

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

2001 Edition

2011 Winter
Supp.

To authorize, on a temporary basis, the issuance of tax increment financing bonds to support the Howard Theatre Redevelopment Project.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Howard Theatre Redevelopment Project Great Streets Initiative Tax Increment Financing Temporary Act of 2010”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Authorized Delegate” means the City Administrator, the Deputy Mayor for Planning and Economic Development, the Chief Financial Officer, the District of Columbia Treasurer, or any officer or employee of the executive office of the Mayor to whom the Mayor has delegated any of the Mayor’s functions under this act pursuant to section 422(6) of the Home Rule Act.

(2) “Available Real Property Tax Increment Revenues” means, for any fiscal year of the District, with respect to the Howard Theatre Redevelopment Project TIF Area, the revenues resulting in that fiscal year from the imposition of the tax under Chapter 8 of Title 47 of the District of Columbia Official Code, including any penalties and interest charges, exclusive of the special tax provided for in section 481 of the Home Rule Act, pledged to the payment of general obligation indebtedness of the District, minus those same revenues generated in the Real Property Tax Base Year; provided, that such revenues are not otherwise exclusively committed to another purpose.

(3) “Available Sales Tax Increment Revenues” means, for any fiscal year of the District, with respect to the Howard Theatre Redevelopment Project TIF Area, the revenues resulting in that fiscal year from the imposition of the taxes under Chapters 20 and 22 of Title 47 of the District of Columbia Official Code, including any penalties and interest charges, exclusive of the portion thereof required to be deposited in the Washington Convention Center Authority Fund established pursuant to section 208 of the Washington Convention Center Authority Act of 1994, effective September 28, 1994 (D.C. Law 10-188; D.C. Official Code §10-1202.08), minus those same revenues generated in the Sales Tax Base Year; provided, that

such revenues are not otherwise exclusively committed to another purpose.

(4) “Available Tax Increment” means the sum of the Available Sales Tax Increment Revenues and Available Real Property Tax Increment Revenue.

(5) “Bond Counsel” means a firm or firms of attorneys designated as bond counsel from time to time by the Mayor.

(6) “Bonds” means the District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), in one or more series, authorized to be issued pursuant to this act.

(7) “Chairman” means the Chairman of the Council of the District of Columbia.

(8) “Chief Financial Officer” means the Chief Financial Officer of the District of Columbia.

(9) “Closing Documents” means all documents and agreements, other than Financing Documents, that may be necessary and appropriate to issue, sell, and deliver the Bonds, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

(10) “Council” means the Council of the District of Columbia.

(11) “Development Agreement” means the development agreement between the District and the Development Sponsor setting for the terms and conditions upon and pursuant to which the District will issue the Bonds and the Development Sponsor will develop the project.

(12) “Development Costs” shall have the same meaning as in section 2(13) of the Tax Increment Financing Authorization Act of 1998, effective September 11, 1998 (D.C. Law 12- 143; D.C. Official Code § 2-1217.01(13)).

(13) “Development Sponsor” means Howard Theatre Restoration, Inc., a District of Columbia corporation, or a designee or assignee of, or successor to, Howard Theatre Restoration, L.L.C., approved by the Mayor.

(14) “District” means the District of Columbia.

(15) “Financing Documents” means the documents, other than Closing Documents, that relate to the financing or refinancing of transactions to be effected through the issuance, sale, and delivery of the Bonds, including any offering document, and any required supplements to any such documents.

(16) “Home Rule Act” means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 *et seq.*).

(17) “Howard Theatre Parking Garage” means parking spaces dedicated for the exclusive use by, and in conjunction with, the Howard Theatre Redevelopment Project in Lots 21, 66, 67, 68, 97, 814, 815, 855, 857, 858, and 859, Square 441.

(18) “Howard Theatre Redevelopment Project” means the financing, refinancing, or reimbursing of Development Costs incurred for the acquisition, leasing, construction, rehabilitating, installing, and equipping of a new mixed-use facility, consisting of a multi-purpose entertainment venue, museum, restaurant, and educational center within the historic building in Lots 90 and 807, Square 441.

(19) "Howard Theatre Redevelopment Project TIF Area" means the area so designated in section 4.

(20) "Real Property Tax Base Year" means the tax year preceding the year in which this act becomes effective and the initial assessed value to be used in making the determination of Available Real Property Tax Revenues of each lot of taxable real property in the Howard Theatre Redevelopment Project TIF Area shall be the assessed value in the tax year preceding the year in which this act becomes effective.

