated, to deliver to the Registrar for the tendered Bonds funds equal to such deficiency.

If money is received by the Registrar as remarketing proceeds or from the Bank or the county, any such amounts shall be deposited by the Registrar in the Purchase Account to be used solely for the payment of the Purchase Price of tendered Bonds and shall not be commingled with other funds held by the Registrar. All Bonds so purchased by the Bank shall be registered in the name of the Bank on the Purchase Date, and (i) shall be held in trust by the Registrar on behalf of the Bank, and shall not be released from such trust unless the Registrar shall have received written instructions from the Bank and written confirmation by Electronic Means that the Credit Facility has been reinstated, or (ii) at the request of the Bank shall be held by the Bank directly. All Bonds so purchased by the county will be registered in the name of the county or its nominee on the Purchase Date. Bonds so owned by the county will continue to be Outstanding under the terms of this ordinance and subject to all of the terms and conditions of this ordinance and will be subject to remarketing by the Remarketing Agent.

(3) Payments of the Purchase Price. Not later than the close of business on the Purchase Date and upon receipt by the Registrar of 100% of the aggregate Purchase Price of the tendered Bonds, the Purchase Price of such Bonds shall be paid to the Registered Owners thereof. Such payments shall be made by wire transfer of immediately available funds. Such payments shall be made first from the proceeds of the remarketing of such Bonds by the Remarketing Agent, and second, from money received from the Bank under the Credit Facility.

**SECTION 3. Amending the Purchase Account Provisions.** Ordinance 14172, Section 4.04, is hereby amended to read as follows (deletions are stricken and additions are underscored):

**Purchase Account.** There is hereby created with the Registrar a segregated trust fund to be designated

the "Purchase Account." The Purchase Account shall consist of ~~((two))~~ three sub-accounts to be designated respectively the "Remarketing Subaccount" and the "Bank Purchase Subaccount," and the "County Purchase Subaccount."

If by the terms of the remarketing, the Registrar receives any money from the remarketing of Bonds, the Registrar shall deposit or cause to be deposited into the Remarketing Subaccount, if and when received, all money delivered to the Registrar as and for the Purchase Price of remarketed Bonds, such money to pay the Purchase Price of remarketed Bonds.

The Registrar shall deposit or cause to be deposited into the Bank Purchase Account, when and as received, all money delivered to the Registrar, if any, from the Bank pursuant to the Credit Facility, such money to be used to purchase unremarketed Bonds, which Bonds shall thereafter be registered in the name of the Bank and considered Bank Bonds. The Registrar shall deposit or cause to be deposited into the County Purchase Subaccount, when and as received, all money delivered to the Registrar, if any, from the county, such money to be used to purchase unremarketed Bonds, which Bonds shall thereafter be registered in the name of the county as provided in Section 4.03(b)(2).

Amounts held in the Bank Purchase Subaccount, County Purchase Subaccount and the Remarketing Subaccount by the Registrar shall be held uninvested and separate and apart from all other funds, accounts and subaccounts.

On the date of purchase, the Registrar shall register and deliver (or hold) or cancel all Bonds purchased on any purchase date as follows: (A) Bonds purchased or remarketed by the Remarketing Agent shall be registered and made available to the Remarketing Agent by 2:15 p.m., New York City time, in accordance with the instructions of the Remarketing Agent; (B) Bonds purchased with proceeds of a drawing on the Credit Facility shall be held as Bank Bonds and shall be held in trust by the Registrar on behalf of the Bank and shall not be released from such trust unless the Registrar shall have received written instructions from the Bank and, unless the Bonds are to be cancelled, written confirmation by Electronic Means that the Letter of Credit has been

reinstated. Notwithstanding anything herein to the contrary, so long as the Bonds are held under the book-entry only system in accordance with Section 2.05 hereof, Bonds will not be delivered as set forth above; rather, transfers of beneficial ownership of the Bonds to the person indicated above will be effected on the registration books of DTC pursuant to its rules and procedures.

Bonds purchased with proceeds of a drawing on the Credit Facility pursuant to this Section shall constitute "Bank Bonds" and shall be held by the Registrar as agent for the Bank pursuant to the Reimbursement Agreement (and shall be shown as such on the registration books maintained by the Registrar) unless and until (1)(A) the Registrar has written confirmation by Electronic Means from the Bank to the extent contemplated by the terms of the Credit Facility that the Credit Facility has been reinstated with respect to such drawing and (B) the Bank has notified the Registrar by facsimile (thereafter promptly confirmed in writing by U.S. Mail) that such Bonds have been released pursuant to the Reimbursement Agreement and are no longer Bank Bonds or (2) the Bank Bonds have been purchased by the county and surrendered for cancellation. Pending reinstatement of the Credit Facility and release of such Bank Bonds, as aforesaid, the Bank or its designee may assign them to an affiliate and shall be entitled to receive all payments of principal of and interest on Bank Bonds and such Bonds shall not be transferable or deliverable to any party (including the county) except the Bank pursuant to the Reimbursement Agreement. Unless an Event of Default has occurred or if the county otherwise instructs, the Remarketing Agent shall continue to use its best efforts to arrange for the sale of any Bank Bonds, subject to full reinstatement of the Letter of Credit with respect to the drawings with which such Bonds were purchased, at a price equal to the principal amount thereof plus accrued interest (not including interest owed to the Bank at the Bank Rate).

