

AN ACT

*Codification
District of
Columbia
Official Code*

2001 Edition

2005 Fall
Supp.

West Group
Publisher

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To authorize and provide for the issuance, sale, and delivery of District of Columbia qualified zone academy revenue bonds in one or more series pursuant to a plan of finance for the benefit of the District of Columbia public schools and public charter schools and to secure the payment of the principal on the revenue bonds.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as "Qualified Zone Academy Revenue Bond Project Forward Commitment Approval Act of 2005".

Sec. 2. Definitions.

Note,
§ 47-340.01

For the purpose of this act, the term:

(1) "Authorized Delegate" means the Mayor, the Chief Financial Officer, or the Deputy Mayor for Planning and Economic Development, or any officer or employee of the Executive Office of the Mayor to whom the Mayor has delegated, or to whom the foregoing individuals have subdelegated, any of the Mayor's functions under this act pursuant to section 422(6) of the Home Rule Act.

(2) "Available Real Property Tax Revenues" means the revenues resulting 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 thereon, exclusive of revenues that are or will be pledged pursuant to sections 481 and 490 of the Home Rule Act, and payments in lieu of such taxes.

(3) "Bond Counsel" means a firm or firms of attorneys designated as District bond counsel from time to time by the Mayor.

(4) "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.

(5) "Chief Financial Officer" means the Chief Financial Officer of the

District of Columbia.

(6) “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.

(7) “Eligible project” means the projects in the area of elementary, secondary or college and university facilities undertaken at a Qualifying School which are subject to financing pursuant to section 490 of the Home Rule Act as a qualified zone academy bond within the meaning of section 1397E(d)(1) of the Internal Revenue Code of 1986, approved August 5, 1997 (111 Stat. 821; 26 U.S.C. § 1397E(d)(1)).

(8) “Financing Documents” means the documents other than Closing Documents that relate to the financing, refinancing or reimbursement of the costs of eligible projects to be effected through the issuance, sale, and delivery of the bonds, including any offering document, and any required supplements to any such documents.

(9) “Home Rule Act” means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-201.01 *et seq.*).

(10) “Issuance Costs” means all fees, costs, charges, and expenses paid or incurred in connection with the authorization, preparation, printing, issuance, sale, and delivery of the bonds, including, but not limited to, underwriting, legal, accounting, rating agency, and all other fees, costs, charges, and expenses incurred in connection with the development and implementation of the Financing Documents, the Closing Documents, and those other documents necessary or appropriate in connection with the authorization, preparation, printing, issuance, sale, marketing, and delivery of the bonds, together with financing fees, costs, and expenses, including program fees and administrative fees charged by the District, fees paid to financial institutions and insurance companies, initial letter of credit fees, compensation to financial advisors and other persons (other than full-time employees of the District) and entities performing services on behalf of or as agents for the District.

(11) “QZAB Collection Agent” means any bank, trust company, or national banking association with requisite trust powers and with an office in the District designated to serve in this capacity by the Mayor.

(12) “QZAB Collection Agreement” means the collection agreement between the District and the QZAB Collection Agent authorized in section 6.

(13) “QZAB Pledged Account” means one or more accounts created and maintained by the QZAB Collection Agent for the benefit of the owners of a series of the bonds and funded by the deposit of some portion of Available Real Property Tax Revenues and other funds in amounts as determined by the Mayor in the QZAB Collection Agreement.

(14) “Qualifying School” means any public school or public charter school

the Council approves, by resolution, for financing, refinancing or reimbursement of the costs of its eligible project pursuant to the provisions of section 490 of the Home Rule Act and this act.

Sec. 3. Bond authorization.

(a) Pursuant to section 490 of the Home Rule Act, the Council authorizes the issuance of bonds.

(b) One or more series of bonds in multiple separate series may be issued for the purpose of assisting in financing, refinancing, and reimbursing the costs of eligible projects. Refunding bonds may be issued to refund bonds. The aggregate principal amount of bonds, other than refunding bonds, shall not exceed the amount authorized under section 1397E of Internal Revenue Code of 1986, approved August 5, 1997 (111 Stat. 821; 26 U.S.C. § 1397E).