(21) "Reserve Agreement" means that certain Reserve Agreement, dated as of April 1, 2002, by and among the District, Wells Fargo Bank Minnesota, N.A., and Financial Security Assurance, Inc.

(22) "Sales Tax Base Year" means the tax year preceding the year in which this act becomes effective.

(23) "TIF" means tax increment financing.

Sec. 3. Creation of the Howard Theatre Redevelopment Project Fund.

(a) There is established as a nonlapsing fund the Howard Theatre Redevelopment Project Fund, which shall be used solely as provided in subsection (d) of this section. The Chief Financial Officer shall deposit into the Howard Theatre Redevelopment Project Fund the Available Tax Increment and any other taxes or fees specifically designated by law for deposit in the Howard Theatre Redevelopment Project Fund.

(b) Except as provided in subsection (e) of this section, all funds deposited into the Howard Theatre Redevelopment Project Fund, and any interest earned on the funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (d) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(c) The Mayor may pledge and create a security interest in the funds in the Howard Theatre Redevelopment Project Fund, or any sub-account within the Howard Theatre Redevelopment Project Fund, for the payment of the costs of carrying out any of the purposes described in subsection (d) of this section without further action by the Council as permitted by section 490(f) of the Home Rule Act. If Bonds are issued, the payment will be made in accordance with the provisions of the Financing Documents entered into by the District in connection with the issuance of the Bonds.

(d) The funds deposited in the Howard Theatre Redevelopment Project Fund may be used to:

- (1) Secure the repayment of the Bonds;
- (2) Pay debt service, including principal, premium, if any, and interest on the Bonds; and
- (3) Finance, refinance, or reimburse the District or the Development Sponsor for costs of the Howard Theatre Redevelopment Project.

(e) If, at the end of any fiscal year of the District following the issuance of the Bonds authorized by this act, the value of cash and investments in the Howard Theatre Redevelopment Fund exceeds the amount of all payments authorized by this act and the Financing Documents, including required deposits into reserve funds, amounts to be set aside for additional series of Bonds issued under this act, and any coverage requirements associated with the sale of the Bonds, during the upcoming fiscal year, the excess shall be transferred to the General Fund of the District of Columbia, unless the District elects to use the excess to redeem Bonds prior to maturity.

Sec. 4. Creation of the Howard Theatre Redevelopment Project TIF Area.

There is hereby established the Howard Theatre Redevelopment Project TIF Area, which shall consist of the following real property:

- (1) Lot 90, Square 441 (with a street address of 620 T Street, N.W.);
- (2) Lot 807, Square 441 (with a street address of 1830 Wiltberger Street, N.W.);

and

- (3) The Howard Theatre Parking Garage.

Sec. 5. Bond authorization.

(a) The Council approves and authorizes the issuance of one or more series of Bonds in an aggregate amount not to exceed \$4 million to fund costs of the Howard Theatre Redevelopment Project, including Development Costs, the financing costs and costs of issuance, capitalized interest, establishment of debt service or other reserve funds related to the Bonds, and any other debt program-related costs as determined by the Chief Financial Officer.

(b) The Mayor may pay from the proceeds of the Bonds, the costs and expenses incurred by the District of Columbia in issuing and delivering the Bonds.

Sec. 6. Bond details.

(a) The Mayor may take any action reasonably necessary or appropriate in accordance with this act in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the Bonds of each series, including, but not limited to, determinations of:

(1) The final form, content, designation, and terms of the Bonds, including a determination that the Bonds may be issued in certificated or book-entry form;

(2) The principal amount of the Bonds to be issued and denominations of the Bonds;

(3) The rate or rates of interest or the method for determining the rate or rates of interest on the Bonds;

(4) The date or dates of issuance, sale, and delivery of, and the payment of interest on, the Bonds, and the maturity date or dates of the Bonds;

(5) The terms under which the Bonds may be paid, optionally or mandatorily redeemed, accelerated, tendered, called, or put for redemption, repurchase, or remarketing

before their respective stated maturities;

(6) Provisions for the registration, transfer, and exchange of the Bonds and the replacement of mutilated, lost, stolen, or destroyed Bonds;

(7) The creation of any reserve fund, sinking fund, or other fund with respect to the Bonds;

(8) The time and place of payment of the Bonds;

(9) Procedures for monitoring the use of the proceeds received from the sale of the Bonds to ensure that the proceeds are properly applied and used to accomplish the purposes of the Home Rule Act and this act;

(10) Actions necessary to qualify the Bonds under blue sky laws of any jurisdiction where the Bonds are marketed; and

(11) The terms and types of credit enhancement under which the Bonds may be secured.

