

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2008 Legislative Session

Bill No. CB-5-2008

Chapter No. _____

Proposed and Presented by Council Member Knotts

Introduced by _____

Co-Sponsors _____

Date of Introduction _____

BILL

1 AN ACT concerning

2 The Issuance and Sale of Special Obligation Bonds

3 For the purpose of providing that special obligation bonds may be issued from time to time under
4 the provisions of this Act, Section 10-269 of the Prince George's County Code, as amended
5 (2003 Edition, 2007 Supplement) and Section 9-1301 of Article 24 of the Annotated Code of
6 Maryland, as amended (2005 Replacement Volume and 2007 Supplement) (collectively, the
7 "Special Taxing District Act") and CR-25-2004 of the County Council of Prince George's
8 County, Maryland (the "Formation Resolution") in an amount not to exceed the aggregate
9 principal amount of Thirty-Five Million Dollars (\$35,000,000) in order for the County to finance
10 the construction of the infrastructure improvements as more particularly described herein;
11 making certain findings and determinations, among others, concerning the public benefit and
12 purpose of such special obligation bonds; providing for the levy of a special tax in the form of a
13 special hotel rental tax and the allocation of such special tax with respect to the special taxing
14 district paid over to a special fund; providing that such special obligation bonds authorized to be
15 issued hereby shall be payable from the amounts levied and deposited in a special fund, as
16 described below, which include the special hotel rental taxes and that the special obligation
17 bonds shall not constitute a general obligation debt of the County or a pledge of the County's full
18 faith and credit or taxing power other than the taxes representing the Special Hotel Rental Tax
19 (defined below); authorizing the County Executive of the County to specify, prescribe,
20 determine, provide for and approve certain details, forms, documents or procedures in
21 connection with such special obligation bonds issued hereunder and any other matters necessary

1 or desirable in connection with the authorization, issuance, sale, delivery and payment of such
2 special obligation bonds; authorizing the County Executive to take certain actions, to execute
3 documents and make certain commitments on behalf of the County in connection with the
4 issuance, sale and delivery of such special obligation bonds; authorizing the execution and
5 delivery of such special obligation bonds and such other documents as may be necessary and
6 desirable to effectuate the financing of the infrastructure improvements and the issuance, sale
7 and delivery of such special obligation bonds; generally providing for, and determining various
8 matters in connection with, the issuance, sale, delivery and payment of such special obligation
9 bonds; and

10 WHEREAS, in order to assist in facilitating the financing for the infrastructure
11 improvements described in Exhibit A attached hereto and made a part hereof, the County will
12 issue its special obligation bonds to fund such improvements; and

13 WHEREAS, the owners of the real property (the “Owners”) in the National Harbor Special
14 Taxing District, described below, are developing retail, commercial, office and residential
15 facilities known as National Harbor (“National Harbor”) which shall be served by the
16 infrastructure improvements; and

17 WHEREAS, such development will further economic development within the County and
18 thus meet the public purposes contemplated by the Special Taxing District Act, the Formation
19 Resolution and this Act; and

20 WHEREAS, the development of National Harbor and the issuance of the Bonds, as
21 hereinafter defined, satisfy the applicable criteria of CR-89-2006 of the County Council of Prince
22 George’s County; and

23 WHEREAS, the Formation Resolution has heretofore designated a contiguous area within
24 the County to be known as the “National Harbor Special Taxing District” as a “special taxing
25 district” as that term is used in the Special Taxing District Act (the “District”); and

26 WHEREAS, the Formation Resolution provided for the creation of a special fund with
27 respect to the District, the levy of a special tax (the “Special Tax”) to be paid over to the special
28 fund and that special obligation bonds could be issued pursuant to an ordinance to finance
29 infrastructure improvements related to the District; and

30 WHEREAS, the Owners and their respective successors and assigns request that the County
31 Council undertake proceedings under the Special Taxing District Act (i) to levy additional

1 special taxes in the form of a special hotel rental tax on hotels, as described in Section 9-
2 1301(c)(5) of Article 24 of the Annotated Code of Maryland, as amended (2005 Replacement
3 Volume and 2007 Supplement), located in the District (the “Special Hotel Rental Tax”) to be
4 paid over to a special fund, (ii) to issue special obligation bonds or special obligation refunding
5 bonds pursuant to the Special Taxing District Act, secured by a levy of the Special Hotel Rental
6 Tax in order to finance or refinance all, or a portion, of the costs of infrastructure facilities and
7 improvements to be located in the District, as described in Exhibit A attached hereto; and