Notwithstanding anything to the contrary in this subsection, if and for so long as the Bonds are to be registered in accordance with Section 2.02 hereof, the registration requirements under this subsection (v) shall be deemed satisfied if Bank Bonds are (1) registered in the name of the Securities Depository or its nominee in accordance with Section 2.05 hereof, and (2)(i) credited on the books of the Securities Depository to the account of the

Registrar (or its nominee) and further credited on the books of the Registrar (or such nominee) to the account of the Bank (or its designee) or (ii) credited on the books of the Securities Depository to the account of the Bank or its nominee.

In the event that any Bonds are registered to the Bank pursuant to the provisions of this section above to the extent requested by the Bank, the Remarketing Agent shall offer for sale and use its best efforts to sell such Bonds at a price equal to the principal amount thereof plus accrued interest (not including interest owed to the Bank at the Bank Rate).

All Bonds to be purchased on any date shall be required to be delivered to the principal office of the Registrar at or before (A) 1:00 p.m., New York City time, on the purchase date in the case of Bonds accruing interest at Commercial Paper or Daily Rates; (B) 12:00 noon, New York City time, on the purchase date in the case of Bonds accruing interest at Weekly Rates; or (C) 5:00 p.m., New York City time, on the second Business Day prior to the purchase date in the case of Bonds accruing interest at Long Term Rates, except for Bonds delivered by or on behalf of an Investment Company in accordance with Section 4.06 hereof which may be delivered by 3:00 p.m., New York City time, on the purchase date. If the Owner of any Bond (or portion thereof) in certificated form that is subject to optional or mandatory purchase pursuant to this Article fails to deliver such Bond to the Registrar for purchase on the purchase date, and if the Registrar is in receipt of the Purchase Price therefor, such Bond (or portion thereof) shall nevertheless be deemed purchased on the day fixed for purchase thereof and ownership of such Bond (or portion thereof) shall be transferred to the purchaser thereof as provided above. Any Owner who fails to deliver such Bond for purchase shall have no further rights thereunder except the right to receive the Purchase Price thereof upon presentation and surrender of said Bond to the Registrar. The Registrar shall, as to any tendered Bonds that have not been delivered to it (i) promptly notify the Remarketing Agent of such nondelivery and (ii) place a stop transfer against an appropriate amount of Bonds registered in the name of such Registered Owner(s) on the bond registration books. The Registrar shall place such stop(s) commencing with the lowest serial number Bond registered in the name of such

Registered Owner(s) until stop transfers have been placed against an appropriate amount of Bonds until the appropriate tendered Bonds are delivered to the Registrar. Upon such delivery, the Registrar shall make any necessary adjustments to the bond registration books.

**SECTION 4. Amending Provisions Relating to the Letter of Credit.** Ordinance 14172, Section 4.05, is hereby amended to read as follows (deletions are stricken and additions are underscored):

**Letter of Credit; Alternate Credit Facility.**

(a) During any Mode (other than the Fixed Mode or the Long Term Mode), while the Credit Facility is in effect with respect to the Bonds, on each Purchase Date or Mandatory Purchase Date, the Registrar, by telecopied demand given before 12:30 p.m., New York time, shall notify the Bank of its need for funds to pay the interest (not including interest owed to the Bank at the Bank Rate) on and/or principal of and/or the Purchase Price of tendered Bonds in accordance with the terms of the Credit Facility so as to receive thereunder by 2:30 p.m., New York City time, on such date an amount, in immediately available funds, sufficient (together with the proceeds of the remarketing of Bonds (received and available to the Registrar prior to the time of drawing or demand under the Credit Facility) in connection with a purchase drawing if the Bonds are then being remarketed) on such date, to pay the Purchase Price in connection therewith. The Registrar shall deposit amounts received from the Bank to pay the Purchase Price of tendered Bonds in the Bank Purchase Subaccount pursuant to Section 4.04 hereof.

(b) During any Mode (other than the Fixed Mode), while the Letter of Credit is in effect, on the Business Day prior to any Interest Payment Date and/or any other date on which a payment of principal with respect to the Bonds is due, whether by maturity or redemption in advance of maturity, as the case may be, the Registrar, by telecopied demand given before 3:00 p.m., New York time, shall notify the Bank of its need for funds to pay interest on and/or principal of the Bonds in accordance with the terms of the Credit Facility so as to receive thereunder by 1:00 p.m. on such Interest Payment Date or date on which a payment of principal with respect to the Bonds is due an amount, in immediately available funds, sufficient to pay such interest (not



including interest owed to the Bank at the Bank Rate) and/or principal. The Registrar shall hold such funds separate and apart in trust for the benefit of Registered Owners, and such funds shall not be commingled with any other funds for any other purpose. No drawing on the Credit Facility may be made for Bank Bonds or Bonds held by the county.

If by 1:00 p.m. New York time on any Interest Payment Date or any other date on which a payment of principal of or interest on the Bonds is due, whether by maturity or redemption in advance of maturity, as the case may be, the Registrar fails to receive funds from the Bank as provided in this subsection (b) to make such payment of principal or interest, the Registrar shall immediately notify the county of the failure (by telephone and Electronic Means). By 2:00 p.m. New York time, the county shall remit to the Registrar, as provided in Section 5.01(a) hereof, in immediately available funds, an amount from the Junior Lien Bond Fund sufficient to make such payment of principal or interest.

~~((b))~~ (c) If at any time there shall have been delivered to the Registrar (i) an Alternate Credit Facility in substitution for the Letter of Credit then in effect, (ii) a Favorable Opinion of Bond Counsel, and (iii) written evidence satisfactory to the Bank of the provision for purchase from the Bank of all Bank Bonds, at a price equal to the principal amount thereof plus accrued and unpaid interest, and payment of all amounts due it under the Reimbursement Agreement on or before the effective date of such Alternate Credit Facility, then the Registrar shall accept such Alternate Credit Facility on the Substitution Date and shall surrender the Letter of Credit immediately to the Bank following the Substitution Date. The county shall give the Registrar, any Securities Depository, the Remarketing Agent and the Bank written notice of the proposed substitution of an Alternate Credit Facility for the Letter of Credit then in effect no less than 45 days prior to the proposed Substitution Date. Thirty days' prior notice of any proposed substitution of an Alternate Credit Facility shall be given by the Registrar to the Registered Owners.

SECTION 5. Amending Provisions Relating to the Junior Lien Bond Fund. Ordinance 14172,

Section 5.02, is hereby amended to read as follows (deletions are stricken and additions are underscored):

Use of Money in Junior Lien Bond Fund and Money Drawn Under Credit Facility. Money in the

Junior Lien Bond Fund shall be used solely for the payment of the principal of, premium, if any, and interest on Junior Lien Obligations as the same shall become due and payable at maturity, upon redemption, on each Interest Payment Date, or otherwise; provided, however, that the lien of the Owners of Bonds on money received from a draw on the Credit Facility shall be first and prior to the lien of any other person thereon. Funds for the payment of the principal of, premium, if any, and interest on the Bonds shall be derived from the following sources in the order of priority indicated:

(a) money drawn by the Registrar under the Credit Facility for the payment of the principal of or interest on the Bonds; and

(b) payments made by the county pursuant to Sections 4.05(b) and 5.01((b)) (a) hereof.

The Credit Facility shall be the obligation of the Bank to pay to the Registrar, in accordance with the terms thereof, such amounts as shall be specified therein and available to be drawn thereunder for the timely payment of the principal of and interest on the Bonds (whether at their stated maturity, or upon redemption or otherwise), and, if the Credit Facility so permits, premium, and portions of the Purchase Price of Bonds corresponding to principal and interest thereon, required to be made pursuant to, and in accordance with, the provisions of this ordinance. Money drawn under the Credit Facility by the Registrar shall be held by the Registrar separate and apart and shall not be commingled with any county funds. Such money shall not be re-invested. The Credit Facility shall be reduced to the extent of any drawings thereunder and reinstated in accordance with the terms thereof. The Letter of Credit delivered on the Closing Date shall terminate 364 days from the Closing Date, or earlier upon the occurrence of one of the events resulting in early termination specified therein or later if extended as provided in the Reimbursement Agreement and Letter of Credit. The county may request an extension of the termination date of the Letter of Credit or may provide for the

delivery of an Alternate Credit Facility prior to the Expiration Date of the Letter of Credit or Alternate Credit Facility, as the case may be, or upon conversion from one Mode to another.

**SECTION 6. Effective Date.** This ordinance shall be effective 10 days after its enactment, in accordance with Article II of the county charter; provided, however, that the amendments to Ordinance 14172 set forth in this ordinance shall not take effect until the County receives the written consent of the Bank.