(b) The Bonds shall contain a legend, which shall provide that the Bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve, the faith and credit or the taxing power of the District (other than the Available Tax Increment and any other taxes and fees allocated to the Howard Theatre Redevelopment Project Fund), do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(c) The Bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor, and attested by the Secretary of the District of Columbia by the Secretary's manual or facsimile signature.

(d) The official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the Bonds.

(e) The Bonds of any series may be issued in accordance with the terms of a trust instrument to be entered into by the District and a trustee or paying agent to be selected by the Mayor, and may be subject to the terms of one or more agreements entered into by the Mayor pursuant to section 490(a)(4) of the Home Rule Act.

(f) The Bonds may be issued at any time or from time to time in one or more issues and in one or more series.

(g) The Bonds are declared to be issued for essential public and governmental purposes. The Bonds, the interest thereon, and the income therefrom, and all funds pledged or available to pay or secure the payment of the Bonds, shall at all times be exempt from taxation by the District, except for estate, inheritance, and gift taxes.

(h) The District pledges, covenants, and agrees with the holders of the Bonds that, subject to the provisions of the Financing Documents, the District will not limit or alter the basis on which Available Real Property Tax Increment Revenues or Available Sales Tax Increment Revenues are received, allocated, applied, or pledged, will not impair the contractual obligations of the District to fulfill the terms of any agreement made with the holders of the Bonds, will not in any way impair the rights or remedies of the holders of the Bonds, and will

not modify, in any way, the exemptions from taxation provided for in this act, until the Bonds, together with interest thereon, and all costs and expenses in connection with any suit, action, or proceeding by or on behalf of the holders of the Bonds, are fully met and discharged. This pledge and agreement for the District may be included as part of the contract with the holders of the Bonds. This subsection shall constitute a contract between the District and the holders of the Bonds. To the extent that any acts or resolutions of the Council may be in conflict with this act, this act shall be controlling.

(i) Consistent with section 490(a)(4)(B) of the Home Rule Act and notwithstanding Article 9 of Subtitle I of Title 28 of the District of Columbia Official Code:

(1) A pledge made and security interest created in respect of the Bonds or pursuant to any related Financing Document shall be valid, binding, and perfected from the time the security interest is created, with or without physical delivery of any funds or any property and with or without any further action;

(2) The lien of the pledge shall be valid, binding, and perfected as against all parties having any claim of any kind in tort, contract, or otherwise against the District, whether or not such party has notice; and

(3) The security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to the security interest is recorded or filed.

Sec. 7. Issuance of the Bonds.

(a) The Bonds of any series may be sold at negotiated upon terms that the Mayor considers to be in the best interests of the District.

(b) The Bonds also may be issued as a TIF note to the Development Sponsor and may be held and used as security for debt incurred or to be incurred by the Development Sponsor, an agent of the Development Sponsor, or another party selected by the Development Sponsor.

(c) The Mayor or an Authorized Delegate may execute, in connection with each sale of the Bonds, offering documents on behalf of the District, may deem final any such offering document on behalf of the District for purposes of compliance with federal laws and regulations governing such matters, and may authorize the distribution of the documents in connection with the sale of the Bonds.

(d) The Mayor is authorized to deliver executed and sealed Bonds, on behalf of the District, for authentication, and, after the Bonds have been authenticated, to deliver the Bonds to the original purchasers of the Bonds upon payment of the purchase price.

(e) The Bonds shall not be issued until the Mayor receives an approving opinion from Bond Counsel as to the validity of the Bonds of such series and, if the interest on the Bonds is expected to be exempt from federal income taxation, the treatment of the interest on the Bonds for purposes of federal income taxation.

(f) The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), and subchapter III of Chapter 3 of Title 47 of the District of Columbia Official Code shall not apply to any contract that the

Mayor may from time to time enter into, or the Mayor may determine to be necessary or appropriate, for purposes of this act.

Sec. 8. Payment and security.

(a) Except as may be otherwise provided in this act, the principal of, premium, if any, on, and interest on, the Bonds shall be payable solely from proceeds received from the sale of the Bonds, income realized from the temporary investment of those proceeds, receipts and revenues realized by the District from the Howard Theatre Redevelopment Project Fund, income realized from the temporary investment of those receipts and revenues prior to payment to the Bond owners, and other funds that, as provided in the Financing Documents, may be made available to the District for payment of the Bonds from sources other than the District, all as provided for in the Financing Documents.