8 WHEREAS, the proposed infrastructure improvements will be situated both within the
9 District; and

10 WHEREAS, the special obligation bonds will be issued and secured pursuant to the
11 provisions of the Special Taxing District Act, the Formation Resolution and this Act; and

12 WHEREAS, to the extent that the taxes representing the levy of the Special Hotel Rental
13 Tax in any given fiscal year of the County exceeds the debt service payable on the special
14 obligation bonds in any such fiscal year, as well as any other payments required to be satisfied by
15 the Special Hotel Rental Tax; at least seventy-five percent (75%) of such excess will be returned
16 to the Prince George’s County treasury; and

17 WHEREAS, if the debt service payable on the special obligation bonds in any fiscal year
18 exceed the taxes representing the Special Hotel Rental Tax, such debt service payments shall be
19 deferred and paid from future available amounts of the Special Hotel Rental Tax; and

20 WHEREAS, the special obligation bonds will initially be delivered to National Harbor
21 Development L.L.C. (the “Developer”) to pay or reimburse the Developer for costs permitted by
22 the Special Taxing District Act that are being incurred by the Developer in connection with its
23 construction of the infrastructure improvements. The special obligation bonds are to be
24 delivered and the improvements will be provided in accordance with the terms and the
25 requirements set forth in a Development Agreement (the “Development Agreement”), between
26 the County and the Developer; and

27 WHEREAS, the infrastructure improvements to be financed with the proceeds of the
28 special obligation bonds will be maintained by the Developer and by owners of the real property
29 located within the District; now, therefore,

30 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
31 Maryland, as follows:

1 A. The words and terms used in this Act that are defined in the Special Taxing District Act or
 2 the Formation Resolution shall have the meanings indicated in the Special Taxing District Act
 3 and the Formation Resolution, as the case may be, unless the context clearly requires a contrary
 4 meaning.

5 B. Acting pursuant to this Act, the Special Taxing District Act and the Formation Resolution,
 6 it is hereby found and determined that the issuance of the Bonds for delivery to the Developer for
 7 the financing of the infrastructure improvements related to the development of the District,
 8 accomplish the public purposes of this Act, the Special Taxing District Act and the Formation
 9 Resolution and pursuant to the Formation Resolution and this Act, the County has complied with
 10 Section 10-269 of the Prince George’s County Code and Section 9-1301(f) of Article 24 of the
 11 Annotated Code of Maryland.

12 C. The types of infrastructure improvements to be financed as permitted by the Special Taxing
 13 District Act in connection with the District are set forth in Exhibit A attached hereto and made a
 14 part hereof including costs related to such improvements which are intended to be funded with
 15 the issuance of the Bonds. The infrastructure improvements are either contained within the
 16 geographic boundaries of the District.

17 D. Before the Bonds are issued, the Financial Officer of the County shall record among the
 18 Land Records of the County at the cost of the District a declaration to the effect that all hotels
 19 located in the District are subject to the Special Hotel Rental Tax.

20 E. Pursuant to the Special Taxing District Act the County hereby establishes a special fund to
 21 be designated the “National Harbor Special Hotel Rental Tax Fund” (the “Special Fund”) with
 22 respect to the District and the County Executive, Chief Administrative Officer and the Financial
 23 Officer of the County are hereby directed and authorized to deposit in such Special Fund all the
 24 taxes representing the Special Hotel Rental Tax received by the County. The County Executive,
 25 the Chief Administrative Officer and the Financial Officer and other officers and employees of
 26 the County, to the extent applicable, are hereby authorized to take all necessary steps in order to
 27 establish a separate fund to be held by the County. The monies in the Special Fund are pledged
 28 to the payment of the Bonds and to the extent that the monies in the Special Fund exceed the
 29 amount needed to pay debt service on the Bonds, to replenish any debt service fund securing the
 30 Bonds, and to pay administration costs of the County related to the Bonds, including any
 31 reserves established therefor.

1 To the extent the debt service payable on the special obligation bonds in any fiscal year
 2 exceed the taxes representing the Special Hotel Rental Tax, such debt service payments shall be
 3 deferred and paid from future available amounts of the Special Hotel Rental Tax.