(c) The Mayor is authorized to take any action necessary or appropriate in accordance with this act in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the bonds pursuant to section 490 of the Home Rule Act, including:

- (1) Approving the issuance, sale, and delivery of the bonds;
- (2) Making loans, grants or allocating funds, purchasing any mortgage, note, or other security, or purchasing, leasing, or selling of any property for the purpose of financing, refinancing, or reimbursing the costs of an eligible project;
- (3) Entering into any agreement concerning the acquisition, use, or disposition of any available revenues, assets, or property;
- (4) Entering into such Financing Documents as may be necessary or appropriate for the issuance, security, and administration of the bonds, the investment of proceeds and moneys in the accounts provided for in, or pursuant to this act, the application of the proceeds of the bonds and the moneys and investments in such accounts, and for the purposes provided in this act, including Financing Documents with Qualifying Schools;
- (5) Setting forth the requirements for an eligible project to comply with the applicable eligibility requirements pursuant to this act in an agreement between the District and the District of Columbia Board of Education with respect to public schools or each Qualifying School with respect to public charter schools;
- (6) Establishing any fund with respect to the bonds as required by the Financing Documents; and
- (7) Refunding the bonds through the issuance of refunding bonds.

Sec. 4. Bond details.

(a) The Mayor is authorized to 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 date or dates of issuance, sale, and delivery of the bonds, and the maturity date or dates of the bonds;

(4) 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;

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

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

(7) The time and place of payment of the bonds;

(8) Procedures for monitoring the use of the proceeds received from the sale of the bonds to ensure that the proceeds are properly applied to one or more Qualifying Schools and used to accomplish the purposes of this act;

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

(10) 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, 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. The Mayor's execution and delivery of the bonds shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the bonds.

(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 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.

Sec. 5. Sale of the bonds.

(a) The bonds of any series may be sold at negotiated or competitive sale at, above, or below par, to one or more persons or entities, and upon terms that the Mayor considers to be in the best interests of the District.

(b) 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.

(c) The Mayor is authorized to deliver the 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.

(d) The bonds shall not be issued until the Mayor receives an approving opinion from Bond Counsel as to the validity of the bonds and the eligibility of the bonds to be qualified zone academy bonds within the meaning of section 1397E(d)(1) of the Internal Revenue Code of 1986, approved August 5, 1997 (111 Stat. 821; 26 U.S.C. § 1397E(d)(1)).

(e) 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 the Financial Institutions Deposit and Investment Amendment Act of 1998, effective March 18, 1998 (D.C. Law 12-56; D.C. Official Code § 47-351.01 *et seq.*), shall not apply to whatever contract the Mayor may from time to time enter, or the Mayor may determine to be necessary or appropriate, for purposes of this act.

Sec. 6. Payment and security.

(a) The District is hereby authorized to pledge the funds on deposit in the QZAB Pledged Account as security for the payment of principal of, and premium, if any, on the bonds.

(b) The bonds shall be payable solely from the funds on deposit in the QZAB Pledged Account and income realized from the temporary investment thereof, and other moneys as provided in the Financing Documents.

(c) The funds for the payment of the bonds shall be deposited with the QZAB Collection Agent pursuant to the QZAB Collection Agreement and used only in accordance with the terms of the agreement.

(d) The Mayor may, without regard to any act or resolution of the Council now existing,

designate a QZAB Collection Agent under the QZAB Collection Agreement. The Mayor may execute and deliver the QZAB Collection Agreement, on behalf of the District and in the Mayor's official capacity, containing the terms that the Mayor considers necessary or appropriate to carry out the purposes of this act.

(e) 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, including a security interest in certain collateral, if any, to the trustee for the bonds pursuant to the Financing Documents.

(f) The trustee is authorized to deposit, invest, and disburse the proceeds received from the sale of the bonds pursuant to the Financing Documents.

Sec. 7. 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. Each of the Financing Documents and each of the Closing Documents to which the District is not a party shall be approved, as to form and content, by the Mayor.

(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 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 to which the District is a party shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the executed Financing Documents and the executed Closing Documents.

(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. 8. Determination of eligible projects.

(a) The Mayor is authorized to establish the process and criteria for the determination of which public schools or public charter schools will be presented to the Council for approval as a Qualifying School.

(b) If the Mayor determines to present a public school or public charter school for

Council approval as a Qualifying School, the Mayor shall enter into negotiations with the District of Columbia Board of Education with respect to public schools or with the respective public charter school with respect to public charter schools to determine the amount of bond proceeds and Available Real Property Tax Revenues to be allocated and the terms and conditions of the agreement between the District and the District of Columbia Board of Education or the Qualifying School.

(c) The Mayor shall transmit to the Council a proposed resolution approving the issuance of a series of bonds and identifying the Qualifying Schools, the amount of the project or projects eligible to be financed with the bond proceeds, and the amount of Available Real Property Tax Revenues to be allocated to the Bonds.

Sec. 9. Allocation of Available Real Property Tax Revenues.

Within 60 days after the approval of a resolution specified in section 8(c), the Chief Financial Officer shall provide for the allocation of Available Real Property Tax Revenues for the series of the bonds. The Chief Financial Officer shall transfer collected Available Real Property Tax Revenues to the appropriate QZAB Pledged Account in the amounts and at the times specified in the QZAB Collection Agreement and the Financing Documents. Monies held or to be held in a QZAB Pledged Account may be used to pay Issuance Costs associated with the bonds, to pay the principal of the series of the Bonds, and to pay other amounts authorized by this act. The QZAB Pledged Accounts shall be non-lapsing.

Sec. 10. Bond security.

(a) The bonds issued pursuant to this act are declared to be issued for essential public and governmental purposes.

(b) The District does hereby pledge to and covenant and agree with the holders of any bonds that, subject to the provisions of the Financing Documents, the District will not limit or alter the basis upon which Available Real Property Tax Revenues are allocated, applied, and pledged pursuant to this act; 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 District taxation provided for in this act, until the bonds, together with interest thereon, are fully met and discharged. To the extent that any acts or resolutions of the Council may be in conflict with this act, this act shall be controlling.

(c) It is the intention of the Council that a pledge made in respect of the bonds shall be valid and binding from the time the Available Real Property Tax Revenues or other funds are deposited in the QZAB Pledged Account; that when deposited in the QZAB Pledge Account, the money or property so pledged and deposited shall immediately be subject to the lien of the pledge without physical delivery or further act; and that the lien of the pledge shall be valid and

binding as against all parties having any claim of any kind against the District, whether or not the parties have notice of the lien. This act, any resolution adopted pursuant to this act, any trust agreement, or any other instrument by which a pledge is created do not need to be recorded or filed under any provisions of the Uniform Commercial Code to be valid, binding, and effective against the parties.

Sec. 11. Authorized delegation of authority.

To the extent permitted by District and federal laws, the Mayor may delegate to any Authorized Delegate the performance of any function authorized to be performed by the Mayor under this act.

Sec. 12. 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, 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) Nothing contained in the bonds, in the Financing Documents, or in the Closing Documents shall create an obligation on the part of the District to make payments with respect to the bonds from sources other than those listed for that purpose in section 7.

(c) All covenants, obligations, and agreements of the District contained in this act, the bonds, and the executed, sealed, and delivered Financing Documents and Closing Documents to which the District is a party, shall be considered to be the covenants, obligations, and agreements of the District to the fullest extent authorized by law, and each of those covenants, obligations, and agreements shall be binding upon the District, subject to the limitations set forth in this act.

(d) 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. 13. District officials.

(a) Except as otherwise provided in section 12(d), 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. 14. 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. 15. 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. 16. Disclaimer.

(a) The issuance of the bonds is in the discretion of the District. Nothing contained in this act, the bonds, the Financing Documents, or the Closing Documents shall be construed as obligating the District to issue any bonds for the benefit of the Qualifying Schools or to participate in or assist the Qualifying Schools in any way with financing, refinancing, or reimbursing the costs of eligible projects.

(b) The District reserves the right to issue the bonds in the order or priority it determines in its sole and absolute discretion. The District gives no assurance and makes no representations that any portion of any limited amount of bonds or other obligations will be reserved or will be available at the time of the proposed issuance of the bonds.

Sec. 17. Severability.

If any particular provision of this act, or the application thereof to any person or circumstance is held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby. If any action or inaction contemplated under this act is determined to be contrary to the requirements of applicable law, such action or inaction shall not be necessary for the purpose of issuance of the bonds, and the validity of the bonds shall not be adversely affected.

Sec. 18. Transmittal.

The Secretary to the Council shall transmit a copy of this act, upon its adoption, to the Mayor.

Sec. 19. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report 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. 788; D.C. Official Code § 1-206.02(c)(3)).

Sec. 20. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia