

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

2001 Edition

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To provide for payments in lieu of taxes for the purpose of financing any project which qualifies under section 490 of the Home Rule Act or for any other use which will be deemed to contribute to the health, education, safety, or welfare of, or the creation or preservation of jobs for, residents of the District, or to economic development of the District, including the development, redevelopment, and expansion of business, commerce, housing, or tourism, or the provision of necessary or desirable public infrastructure improvements; to amend the District of Columbia Deed and Recordation Tax Act to ensure the collection of recordation taxes on properties exempted from property tax under agreements entered into pursuant to this legislation; to amend section 47-902 of the District of Columbia Official Code to ensure there is the collection of deed transfer taxes on properties exempted from property tax under agreements entered into pursuant to this legislation; and to amend section 47-1002 of the District of Columbia Official Code to exempt from real property taxation real property, including the land, any improvements thereon, and any possessory interests therein, for which payments in lieu of taxes are being made under a PILOT agreement.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Payments In Lieu of Taxes Act of 2004".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Bonds" means any bonds, notes, or other instruments issued by the District pursuant to section 490 of the Home Rule Act and secured by payments in lieu of taxes or other security authorized by this act.

(2) "Development costs" means all costs and expenses relating to the development, redevelopment, purchase, acquisition, protection, financing, construction, expansion, reconstruction, restoration, rehabilitation, renovation and repair, and the furnishing, equipping, and operating of a project, including:

(A) The purchase or lease expense for land, structures, real or personal property, rights, rights-of-way, roads, franchises, easements, and interests acquired or used for,

or in connection with, the project and costs of demolishing or removing buildings or structures on land so acquired;

(B) Expenses incurred for utility lines, structures, or equipment charges;

(C) Interest prior to, and during, construction, and for a period as may be necessary for the operation of a project;

(D) Provisions for reserves for principal and interest for extensions, enlargements, additions, improvements, and extraordinary repairs and replacements;

(E) Expenses incurred for architectural, engineering, energy efficiency technology, design and consulting, financial, and legal services;

(F) Fees for letters of credit, bond insurance, debt service reserve insurance, surety bonds, or similar credit or liquidity enhancement instruments;

(G) Costs and expenses associated with the conduct and preparation of specification and feasibility studies, plans, surveys, historic structure reports, and estimates of expenses and revenues;

(H) Expenses necessary or incident to issuing Bonds and determining the feasibility and the fiscal impact of financing the acquisition, construction, or development of a project; and

(I) The provision of a proper allowance for contingencies and initial working capital.

(3) “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.*).

(4) “Owner” means, with respect to the PILOT parcel, the owner of a fee simple or a possessory interest.

(5) “Payments in lieu of taxes” or “PILOT” means payments made with respect to a PILOT parcel for a PILOT period in lieu of real property taxes.

(6) “PILOT agreement” means a written agreement between the District and the owner of a PILOT parcel providing for payments in lieu of taxes for the purpose of financing one or more projects or for other authorized uses as provided under this act.

(7) “PILOT parcel” means a tax lot or lots (or a portion thereof) exempt from the payment of real property tax in accordance with the provisions of this act and D.C. Official Code § 47-1002(29).

(8) “PILOT period” means the period during which a PILOT parcel (or a portion thereof) will be exempt from the payment of real property tax.

Sec. 3. PILOT agreements.

(a)(1)(A) Subject to approval by the Council under section 4(a) or (b), the Mayor may enter into a PILOT agreement for the purpose of financing the development costs of one or more projects which qualify under section 490 of the Home Rule Act. Except as otherwise provided in the PILOT agreement, payments in lieu of taxes made pursuant to the PILOT agreement may be assigned or pledged in connection with the Bonds authorized to be issued

under this act.

(B) As an inducement to enter into the PILOT agreement, a portion of the payments in lieu of taxes pursuant to the PILOT agreement may be used in accordance with the terms of the PILOT agreement for any other use which will be deemed to contribute to the health, education, safety, or welfare of, or the creation or preservation of jobs for, residents of the District, or to economic development of the District, including the development, redevelopment, and expansion of business, commerce, housing, or tourism, or the provision of necessary or desirable public infrastructure improvements.

(2) A PILOT agreement pursuant to this subsection shall include:

- (A) The description of the PILOT parcel;
- (B) The date, or the manner of determining the date, on which the exemption from real property tax for the PILOT parcel shall commence and terminate;
- (C) The party who shall be obligated to make payments in lieu of taxes;
- (D) The requirement that payments in lieu of taxes shall be paid in accordance with the PILOT agreement;
- (E) The project (or projects) to be financed with the proceeds of Bonds;
- (F) The terms and conditions of the issuance of the Bonds to finance the project (or projects) and the application of the Bond proceeds, including the conditions which must be satisfied prior to the issuance of the Bonds and the uses and application of the Bond proceeds; and

(G) If a portion of the payments in lieu of taxes pursuant to the PILOT agreement may be used other than for the purpose of financing any project which qualifies under section 490 of the Home Rule Act:

- (i) The portion of payments in lieu of taxes which shall secure the Bonds;
- (ii) The portion of payments in lieu of taxes shall be applied to the other use; and
- (iii) The application of the portion of payments in lieu of taxes set forth in sub-subparagraph (ii) of this subparagraph.

(b)(1) Subject to approval by the Council under section 4(b), the Mayor may enter into a PILOT agreement for any other use which will be deemed to contribute to the health, education, safety, or welfare of, or the creation or preservation of jobs for, residents of the District, or to economic development of the District, including the development, redevelopment, and expansion of business, commerce, housing, or tourism, or the provision of necessary or desirable public infrastructure improvements.

(2) A PILOT agreement pursuant to this subsection shall include:

- (A) The description of the PILOT parcel;
- (B) The date, or the manner of determining the date, on which the exemption from real property tax for the PILOT parcel shall commence and terminate;
- (C) The party who shall be obligated to make the payments in lieu of taxes;

(D) The requirement that the payments in lieu of taxes shall be paid in accordance with the PILOT agreement; and

(E) The use for which the payments in lieu of taxes shall be applied, including a detailed delineation of the expenditures to be made.

(c) Notwithstanding any of the provisions of this act, a PILOT agreement shall not result in a reduction of the total assessed value of real property subject to taxation under Chapter 8 of Title 47 of the District of Columbia Official Code.

(d) A PILOT Agreement shall be an encumbrance upon, and run with, the PILOT Parcel. A memorandum of the PILOT Agreement shall be recorded in the land records of the District.

Sec. 4. Approval by the Council.

(a)(1) The issuance of Bonds, including the execution of the PILOT agreement and other financing agreements and documents, under section 3(a)(1)(A) shall be subject to the approval of the Council. The Mayor shall transmit to the Council a proposed resolution to approve the issuance of Bonds, the maximum amount of the Bonds to be issued, and the PILOT agreement for a 60-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. The proposed resolution shall include:

(A) The terms of the Bonds to be issued;

(B) The terms of the PILOT agreement, including a statement that the proposed form of the PILOT agreement has been transmitted to the Council;

(C)(i) The amount of the payments in lieu of taxes; and

(ii) The amount of the real property taxes which would be paid in the absence of the PILOT agreement if the proposed project (or projects) were completed;

(D) The public benefits to be derived from the project (or projects) to be financed by the Bonds and the likelihood that project (or projects) would be completed in the absence of the approval of the transaction;

(E) If a portion of the payments in lieu of taxes pursuant to the PILOT agreement may be used other than for the purpose of financing a project which qualifies under section 490 of the Home Rule Act, the public benefits to be derived from the use and the likelihood that project would be completed in the absence of the approval of the transaction;

(F)(i) Whether conventional, or alternative forms of, financing are available;

(ii) Whether best efforts have been made to secure conventional, or alternative forms of, financing; and

(iii) Why conventional, or alternative forms of, financing is impracticable or undesirable;

(G) If a project to be financed by the Bonds (which, for the purposes of this paragraph, shall include an ownership interest in property which will benefit from the project to be financed by the Bonds) or other use is to be funded or financed is to be operated or held for profit:

(i) Whether the District will have an ownership interest or profits participation; and

(ii) If the District will not have an ownership interest or profits participation, why an ownership interest or profits participation is impracticable or undesirable; and

(H) A financial analysis prepared by the Office of the Chief Financial Officer, which financial analysis shall consist of the following:

(i) A report delineating the amount of the payments in lieu of taxes, including the amount of the real property taxes which would be paid in the absence of the PILOT agreement, if the proposed project (or projects) were completed;

(ii) The effect of the PILOT Agreement on the total assessed value of real property subject to taxation under Chapter 8 of Title 47 of the District of Columbia Official Code; and

(iii) The effect of the PILOT Agreement on the budget and financial plan.

(2) If the Council does not approve or disapprove the transaction within the 60-day review period, the proposed resolution shall be deemed disapproved.

(3) If the proposed terms of the transaction shall change in any material respect, including the terms of the proposed PILOT agreement which was transmitted to the Council, a new proposed resolution which complies with paragraph (1) of this subsection shall be submitted to the Council for approval in accordance with this section.

(b)(1) The execution of the PILOT agreement, and any related agreements and documents, pursuant to section 3(a)(1)(B) or (b) shall be subject to the approval of the Council by act.

(2) The act shall include the following findings:

(A) The terms of the PILOT agreement, including a statement that the proposed form of the PILOT agreement has been transmitted to the Council;

(B) The terms of any other agreement or document, or any subsidy or assistance which will be provided, in connection with the PILOT agreement or proposed use;

(C)(i) The amount of the payments in lieu of taxes; and

(ii) The amount of the real property taxes which would be paid in the absence of the PILOT agreement if the expenditures for the proposed use were made (and the proposed project (or projects) for which a subsidy or assistance will be received, if any, were completed);

(D) The public benefits to be derived from the proposed use (and any project (or projects) for which a subsidy or assistance will be received) and the likelihood that the proposed project would be completed (and the project (or projects) for which a subsidy or assistance will be received, if any, would be completed) in the absence of the approval of the transaction;

(E)(i) Whether best efforts have been made to secure other means of achieving the proposed use; and

(ii) Why the other means of achieving the proposed use is impracticable or undesirable;

(F) If a proposed use (which, for the purposes of this paragraph, shall include an ownership interest in property which will benefit from the proposed use (or a project for which a subsidy or assistance will be received, if any)) is to be operated or held for profit:

(i) Whether the District will have an ownership interest or profits participation; and

(ii) If the District will not have an ownership interest or profits participation, why an ownership interest or profits participation is impracticable or undesirable; and

(G) A financial analysis prepared by the Office of the Chief Financial Officer, which financial analysis shall consist of the following:

(i) A report delineating the amount of the payments in lieu of taxes, including the amount of the real property taxes which would be paid in the absence of the PILOT agreement, if the proposed project (or projects) were completed;

(ii) The effect of the PILOT Agreement on the total assessed value of real property subject to taxation under Chapter 8 of Title 47 of the District of Columbia Official Code; and

(iii) The effect of the PILOT Agreement on the budget and financial plan.

(3) If the proposed terms of the transaction shall change in any material respect, including the terms of the proposed PILOT agreement which was transmitted to the Council, a new act which complies with paragraph (1) of this subsection shall be required to approve the transaction in accordance with this section.

Sec. 5. Payment and collection of payments in lieu of taxes.

(a) The owner of the PILOT parcel shall make the payments in lieu of taxes to the District at the same time and in the same manner as real property taxes under Chapter 8 of Title 47 of the District of Columbia Official Code; provided, that in connection with issuance of Bonds, the PILOT may be paid for the benefit of the holders of the Bonds to the bond trustee or other persons as provided in the financing documents for the purposes set forth therein; provided further, that if such provisions are included in the financing documents, the PILOT shall constitute a lien against the property on which the PILOT was assessed to the same extent as a real property tax lien and shall be deemed to be a tax within the meaning of 11 U.S.C. §§ 502(b), 505, and 507(a)(8)(B).

(b) Payments in lieu of taxes shall be subject to the same penalty and interest provisions as unpaid real property tax under the Chapter 8 of Title 47 of the District of Columbia Official Code.

(c) A lien for unpaid payments in lieu of taxes, including penalty and interest, shall attach to the PILOT parcel in the same manner and with the same priority as a lien for delinquent real property tax under Chapter 13A of Title 47 of the District of Columbia Official

Code.

(d) The unpaid payments in lieu of taxes may be collected in accordance with Chapter 13A of Title 47 of the District of Columbia Official Code.

Sec. 6. Bond authorization.

The issuance of Bonds in accordance with this act is authorized. The aggregate principal amount of Bonds which may be issued under this act shall not exceed \$250 million.

Sec. 7. Details of Bonds.

(a) Subject to the terms of the resolution authorizing issuance of the Bonds, the Mayor may take any action necessary or appropriate in accordance with this act in connection with the preparation, execution, issuance, sale, delivery, and payment of Bonds, including determinations of:

- (1) The final form, content, designation, and terms of the Bonds, including a determination that the Bonds may be issued in certificate 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 each series of 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 they are properly applied to the project and used to accomplish the purposes of this act; and
- (10) Actions necessary to qualify the Bonds under blue sky laws of any jurisdiction where the Bonds are marketed.

(b) The Bonds shall contain a legend, which shall provide that the Bonds shall be special obligations of the District, shall be nonrecourse to the District, shall not be a pledge of, and shall not involve, the faith and credit or the taxing power of the District (other than the PILOT or any other security authorized by this act), 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.

(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. 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 same.

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

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

Sec. 8. Security for Bonds.

(a) A series of Bonds may be secured by a trust agreement or trust indenture between the District and a corporate trustee having trust powers, or secured by a loan agreement or other instrument giving power to a corporate trustee by means of which the District may do the following:

(1) Make and enter into any and all covenants and agreements with the trustee or the holders of the Bonds that the District may determine to be necessary or desirable covenants and agreements as to:

(A) The application, investment, deposit, use, and disposition of the proceeds of Bonds and the other monies, securities, and property of the District;
(B) The assignment by the District of its rights in any agreement;
(C) Terms and conditions upon which additional Bonds of the District may be issued;

(D) Providing for the appointment of a trustee to act on behalf of bondholders and abrogating or limiting the rights of the bondholders to appoint a trustee; and

(E) Vesting in a trustee for the benefit of the holders of Bonds, or in the bondholders directly, such rights and remedies as the District shall determine to be necessary or desirable;

(2) Pledge, mortgage or assign monies, agreements, property, or other assets of the District, either presently in hand or to be received in the future, or both;

(3) Provide for bond insurance and letters of credit, or otherwise enhance the credit of and security for the payment of the Bonds; and

(4) Provide for any other matters of like or different character that in any way affect the security for or payment of the Bonds.

(b) The Bonds are declared to be issued for essential public and governmental purposes. The Bonds and the interest thereon and the income therefrom, and all monies 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.

(c) 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 revenues pledged to secure the Bonds or the basis on which such revenues are collected or allocated, 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, and will not modify in any way, with respect to the Bonds, the exemptions from taxation provided for in this act, until the Bonds, together with interest thereon, with interest on any unpaid installment of interest and all costs and expenses in connection with any suit, action or proceeding by or on behalf of the holders, are fully met and discharged. This pledge and agreement of the District may be included as part of the contract with the holders of any of its Bonds. This subsection shall constitute a contract between the District and the holders of the Bonds authorized by this act. To the extent that any acts or resolutions of the Council may be in conflict with this act, this act shall be controlling.

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

(1) A pledge made and security interest created in respect of any 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. 9. Default.

If there shall be a default in the payment of the principal of, or interest on, any Bonds of a series after the principal or interest shall become due and payable, whether at maturity or upon call for redemption, or if the District shall fail or refuse to carry out and perform the terms of any agreement with the holders of any of the Bonds, the holders of the Bonds, or the trustee appointed to act on behalf of the holders of the Bonds, may, subject to the provisions of the financing documents, do the following:

(1) By action, writ, or other proceeding, enforce all rights of the holders of the Bonds, including the right to require the District to carry out and perform the terms of any agreement with the holders of the Bonds or its duties under this act;

(2) By action, require the District to account as if it were the trustee of an express trust;

(3) By action, petition to enjoin any acts or things that may be unlawful or in violation of the rights of the holders of the Bonds; and

(4) Declare all the Bonds due and payable, whether or not in advance of maturity and, if all the defaults be made good, annul the declaration and its consequences.

Sec. 10. Liability.

(a) The members of the Council, the Mayor, or any person executing Bonds shall not be liable personally on the Bonds by reason of the issuance thereof.

(b) Notwithstanding any other provision of this act, the Bonds shall not be general

obligations of the District and shall not be in any way a debt or liability of the District within the meaning of any debt or other limit prescribed by law. The full faith and credit or the general taxing power of the District (other than the PILOT or other security authorized under this act) shall not be pledged to secure the payment of any Bonds.

Sec. 11. Prior legislation.

This act shall not adversely affect any actions taken, agreements entered into, pledge of security made, or Bonds issued prior to the effective date of this act.

Sec. 12. Section 302(3) of the District of Columbia Deed Recordation Tax Act, approved March 2, 1962 (76 Stat. 11; D.C. Official Code § 42-1102(3)), is amended by striking the phrase “for recordation;” and inserting the phrase “for recordation; provided further, that this exemption shall not apply to property which is exempt under § 47-1002(29);”

Amend
§ 42-1102

Sec. 13. Title 47 of the D.C. Official Code is amended as follows:

(a) Section 47-902(3) is amended by striking the phrase “District of Columbia);” and inserting the phrase “District of Columbia); provided further, that this exemption shall not apply to property which is exempt under § 47-1002(29);”

Amend
§ 47-902

(b) Section 47-1002 is amended as follows:

Amend
§ 47-1002

(1) Paragraph (27) is amended by striking the phrase “; and” at the end of the paragraph and inserting a semi-colon in its place.

(2) Paragraph (28) is amended by striking the period at the end of the paragraph and inserting the phrase “; and” in its place.

(3) A new paragraph (29) is added to read as follows:

“(29) Except as provided in the PILOT Agreement, property, including land, any improvements thereon, and any possessory interests therein, for which payments in lieu of taxes are being made under a PILOT agreement pursuant to the Payments in Lieu of Taxes Act of 2004, passed on 2nd reading on December 7, 2004 (Enrolled version of Bill 15-882), during the term of the PILOT agreement.”.

Sec. 14. 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. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 15. 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

ENROLLED ORIGINAL

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