4 The declaration and pledge of the Special Hotel Rental Tax shall remain in place until the
 5 later of the date the Bonds are paid in full or defeased, or one year subsequent to the date that the
 6 County and Developer determine that it is no longer necessary to provide for the payment.

7 F. Pursuant to the Special Taxing District Act and this Act, the County hereby levies and
 8 imposes the Special Hotel Rental Tax at a rate and amount of five percent (5%) on all gross
 9 amounts of money paid to the owners or operators of hotels located in the District by transient
 10 guests or tenants for renting, using or occupying a room or rooms in the hotels located in the
 11 District to provide for (i) the payment of the principal of and interest on the Bonds and to provide
 12 for replenishment of any debt service reserve fund securing the Bonds as well as for the payment
 13 of County administrative expenses, to the extent such replenishments and expenses are not
 14 otherwise provided for, including any reserves established therefor. The Special Hotel Rental
 15 Tax also may be levied with respect to refunding bonds issued under the Special Taxing District
 16 Act pursuant to the provisions of an ordinance or resolution enacted or adopted by the County in
 17 connection with the issuance of such refunding bonds. The Special Hotel Rental Tax is levied
 18 and imposed upon all hotels within the District, for the purposes, to the extent and in the manner
 19 provided in this Act through the application of the procedures provided herein. Further, the
 20 Special Hotel Rental Tax levied and imposed by the Special Taxing District Act and this Act in
 21 the District shall take effect and be in force from the date this Act becomes law beginning July 1,
 22 2008.

23 G. The special obligation bonds may be issued in one or more series in an aggregate principal
 24 amount not to exceed Thirty-Five Million Dollars (\$35,000,000) (the "Bonds"). The proceeds of
 25 the Bonds will be utilized solely to finance all or part of the costs of the improvements described
 26 in Exhibit A attached hereto and made a part hereof through the issuance of such Bonds for
 27 delivery to the Developer as permitted pursuant to the provisions of the Special Taxing District
 28 Act. The Bonds will be payable solely from the amounts levied and deposited in the Special
 29 Fund created by this Act. Provisions may be made for municipal bond insurance or any other
 30 type of financial guaranty of the Bonds, if applicable. In addition, the Bonds may be secured
 31 through the establishment of additional sinking funds or the pledge of other assets and revenues

1 toward the payment of the principal and interest on the Bonds, if applicable. The Bonds issued
2 hereunder are a special obligation of the County and do not constitute a general obligation debt
3 of the County or a pledge of the County's full faith and credit or taxing power except for the
4 Special Hotel Rental Tax. In addition, Bonds issued hereunder may be refunded by bonds issued
5 under the Special Taxing District Act.

6 H. The Bonds shall be executed in the name of the County and on its behalf by the County
7 Executive, by manual or facsimile signature, the corporate seal of the County or a facsimile
8 thereof shall be impressed or otherwise reproduced thereon and attested by the Clerk of the
9 County Council or the Chief Administrative Officer by manual or facsimile signature. The
10 Development Agreement to be entered into between the County and the Developer to provide for
11 the construction by the Developer of the improvements referred to in Exhibit A and, where
12 applicable, all other documents as the County Executive deems necessary to effectuate the
13 issuance, sale and delivery of the Bonds of any series, shall be executed in the name of the
14 County and on its behalf by the County Executive by manual signature, and the corporate seal of
15 the County or a facsimile thereof shall be impressed or otherwise reproduced thereon and
16 attested by the Clerk of the County Council or the Chief Administrative Officer by manual
17 signature. If any officer whose signature or countersignature or a facsimile of whose signature or
18 countersignature appears on the Bonds of any series or on any of the aforesaid documents ceases
19 to be such officer before the delivery of the Bonds of such series or any of the other aforesaid
20 documents, such signature or countersignature or such facsimile shall nevertheless be valid and
21 sufficient for all purposes, the same as if such officer had remained in office until delivery. The
22 County Executive, the Clerk of the County Council and other officials of the County are hereby
23 authorized and empowered to do all such acts and things and execute such documents and
24 certificates as the County Executive may determine to be necessary to carry out and comply with
25 the provisions of this Act, subject to the limitations set forth in the Special Taxing District Act
26 and this Act.