(b) There is further allocated to the payment of debt service on the Bonds the Available Increment. The Available Increment shall be subordinate to the allocation of Available Increment to the Budgeted Reserve (as defined in the Reserve Agreement and as these terms more fully described in the Reserve Agreement) to the extent that the Reserve Agreement continues to apply to the Available Increment and may be used for the payment of debt service on the Bonds to the extent that the revenues allocated in subsection (a) of this section are inadequate to pay debt service on the Bonds. The allocation of Available Increment authorized by this subsection shall be made in compliance with all existing contractual obligations of the District with respect to the Available Increment and shall terminate on the date on which all of the Bonds are paid or provided for and are no longer outstanding pursuant to their terms.

(c) Payment of the Bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the Bond owners of certain of its rights under the Financing Documents and Closing Documents to the trustee for the Bonds pursuant to the Financing Documents.

(d) The trustee or paying agent is authorized to deposit, invest, and disburse the proceeds received from the sale of the Bonds pursuant to the Financing Documents.

Sec. 9. Financing and Closing Documents.

(a) The Mayor is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents to which the District is a party that may be necessary or appropriate to issue, sell, and deliver the Bonds.

(b) The Mayor is authorized to execute, in the name of the District and on its behalf, the Financing Documents and any Closing Documents to which the District is a party by the Mayor's manual or facsimile signature.

(c) If required, the official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the Bonds, the Financing Documents, and the Closing Documents to which the District is a party.

(d) The Mayor's execution and delivery of the Financing Documents and the Closing

Documents shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content thereof.

(e) The Mayor is authorized to deliver the executed and sealed Financing Documents and Closing Documents, on behalf of the District, prior to or simultaneously with the issuance, sale, and delivery of the Bonds, and to ensure the due performance of the obligations of the District contained in the executed, sealed, and delivered Financing Documents and Closing Documents.

Sec. 10. Limited liability.

(a) The Bonds shall be special obligations of the District. The Bonds shall be without recourse to the District. The Bonds shall not be general obligations of the District, shall not be a pledge of, or involve, the faith and credit or the taxing power of the District (other than the Available Tax Increment and any other taxes or fees allocated to the Howard Theatre Redevelopment Project Fund), shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(b) The Bonds shall not give rise to any pecuniary liability of the District and the District shall have no obligation with respect to the purchase of the Bonds.

(c) No person, including, but not limited to any Bond owner, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or agents for monetary damages suffered as a result of the failure of the District to perform any covenant, undertaking, or obligation under this act, the Bonds, the Financing Documents, or the Closing Documents, or as a result of the incorrectness of any representation in or omission from the Financing Documents or the Closing Documents, unless the District or its elected or appointed officials, officers, employees, or agents have acted in a willful and fraudulent manner.

Sec. 11. District officials.

(a) Except as otherwise provided in section 10 (c), the elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the Bonds or be subject to any personal liability by reason of the issuance of the Bonds, or for any representations, warranties, covenants, obligations, or agreements of the District contained in this act, the Bonds, the Financing Documents, or the Closing Documents.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the Bonds, the Financing Documents, or the Closing Documents shall be valid and sufficient for all purposes notwithstanding the fact that the individual signatory ceases to hold that office before delivery of the Bonds, the Financing Documents, or the Closing Documents.

Sec. 12. Maintenance of documents.

Copies of the specimen Bonds and of the final Financing Documents and Closing Documents shall be filed in the Office of the Secretary of the District of Columbia.

Sec. 13. Information reporting.

Within 3 days after the Mayor's receipt of the transcript of proceedings relating to the issuance of the Bonds, the Mayor shall transmit a copy of the transcript to the Secretary to the Council.

Sec. 14. Authority of the Chief Financial Officer.

Notwithstanding any other provision of this act, any action taken by the Mayor to implement the provisions of this act shall be consistent with the Chief Financial Officer's authority under section 424d of the Home Rule Act.

Sec. 15. Fiscal impact of issuance.

For the purposes of determining the fiscal impact of this act, the Bonds shall be deemed to be issued under the authority of the Retail Incentive Act of 2004, effective September 8, 2004 (D.C. Law 15-185; D.C. Official Code § 2-1217.71 *et seq.*), as a project within the 7th Street/Georgia Avenue, N.W., Retail Priority Area established pursuant to the Great Streets Neighborhood Retail Priority Areas Approval Resolution of 2007, effective July 10, 2007 (Res. 17-257; 54 DCR 714).

Sec. 16. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 17. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved

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December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia