

ORDINANCE NO. 2010-037

ORIGINAL

AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE DELAWARE COUNTY, INDIANA TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS (PRL PROJECT), AND THE LENDING OF THE PROCEEDS THEREOF TO PRL, INC., AND AUTHORIZING AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, Delaware County, Indiana (the "County"), is a political subdivision of the State of Indiana and by virtue of I.C. 36-7-11.9 and I.C. 36-7-12 (collectively, the "Act"), is authorized and empowered to adopt this ordinance (this "Bond Ordinance") and to carry out its provisions;

WHEREAS, PRL, Inc. or an affiliate thereof (the "Borrower"), desires to finance all or a portion of the costs of the acquisition, construction, renovation, and equipping of land and/or facilities for use by the Borrower in its railroad affiliated services (including without limitation locomotive repair and rebuilding) and related operations within the County, which will be located in the PRL Allocation Area (the "Area"), created by the Delaware County Redevelopment Commission in the County (the "Project");

WHEREAS, the Borrower has advised the Delaware County Economic Development Commission (the "Commission") and the County that it proposes that the County issue its Taxable Economic Development Revenue Bonds (PRL Project), in one or more series (with an appropriate series designation for each series), in an aggregate principal amount not to exceed Twenty-One Million Dollars (\$21,000,000) (the "Bonds") under the Act and loan the proceeds of such Bonds to the Borrower for the purpose of financing the Project;

WHEREAS, the completion of the Project results in the diversification of industry, the creation or retention of jobs and the creation or retention of business opportunities in the County;

WHEREAS, pursuant to I.C. § 36-7-12-24, the Commission published notice of a public hearing (the "Public Hearing") on the proposed issuance of the Bonds to finance the Project;

WHEREAS, on November 12, 2010, the Commission held the Public Hearing on the Project; and

WHEREAS, the Commission has performed all actions required of it by the Act preliminary to the adoption of this Bond Ordinance and has approved and forwarded to the County Council the forms of: (1) a Bond Purchase and Loan Agreement among the County, the Borrower and a purchaser to be determined (including a form of Promissory Note) relating to the Bonds (the "Loan Agreement"); (2) the Bonds; and (3) this Bond Ordinance (the Loan Agreement, the Bonds, and this Bond Ordinance, collectively, the "Financing Agreements");

NOW, THEREFORE, BE IT ORDAINED BY THE DELAWARE COUNTY COUNCIL THAT:

Section 1. Findings; Public Benefits. The County Council hereby finds and determines that the Project involves the acquisition, construction, renovation and equipping of an "economic development facility" as that phrase is used in the Act; that the Project will increase or retain employment opportunities and increase diversification of economic development in the County, will improve and promote the economic stability, development and welfare in the County, will encourage and promote the expansion of industry, trade and commerce in the County and the location of other new industries in the County; that the public benefits to be accomplished by this Bond Ordinance, in tending to overcome insufficient employment opportunities and insufficient diversification of industry, are greater than the cost of public services (as that phrase is used in the Act) which will be required by the Project; and, therefore, that the financing of the Project by the issuance of the Bonds under the Act: (i) will be of benefit to the health and general welfare of the County; and (ii) complies with the Act.

Section 2. Approval of Financing. The proposed financing of the Project by the issuance of the Bonds under the Act, in the form that such financing was approved by the Commission, is hereby approved.

Section 3. Authorization of the Bonds. The issuance of the Bonds, payable solely from revenues and receipts derived from the Financing Agreements, is hereby authorized.

Section 4. Terms of the Bonds. (a) The Bonds, in the aggregate principal amount not to exceed Twenty-One Million Dollars (\$21,000,000), shall (i) be executed at or prior to the closing date by the manual or facsimile signatures of the Board of Commissioners and the Auditor of the County; (ii) be dated as of the date of their delivery; (iii) mature on a date not later than twenty-five (25) years after the date of issuance; (iv) bear interest at such rates as determined through negotiation with the purchaser thereof, with such interest payable as provided in the Financing Agreements; (v) be issuable in such denominations as set forth in the Financing Agreements; (vi) be issuable only in fully registered form; (vii) be subject to registration on the bond register as provided in the Loan Agreement; (viii) be payable in lawful money of the United States of America; (ix) be payable at an office as provided in the Loan Agreement; (x) be subject to optional redemption prior to maturity and subject to redemption as otherwise provided in the Financing Agreements; (xi) be issued in one or more series; and (xii) contain such other terms and provisions as may be provided in the Financing Agreements.

(b) The Bonds and the interest thereon do not and shall never constitute an indebtedness of, or a charge against the general credit or taxing power of, the County, but shall be special and limited obligations of the County, payable solely from revenues and other amounts derived from the Financing Agreements. Forms of the Financing Agreements are before this meeting and are by this reference incorporated in this Bond Ordinance, and the Auditor of the County is hereby directed, in the name and on behalf of the County, to insert them into the minutes of the County Council and to keep them on file.

Section 5. Sale of the Bonds. The Board of Commissioners and the Auditor of the County are hereby authorized and directed, in the name and on behalf of the County, to sell the Bonds to a purchaser or purchasers selected by such officers at such prices and on such terms as may be determined at the time of sale.

Section 6. Execution and Delivery of Financing Agreements. For each series of the Bonds, the Board of Commissioners and Auditor of the County are hereby authorized and directed, in the name and on behalf of the County, to execute or endorse and deliver the Loan Agreement, the Promissory Note from the Borrower to the County, and the Bonds, submitted to the County Council, which are hereby approved in all respects.

Section 7. Changes in Financing Agreements. The Board of Commissioners and Auditor of the County are hereby authorized, in the name and on behalf of the County, without further approval of the County Council or the Commission, to approve such changes in the Financing Agreements as may be permitted by Act, such approval to be conclusively evidenced by their execution thereof.

Section 8. General. The Board of Commissioners and Auditor of the County, and each of them, are hereby authorized and directed, in the name and on behalf of the County, to execute or endorse any and all agreements, documents and instruments, perform any and all acts, approve any and all matters, and do any and all other things deemed by them, or any of them, to be necessary or desirable in order to carry out and comply with the intent, conditions and purposes of this Bond Ordinance (including the preambles hereto and the documents mentioned herein), the Project, the issuance and sale of the Bonds, and the securing of the Bonds under the Financing Agreements, and any such execution, endorsement, performance or doing of other things heretofore effected be, and hereby is, ratified and approved.

Section 9. Binding Effect. The provisions of this Bond Ordinance and the Financing Agreements shall constitute a binding contract between the County and the holders of the Bonds, and after issuance of the Bonds this Bond Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of the holders of the Bonds as long as the Bonds or interest thereon remains unpaid.

Section 10. Repeal. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 11. Effective Date. This Bond Ordinance shall be in full force and effect immediately upon adoption and compliance with I.C. § 36-2-6.

Section 12. Copies of Financing Agreements on File. Two copies of the Financing Agreements incorporated into this Bond Ordinance were duly filed in the office of the Auditor of the County, and are available for public inspection in accordance with I.C. § 36-1-5-4.

DULY PASSED on this 12 day of November, 2010, by the Delaware County Council.

Michael E. Jones
Kevin Neuman
Teddy Brown
J. F. King
Chad

Judy Quest