27 I. The Bonds shall be delivered to the Developer upon such terms and conditions as the
28 County Executive and County Council shall approve.

29 J. Subject to the provisions of this Act, the County Executive by executive order:

- 30 (1) shall prescribe the form, tenor, terms and conditions of and security for the Bonds;
- 31 (2) shall prescribe the principal amounts, rate or rates of interest which shall equal eight

1 percent (8%), denominations, date, maturity or maturities (within the limits prescribed in the
2 Special Taxing District Act), and the time and place or places of payment of the Bonds, and the
3 terms and conditions and details under which the Bonds may be called for redemption prior to
4 their stated maturities;

5 (3) may appoint bond counsel, underwriters, a financial advisor and if necessary, may
6 appoint a trustee, a bond registrar and a paying agent or agents for the Bonds;

7 (4) shall approve the form and contents of, and execute and deliver (where applicable), the
8 Development Agreement, an indenture of trust and such other contracts and documents to which
9 the County is a party and which may be necessary to effectuate the issuance, sale and delivery of
10 the Bonds and apply the Special Fund as set forth herein;

11 (5) shall determine the time of execution, issuance, sale and delivery of the Bonds and
12 prescribe any and all other details of the Bonds;

13 (6) shall approve the terms of the delivery of the Bonds as provided in Paragraph I hereof;

14 (7) shall provide for the direct or indirect payment of all costs, fees and expenses incurred
15 by or on behalf of the County in connection with the issuance, sale and delivery of the Bonds,
16 including (without limitation) costs of printing (if any) and issuing the Bonds, the funding of
17 reserves, legal expenses (including the fees of bond counsel) and compensation to any person
18 performing services by or on behalf of the County in connection therewith; and

19 (8) shall do any and all things necessary, proper or expedient in connection with the
20 issuance, sale and delivery of the Bonds in order to accomplish the legislative policy of the
21 Special Taxing District Act and the public purposes of this Act, subject to the limitations set
22 forth in the Special Taxing District Act and any limitations prescribed by this Act.

23 This delegation of authority to the County Executive is subject to his discretion and to the
24 extent he does not exercise such discretion pursuant to the provisions of this Act, neither such
25 officer nor the County shall be subject to any liability.

26 SECTION 2. BE IT FURTHER ENACTED, that the Bonds being authorized herein, the
27 construction costs of the improvements for which said Bonds are authorized and issued, and any
28 costs paid or reimbursed from the Special Hotel Rental Tax are not deemed to be construction,
29 monetary contributions or procurement for purposes of Subtitle 10A of the Prince George's
30 County Code. Any improvements and costs funded in whole or part by said Bonds or paid or
31 reimbursed from the Special Hotel Rental Tax are specifically exempted from the provisions of

1 Subtitle 10A.

2 SECTION 3. BE IT FURTHER ENACTED, that the provisions of this Act are severable,
3 and if any provision, sentence, clause, section or part hereof is held or determined to be illegal,
4 invalid or unconstitutional or inapplicable to any person or circumstances, such illegality,
5 invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining
6 provisions, sentences, clauses, sections or parts of this Act or their application to other persons or
7 circumstances. It is hereby declared to be the legislative intent that this Act would have been
8 passed if such illegal, invalid, unconstitutional or inapplicable provision, sentence, clause,
9 section or part had not been included herein, and as if the person or circumstances to which this
10 Act or any part hereof are inapplicable had been specifically exempted herefrom.

11 SECTION 4. BE IT FURTHER ENACTED, that this Act shall take effect 45 days from the
12 date it becomes law.

Adopted this ____ day of _____, 2008.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Samuel H. Dean
Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Jack B. Johnson
County Executive

KEY:

Underscoring indicates language added to existing law.

[Brackets] indicate language deleted from existing law.

Asterisks *** indicate intervening existing Code provisions that remain unchanged.

EXHIBIT A

DESCRIPTION OF THE PUBLIC FACILITIES AND IMPROVEMNETS

The public facilities and improvements, include but are not limited to, streets and sidewalks, including promenades, a plaza, and entrance features; utility installation; transit facilities, including piers, ferries and ground transit vehicles; parks and recreational facilities, including public art; lighting; parking facilities; and other necessary improvements for the development and utilization of the National Harbor, including but not limited to related security, landscaping and tree plantings.