ENROLLMENT(S)

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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 12-143

"Tax Increment Financing Authorization Act of 1998

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198 "the Act", the Council of the District of Columbia adopted Bill No. 12-498 on first and second readings, March 3, 1998 and April 7, 1998, respectively. Following the signature of the Mayor on May 4, 1998, pursuant to Section 404(e) of "the Act", and was assigned Act No. 12-354 and published in the June 12, 1998, edition of the D.C. Register (Vol. 45 page 3724) and transmitted to Congress on June 8, 1998 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 12-143, effective September 11, 1998.

LINDA W. CROPP
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

June	9,10,11,12,15,16,17,18,19,22,23,24,25
July	14,15,16,17,20,21,22,23,24,27,28,29,30,31,
Sept.	8,9,10

ENROLLED ORIGINAL

AN ACT

D.C. ACT 12-354

Codification District of Columbia Code **1999 Supp.**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 4, 1998

To authorize tax increment financing as a development tool to encourage economic development in the District.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Tax Increment Financing Authorization Act of 1998".

New Subchapter VII, Chapter 22, Title 1

Sec. 2. Definitions.

New Section 1-2293.1

For the purposes of this act, the term:

(1) "Assessor" means the Office of Taxation and Revenue, or such other person or office responsible for assessing the value of real property.

(2) "Authority" means the District of Columbia Financial Responsibility and Management Assistance Authority.

(3) "Available real property tax revenues" means the revenues resulting from the imposition of the tax provided for in Chapter 8 of Title 47 of the District of Columbia Code and payments in lieu of real property taxes, exclusive of the special tax provided for in section 481 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 807; D.C. Code § 47-331) and pledged to the payment of general obligation indebtedness of the District.

(4) "Available sales tax revenue" means the revenues resulting from the imposition of the tax imposed pursuant to Chapter 20 of Title 47 of the District of Columbia 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. Code § 9-809), and the portion thereof required to be deposited in the Metrorail/Metrobus Account pursuant to section 2(b)(2)(A) of the Stable and Reliable Source of Revenues for WMATA Act of 1982, effective April 30, 1982 (D.C. Law 4-103; D.C. Code § 1-2466(b)(2)(A)).

(5) "Capital City Business and Industrial Area" means the area beginning at the intersection of New York Avenue, N.E., and 9th Street, N.E., to Montana Avenue, N.E.; north on Montana Avenue, N.E., to W Street N.E.; west on W Street, N.E., to 13th Street, N.E.; northwest on 13th Street, N.E., to Brentwood Road, N.E.; southwest on Brentwood Road, N.E., to 9th Street, N.E.; south on 9th Street, N.E., to New York Avenue, N.E.

(6) "Capital City Market Area" means the area beginning at the intersection of Florida Avenue, N.E., and North Capitol Street; southeast on Florida Avenue, N.E., to 12th Street, N.E.; south on 12th Street, N.E., to H Street, N.E.; west on H Street, N.E., to 9th Street, N.E.; north on 9th Street, N.E., to Florida Avenue, N.E.

(7) "Capital improvement" means the same under generally accepted accounting principles.

(8) "CFO" means the Chief Financial Officer of the District as established by section 424(a) of the District of Columbia Home Rule Act, approved April 17, 1995 (109 Stat. 142; D.C. Code § 47-317.1(a)).

(9) "Collector" means the District of Columbia Treasurer, or such other person or office as is from time to time responsible for the collection of real property taxes and sales taxes.

(10) "Comprehensive Plan" means the Comprehensive Plan of the District of Columbia adopted by the Council, as amended from time to time.

(11) "Current assessed value" means for any tax year, the assessed value of each lot of taxable real property within a TIF area as then recorded on the land records of the District as of January preceding the tax year.

(12) "DD Regulations" means the Downtown Development District Regulations, 11 DCMR §1700 *et seq.* (1995).

(13) "Development costs" means any or all of the following costs either actual or estimated for a development project:

(A) Costs of studies, surveys, plans and specifications, including professional service costs for architectural, accounting, engineering, legal, marketing, financial and planning services;

(B) Property assembly costs, including acquisition or leasing of land and other property, real or personal, or rights or interests in property, demolition of buildings and other structures, remediation of environmental hazards, and the clearing and grading of land;

(C) Costs of preservation, rehabilitation, reconstruction, repair or remodeling of existing public or private buildings, structures and fixtures;

(D) Costs of any public works or improvements undertaken by, or at the direction of the District or any other governmental unit;

(E) Costs of parking and transportation facilities, stadia, museums, other cultural institutions, educational institutions, retail, entertainment and recreation facilities, telecommunications infrastructure, public plazas, malls, pedestrian walkways and parks that are owned by the District or any other governmental unit or are privately owned but available for use by the general public;

(F) Costs of construction of new public or privately owned housing units and community facilities and costs of preservation, rehabilitation, reconstruction, repair or remodeling of public and private buildings for use as housing units and community facilities;

(G) Costs of maintaining and operating public works and improvements;

(H) Financing costs, including but not limited to all expenses related to the issuance of TIF bonds, interest on TIF bonds, TIF bond reserves, credit enhancements, and costs related to the performance by the District government of its covenants and agreements with the holders of its TIF bonds;

(I) Working capital and working capital reserves directly related to the development of a project;

(J) Administrative costs of the District in issuing TIF bonds pursuant to this act; and

(K) Relocation, job training, and education costs.

(14) "Development sponsor" means any organization or person that seeks to undertake, or undertakes, a project.

(15) "District" means the District of Columbia.

(16) "Downtown area" means the area of the District addressed by the Downtown Interactive Task Force, being the area with the boundary commencing at the intersection of Pennsylvania Avenue, N.W. and 12th Street, N.W.; north on 12th Street, N.W., to N Street, N.W.; east on N Street, N.W., to New Jersey Avenue, N.W.; southeast on New Jersey Avenue, N.W., to 2nd Street, N.W.; south on 2nd Street, N.W., to Pennsylvania Avenue, N.W.; and northwest on Pennsylvania Avenue, N.W., to the point of commencement.

(17) "Downtown Report" means the Interactive Downtown Task Force Report.

(18) "Eligible project" means a project that has been certified by the CFO as complying with the requirements set forth in this act.

(19) "Georgia Avenue Area" means any square located on or abutting Georgia Avenue, N.W., beginning at the intersection Florida Avenue, N.W., and north on Georgia Avenue, N.W., to Eastern Avenue, N.W.

(20) "Gross floor area" means gross floor area within the meaning of the Zoning Regulations of the District.

(21) "HPRB" means the District of Columbia Historic Preservation Review Board.

(22) "Initial assessed value" means the assessed value of each lot of taxable real property within a tax increment area on the date the tax increment area is established.

(23) "Initial sales tax amount" means the amount of available sales tax revenues

from locations within the tax increment area in the calendar year immediately preceding the year in which the tax increment area is established.

(24) "Priority development area" means the downtown area, Capital City Business and Industrial Area; Capital City Market Area; Georgia Avenue Area; any District-designated Foreign Trade Zones or Free Trade Zones as defined under Federal law; any federally-approved Enterprise Zones, Empowerment Zones, or Enterprise Community; Development Zone Areas; and the Southeast Federal Center/Navy Yard Area; and any housing opportunity area, development area, or new or upgraded commercial center designated on the District of Columbia Generalized Land Use Policies Map that is part of the Comprehensive Plan; the Minnesota Avenue area which shall consist of land within the boundary descriptions beginning from East Capitol Street, N.E., to Nannie Helen Burroughs Avenue, N.E.; the Dix Street area which shall consist of land within the boundary descriptions beginning from 58th Street, N.E. to Eastern Avenue, N.E.; the Nannie Helen Burroughs area which shall consist of land within the boundary descriptions beginning from Eastern Avenue, N.E., to 49th Street, N.E.; the Pennsylvania Avenue area which shall consist of land within the boundary descriptions beginning from Branch Avenue, S.E., to Carpenter Street, S.E.; and the Benning Road area which shall consist of land within the boundary descriptions beginning from East Capitol Street, S.E., to 44th Street, N.E., from Hanna Place, S.E., to Hillside Road, S.E., and from 39th Street, S.E., to 36th Street, S.E.; and the Division Avenue area from Eads Street, N.E., to Hayes Street, N.E.

(25) "Project" means any capital improvement undertaken within the priority development area.

(26) "Real property tax increment revenues" means the portion of the available real property tax revenues allocable to one or more tax allocation funds pursuant to this act.

(27) "Sales tax increment revenues" means the portion of the available sales tax revenues allocable to one or more tax allocation funds pursuant to this act.

(28) "Southeast Federal Center/Navy Yard Area" means the area beginning at the intersection of Interstate 395/295 (SW/SE Freeway) and the Anacostia River Waterfront, S.W., northwest to 14th Street, S.W.; south on 14th Street, S.W., to the Washington Channel Waterway; east along the Washington Channel Waterway to the Anacostia River eastern banks and adjacent areas encompassing the public housing and residential parcels adjacent to the Navy Yard, 8th Street, S.W., commercial corridor, marine barracks, Buzzard Point area, northern tip of the Naval station, Poplar Point, Anacostia waterfront, portions of the West Campus of Saint Elizabeth's, and the area surrounding the Anacostia Metro Station.

(29) "Special merits" means other economic, cultural, social, or financial factors, apart from the criteria established in the act, that may justify the approval of TIF for a project. The special merits shall be established, by regulation, by the CFO in consultation with the City Administrator or during a control year, as defined in section 305 of the District of

Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 97; D.C. Code § 47-393), the Chief Management Officer ("CMO"), and the Director of the Department of Housing and Economic Development.

(30) "TIF" means tax increment financing.

(31) "TIF area" means any area designated and established for TIF pursuant to the provisions of this act.

(32) "TIF bonds" means bonds, notes or other obligations issued pursuant to this act.

Sec. 3. TIF bond authorization and forward commitment. **New Section 1-2293.2**

(a) Pursuant to section 490 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 809; D.C. Code § 47-334), ("Home Rule Act") the Council authorizes the issuance of TIF bonds. The portions of property tax increment revenues and the portions of the sales tax increment revenues that are declared to be dedicated pursuant to this act, to the payment of debt service on TIF bonds, the provision and maintenance of reserves, and the payment of development costs, shall constitute tax increments as defined in section 490(m)(6) of the Home Rule Act.

(b) TIF bonds may be issued to finance development costs of eligible projects approved pursuant to this act. Refunding bonds may be issued to refund bonds issued pursuant to this act. The aggregate principal amount of TIF bonds, other than refunding bonds shall not exceed $300 million. All TIF bonds issued pursuant to this act shall be issued before January 1, 2003.

(c) The CFO is authorized to enter into such financing documents as may be necessary or appropriate for the issuance, security, and administration of the TIF bonds, investment of proceeds and moneys in the accounts provided for in, or pursuant to this act, and the application of the proceeds of the TIF bonds and the moneys and investments in such accounts, and for the purposes provided in section 8, including financing documents with development sponsors. The CFO is authorized to execute and deliver in the name of the District, and on its behalf, any financing documents and any closing documents to which the District is a party, including each trust agreement, trust indenture, secured loan agreement or other instrument entered into by the District pursuant to this act.

(d) The requirements for a project to comply with the applicable eligibility requirements pursuant to section 4 shall be set forth in an agreement between the District and the development sponsor. The agreement shall obligate the development sponsor to develop the specified eligible project.

(e) TIF bonds may qualify as tax-exempt enterprise zone facility bonds if the bonds satisfy the applicable requirements of the Internal Revenue Code of 1986, as amended, and applicable laws of the District.

Sec. 4. Certification of development project. New Section 1-2293.3

(a) In order to be eligible for TIF, a development sponsor of any project located in a priority development area shall apply to the CFO for certification that the project complies with the requirements of this act. The application shall consist of a development plan for the project, which shall consist of the following:

(1) A delineation of the proposed TIF area;

(2) A description of the proposed land uses of the project;

(3) The use of the financing proceeds made available pursuant to this act;

(4) A pro forma projection of the revenues and expenses of the project;

(5) An assessment of the financial feasibility of the project;

(6) A general description of the timing and phasing of the project;

(7) A description of the compatibility of the project with the Comprehensive Plan;

(8) A description of the project's compliance with the zoning regulations of the District; and

(9) An analysis of the projected tax revenue and benefits to be generated by the project.

(b) Not later than 120 days after the receipt of an application which meets the criteria set forth in subsection (a) of this section the CFO shall certify or reject the project. In determining whether to certify the project, the CFO shall consider the following criteria:

(1) Whether the project is financially feasible;

(2) Whether the project will likely result in a net increase in the taxes payable to the District, taking into consideration income taxes, franchise taxes, real property taxes, without regard to the real property tax increment revenues to be applied to payment of the TIF bonds, sales taxes, without regard to the sales tax increment revenues to be applied to payment of the TIF bonds, parking taxes, use taxes, and other taxes, over the amount that would have been payable to the District in the absence of the project;

(3) Whether the project is consistent with the Comprehensive Plan and will achieve development priorities identified in the Comprehensive Plan for the priority development area in which the project is located;

(4) Whether the project's total anticipated benefits to the District, including public benefits as well as financial benefits, exceed the total anticipated costs to the District;

(5) Whether an allocation of the project's real property tax increment revenues and sales tax increment revenues will compete with or supplant benefits from other sources or by other means which are otherwise available for the project on reasonable terms and conditions; and

(6) Whether the project is one of special merits and there is a reasonable

probability that the special merits of the project will not be achieved without the TIF allocation.

(c) In addition to the criteria enumerated in subsection (b) of this section, for projects located in the Downtown Area, the CFO shall consider whether the project will achieve development priorities identified in the Downtown Report that are consistent with the Comprehensive Plan and that satisfy one of the following:

(1) If located within a Housing Priority Area, whether the project, for the proposed term of the TIF bonds, commits to:

(A) Providing on-site at least 65% of the residential gross floor area required by the DD Regulations for the applicable Housing Priority Area; or

(B) Providing on-site at least 65% of the residential gross floor area required by the DD Regulations for the applicable Housing Priority Area utilizing not less than 90% of the leasable area of the floor at street level, and not less than 75% of the leasable area of the floor immediately above or immediately below the floor at the street level, for one or more of the preferred uses set forth in sections 1710 or 1711 of the DD Regulations with the preferred use space having a clear ceiling height of not less than 13 feet (unless the project is subject to the HPRB review in which case such 13 feet ceiling height shall not apply).

(2) If not located within a Housing Priority Area, whether the project, for the proposed term of the TIF bonds, commits to:

(A) Making residential housing as its primary use; or

(B) Utilizing not less than 90% of the leasable space on the floor at street level, and not less than 75% of the leasable space on the floor immediately above or below the floor at street level, for one or more of the preferred uses set forth in sections 1710 and 1711 of the DD Regulations, with all the preferred use space (unless the project is subject to HPRB review) having a clear ceiling height of not less than 13 feet.

(3) Whether located in a housing priority area or in other parts of the downtown area, if a project fails to meet the criteria enumerated in paragraphs (1) or (2) of this subsection, the CFO shall determine whether the project is one of special merits and there is a reasonable probability that the special merits of the project will not be achieved without the TIF allocation.

(d) If, upon consideration of the criteria set forth in subsections (b) and (c) of this section, the CFO determines to certify the project for Council approval, the CFO shall enter into negotiations with the development sponsor to determine the boundaries of the TIF area for the project, the amount of tax increment allocation, the type of tax to be allocated, the terms and conditions of the agreement between the District and the development sponsor, and the termination dates for the tax increment revenues to be allocated to the project. Upon completion of negotiations, the CFO shall certify the project, and prepare a proposed resolution for the approval of the Council consistent with the results of the negotiations and with section 5. If the project does not comply with the criteria, the CFO shall so notify the development sponsor in writing stating in what areas the project fails to meet the criteria. The CFO shall allow the development sponsor up to 60 days to comply and cure any defects.

(e) The Zoning Administrator; the Director, Office of Planning; the Corporation Counsel; the Director, Department of Housing and Community Development; and any other relevant agency of the District government shall furnish to the CFO information and certificates as may be required by the CFO to confirm a project's compliance with the criteria enumerated in subsections (b) and (c) of this section.

(f) Subject to the consent of each development sponsor of a project within the affected TIF areas and the rights of the holders of its TIF bonds, the CFO may abolish a TIF area, merge TIF areas or alter the boundaries of a TIF area.

(g) The CFO shall impose reasonable fees in connection with the issuance of the TIF bonds to defray administrative costs or burdens incurred as a result of the determination of the tax increment allocation and the issuance of such TIF bonds.

Sec. 5. Approval by the Council. **New Section 1-2293.4**

Upon completion of negotiations with the development sponsor, the CFO may certify the project and submit such certification and the proposed resolution referred to in section 4(d) to the Mayor. If the Mayor determines that the resolution is consistent with the requirements of this section, the Mayor shall transmit to the Council a proposed resolution to approve the project, the TIF area, the development agreement, and the amount to be financed . The proposed resolution shall define the TIF area for the eligible project, a summary description of the eligible project and its compliance with the criteria, a listing of the public benefits to be derived from the eligible project, portion of real property tax or sales revenues increment to be allocated to the project; and a summary of the terms of the TIF bonds to be issued with respect to the project. The Council shall approve or disapprove the proposed resolution within 45 days.

Sec. 6. Allocation of tax increments. **New Section 1-2293.5**

(a) When a TIF area for a project is established pursuant to sections 4 and 5, the Assessor shall promptly determine and certify the initial assessed value of each lot of taxable property within the TIF area and the Collector shall determine and certify the initial sales tax amount for the TIF area.

(b) Within 60 days after the approval of a project by resolution of the Council, the CFO shall provide for the allocation of property tax increment revenues or sales tax increment revenues, or both, within each TIF area. The CFO shall establish one or more separate tax increment allocation accounts within the General Fund for the deposit and application of property tax increment revenues and sales tax increment revenues from each tax increment area. Moneys shall be transferred from such accounts at the times and in the amounts required pursuant to financing documents under sections 3 and 8 to any fund or account established under such documents for the purpose specified in those documents or may, as provided in the bond documents, be transferred directly from the collector to such funds and accounts. Pursuant to subsections (c), (d), and (e) of this section, moneys held or to be held in a tax allocation account or such funds and accounts established under financing documents may be used to pay development costs associated with projects in the applicable tax increment area, to pay the principal of and interest on the TIF bonds issued with respect to such tax increment area, and otherwise applied as indicated in subsection (e) of this section consistent with the applicable bond documents. Moneys in a tax allocation account or in any fund or account established under the financing documents may be pledged as security for the payment of TIF bonds issued to finance development costs with respect to the applicable tax increment area and to related purposes referred to in subsection (e) of this section.

(c) Notwithstanding any other law, available real property tax revenues from so much of that portion of taxes levied within a TIF area, from the date of the approval of the TIF area, that are attributable to the difference between the current assessed value and the initial assessed value of each lot of taxable real property within the TIF area as have been approved for such allocation by resolution of the Council shall be paid by the Collector to the CFO for deposit into one or more of the tax increment accounts established by the CFO pursuant to subsection (b) of this section.

(d) Notwithstanding any other law, so much of that portion of available sales tax revenues that results from the sales tax levied within a TIF area, from the date of the approval of the TIF area, that are in excess of the initial sales tax amount as have been approved for such allocation by resolution of the Council shall be paid by the Collector to the CFO for deposit into one or more of the tax increment accounts established by the CFO pursuant to subsection (b) of this section.

(e) The amounts, if any, remaining in the tax increment accounts for a TIF area at the end of each tax year, after provision for the payment of principal or interest on TIF bonds, any costs of credit or liquidity enhancement and other costs, fees, and expenses of administering, carrying, and paying the bonds and the funds, trusts, and escrows pertaining to them, and providing for reasonably required reserves, all as provided in the bond documents, shall revert to the General Fund.

Sec. 7. TIF bond issuance. **New Section 1-2293.6**

The CFO shall issue the District's TIF bonds for the purposes authorized by the act. The CFO shall exercise such power to authorize and provide for the issuance of TIF bonds by signing financing documents, including those referred to in section 8, which shall describe in brief and general terms sufficient for reasonable identification the development costs to be financed or the TIF bonds that are to be funded or refunded and the property tax increment revenues, the sales tax increment revenues and the other revenues, assets and funds that are to be pledged to secure the repayment of such TIF bonds. The TIF bonds may be issued in more than one series, may be executed in such manner, and may bear such date or dates, mature at such time or times (provided, however, that the final maturity date of any TIF bonds payable from property tax increment revenues or sales tax increment revenues derived from a TIF area may not be later than the termination date of that TIF area), bear interest at any fixed or variable rate, be subject to redemption upon such terms and have such other terms and provisions as the financing documents, including any supplemental thereto, a trust agreement or a trust indenture may provide. The CFO may charge a reasonable fee to cover administrative costs.

Sec. 8. TIF Bond security. **New Section 1-2293.7**

(a) A series of TIF bonds may be secured by a trust agreement or trust indenture between the District and a corporate trustee having trust powers, or by a secured 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 TIF bonds that the District may determine to be necessary or desirable including, without limitation, covenants and agreements as to:

(A) The application, investment, deposit, use and disposition of the proceeds of TIF bonds and the other moneys, securities, and property of the District;

(B) The terms and conditions of any agreement with any other person concerning the development of the downtown area;

(C) The assignment by the District of its rights in any agreement;

(D) Terms and conditions upon which additional TIF bonds of the District may be issued;

(E) 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

(F) Vesting in a trustee, for the benefit of the holders of TIF bonds, or in the bondholders directly, such rights and remedies as the District shall determine;

(2) Pledge, mortgage or assign moneys, 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 its TIF 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 TIF bonds.

(b) TIF bonds issued pursuant to this act are declared to be issued for an essential public and governmental purposes. The TIF bonds and the interest thereon and the income therefrom, and all moneys 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

TIF bonds issued pursuant to this act that, subject to the provisions of the financing documents, the District will not limit or alter the basis upon which available real property taxes and available sales taxes are received, 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 TIF bonds, will not in any way impair the rights or remedies of the holders, and will not modify in any way 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. The CFO is authorized to include this pledge and agreement of the District as part of the contract with the holders of any of its bonds. This act shall constitute a contract between the District and the holders of the TIF 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) It is the intention of the Council that a pledge made in respect of its TIF bonds shall be valid and binding from the time the pledge is made; that the money or property so pledged and thereafter received 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 in tort, contract or otherwise against the District irrespective of whether the parties have notice. Neither the bond order, trust agreement, nor any other instrument by which a pledge is created need be recorded or filed under the provisions of the Uniform Commercial Code to be valid, binding, and effective against the parties.

Sec. 9. Default. **New Section 1-2293.8**

If there shall be a default in the payment of the principal of or interest on any TIF 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 government shall fail or refuse to carry out and perform the terms of any agreement with the holders of any of the TIF bonds; then the holders of the TIF bonds, or the trustee appointed to act on behalf of the holders, 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 TIF bonds, including the right to require the District government to carry out and perform the terms of any agreement with the holders of the TIF bonds or its duties under this act;

(2) By action, require the District government 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 TIF bonds; and

(4) Declare all the TIF 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. Public inspection. New Section 1-2293.9

The CFO may cause any bond order to be filed for public inspection and cause to be published in a newspaper of general circulation in the District a notice stating the fact and date of such bond order and the place where such bond order has been filed for public inspection and also the date of the first publication of such notice. The publication also shall contain a notice that any suit, action, or proceeding of any kind or nature in any court questioning the validity of this act or the validity or proper authorization of TIF bonds provided for by the bond order or the validity of any covenants or agreements provided for by said bond order or any financing document securing the TIF bonds authorized by said bond order shall be commenced within 20 days after the first publication of said notice. If any such notice shall at any time be published and if no suit, action, or proceeding questioning the validity of this act or the validity or proper authorization of TIF bonds provided for by the bond order referred to in said notice, or the validity of any covenants or agreements provided for by said bond order or any financing documents securing the TIF bonds authorized by said bond order shall be commenced or instituted within 20 days after the first publication of said notice, then all residents, taxpayers, and owners of property in the District and all other persons whatsoever shall be forever barred and foreclosed from instituting or commencing any proceeding, questioning the validity of this act, or the validity or proper authorization of such TIF bonds, or the validity of any such covenants, and agreements, and this act shall be conclusively deemed to have been validly enacted by the District and the CFO shall be conclusively deemed to have been authorized to exercise the powers delegated to the CFO under this act, and said TIF bonds, covenants, and agreements shall be conclusively deemed to be valid and binding obligations of the District as provided in this act.

Sec. 11. Liability. New Section 1-2293.10

(a) Neither the members of the Council nor any person executing TIF bonds issued pursuant to this act shall be liable personally on the TIF bonds by reason of the issuance thereof.

(b) Notwithstanding any other provision of this act, TIF bonds issued pursuant to this act are not 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. Neither the full faith and credit nor the taxing power of the District (other than property tax increment revenues and sales tax increment revenues) may be pledged to secure the payment of any TIF bonds issued pursuant to this act.

Sec. 12. Transfer of authority. New Section 1-2293.11

All the authority of the CFO under this act, except the duties of the CFO under section 6(b), with respect to providing for the allocation of tax increment revenues pursuant to the resolution under section 5, and establishing accounts, shall be transferred to the Board of Directors of the National Capital Revitalization Corporation ("Board") in accordance with the National Capital Revitalization Corporation Act of 1998 (Bill 12-514), upon notification to the CFO that the Board is ready to assume the functions.

Sec. 13. Fiscal impact statement.

A. Summary

Bill 12-498 has no fiscal impact by itself, other than relatively minor costs associated with the Office of Tax and Revenue's efforts to build its tax-related informational capabilities. The bill authorizes the use of tax increment financing to help finance projects which would not otherwise be undertaken but for the financial assistance of the city. These projects will have an individual fiscal impact, principally in regard to revenues. A fiscal impact analysis of each project will be included with each project proposal. To illustrate the possible benefits of TIF projects, two examples are included in the Revenue Statement, including a major downtown project and a neighborhood development.

Costs. Most costs to the city in creating a TIF project would be included in the bond and amortized over its life, or absorbed by developers, thus having a minor fiscal impact when compared to the possible benefits of enhanced tax receipts. These costs include those necessary to produce and analyze proposed projects and to monitor their progress, including the changing level of tax receipts.

Revenues. Revenue implications comprise the largest considerations in TIF projects. In return for making an investment by giving up a portion of tax receipt increases, the District expects to accomplish policy objectives and to increase the net level of tax receipts through the economic activity the project should produce. Consideration must be given to the implications TIF projects have on revenue collections, both positive and negative, in parts of the city outside the TIF project area(s).

B. Expenditure Statement

Costs of TIF projects include:

1. Costs of producing and analyzing TIF project proposals will be managed by the proposed independent NCRC board once it is established. (The sources and level of funding of the NCRC have yet to be determined.) Until then, bill 12-498 calls for the CFO to manage these costs for the relatively few projects that may be undertaken in the meantime. In terms of managing these costs, the CFO or the NCRC may decide to absorb them, have developers absorb them, or amortize them over the life of the bond. These costs are not expected to be major relative to the potential revenue impact of a project. For example, a neighborhood project consisting of $15 million in total costs might include about $20,000 of these particular costs. For a larger undertaking, such as a major downtown development project, these costs could amount to $100,000, primarily for specialized consulting services.

2. Costs of carrying out the actual work of projects will be included in the developer's proposal and will be paid for out of expected revenues produced by the project.

3. Costs of administering and monitoring. The remainder of the Expenditure Statement examines these costs and the challenges arising from the city's role in TIF projects, as described by the Office of Tax and Revenue:

> <u>**Administrative Challenges**</u>
>
> The legislation raises administrative problems associated with both the real property tax and the sales tax. In general, implementation requires billing and collection systems with capabilities that do not currently exist within the Office of Tax and Revenue. In addition, there are procedural and legal requirements that would need to be incorporated into authorizing legislation and its implementation.
>
> Specific administrative issues include:
>
> **A. Identification of Property.** A Geographical Information System will be required to accurately identify all parcels within given geographic boundaries. For the current Business Improvement Districts (BID), the managers of the districts identify the parcel and tax amounts and provide this information to the Office of Tax and Revenue in electronic form.
>
> **B. Tax Complexity and Allocation of Funds.** The legislation requires the Office of Tax and Revenue to calculate and distribute all property tax collections according to the various resolutions applicable to each Development District.
>
> **C. Geographic Location of Sales.** Sales tax collections cannot be geographically determined using information currently collected by OTR because file addresses are not

necessarily the addresses of the site of sale.

The implementation of the Integrated Tax System, which is underway, may provide the capability for handling some of the demands that would arise from this legislation. However, a higher degree of complexity would have to be added to the planning factors now being considered. The system may not be fully operational for four or five years.

In undertaking projects, resolution of the administrative problems involved should be made part of the project design, with costs paid for as part of the project.

Costs

To administer this legislation beyond a few limited pilot projects the District would incur additional costs, which are identified below. These costs should be incorporated into the costs of TIF projects.

1. **Development of a New Real Property Tax Billing System.** The Real Property Tax Administration will need a new billing system to administer the Bill in its current form. The current billing system cannot handle the following tasks that are part of implementing TIF financing: (1) timely identification of the payments made on each parcel within a district, (2) computations for redistribution of revenues to the districts, (3) determining priority between real property taxes and redevelopment surcharges when there are partial payments, outstanding balances due, or delinquent interest and penalties from prior years are due, and (4) calculation of interest and penalty payments given the additional tax components.

   This new system would require geo-coding software changes within the Office of Tax and Revenue as well as at the financial institutions collecting the tax. The billing system must be funded at least two years before it can be brought online. Moreover, additional staff members and equipment would be needed. It is possible that the Integrated Tax System (ITS) which is currently being planned can facilitate the administration of this Bill; however, ITS may not be available for real property tax administration for another five years.

Item	FY1998	FY1999	FY2000	FY2001	FY2002
Software	500,000				
2 staff and associated equipment and expenses	100,000	80,000	80,000	80,000	80,000
Total	$600,000	80,000	80,000	80,000	80,000

2. **Coding Sales Tax Returns with Collection Districts.** The addresses currently listed on the sales tax forms may not correspond to the location at which the sales taxes were collected. Moreover, there may be a possibility of collections from multiple locations appearing on the same tax form. Additional start-up and administrative costs will be incurred.

Item	FY1998	FY1999	FY2000	FY2001	FY2002
Programming and software	50,000				
2 staff persons and related expenses	100,000	80,000	80,000	80,000	80,000
Total	$150,000	80,000	80,000	80,000	80,000

3. **Calculating and monitoring the allocation of benefits in Tax Collection Districts.** The methodology for making and monitoring these aspects of the legislation needs to be developed, and OTR will need the capability to monitor results even if many of the initial determinations are made by TIF project staff. Additional costs for developing and monitoring the methodology will be incurred.

Item	FY1998	FY1999	FY2000	FY2001	FY2002
Consultant expenses	50,000				
2 staff persons and related expenses	100,000	80,000	80,000	80,000	80,000
Total	$150,000	80,000	80,000	80,000	80,000

C. Revenue Statement

The revenue impact of TIF projects is expected to be significant, however, much depends upon the specific arrangements and outcome connected with each project. At the conclusion of this section are two examples that show the possible revenue impact of TIF projects.

Tax Increment Financing (TIF) is a useful tool for initiating economic development when a project is viable but start up costs (such as public improvements) present a major hurdle to getting it off the ground. Within the TIF structure, the incremental revenue from a development is dedicated to bonding for site preparation and other costs. The debt service is funded by anticipated growth in revenue.

The District's Arena Bond financing for preparation of the MCI Arena site is similar to a TIF project (although the financing mechanism differs). Benefits from other well-chosen projects should be similar to the benefits of the Arena. The Arena has not been in operation for long, so the luxury of hindsight cannot yet be applied. However, activity in Arena bookings is brisk, retail establishments in the facility appear to be operating well, and the neighborhood is enjoying a fresh exterior and the potential for additional upgrading.

Under the TIF legislation, some or all of the tax increments due to increases in property values and/or retail sales in a designated TIF district will be distributed to special TIF-related accounts. These accounts would be established to provide enhanced public services in a TIF redevelopment district and for debt services on the bond issuance to fund the investments in that district. Negotiations regarding particular projects need to be mindful of issues in accurately measuring the incremental tax impact of such projects.

- Sales and property tax increment from development within a specified area are difficult to measure. Sales tax receipts and property tax values normally increase as a result of inflation, general growth in the surrounding economy, and development in areas that are in close proximity to the redevelopment district.

- Sales tax increments due solely to development in a designated TIF area are particularly difficult to measure. An attractive TIF redevelopment will attract some sales away from other parts of the city, as well as attract new sales from outside the city. Only the sales new to D.C. should be credited to the TIF. Also, the legislation proposes that the previous year's sales tax collections in a designated TIF area be used as the base line to measure any increase in sales tax receipts. Sales tax revenues, however, fluctuate with the business cycle. If the year used to establish the baseline falls during a recession, the District would automatically lose sales tax revenues to the TIF district.

TAX INCREMENT FINANCING – TWO HYPOTHETICAL EXAMPLES

Tax increment financing (TIF) can be used to help finance economic development projects that are not likely to be undertaken without public assistance. TIF allows portions of future increases in real property taxes, sales taxes or other revenues generated by the new development to pay a portion of the project costs. The costs paid by TIF would typically be for public infrastructure and improvements, employee relocation, and other development purposes. A TIF-financed project must satisfy two key criteria: (1) direct contribution to achieving specific public objectives that could not be achieved without TIF, and (2) reasonable prospects for achieving a positive net fiscal impact.

Two types of TIF projects have been widely discussed by the City Council: (1) a major downtown project including entertainment/retail space, housing units, offices, and parking, and (2) a neighborhood retail center on city-owned or privately held land which has remained undeveloped or underutilized. The following hypothetical examples of project proposals illustrate the role of TIF in each type of project.

The downtown hypothetical example is adapted from an analysis prepared by Basile Bauman Prost & Associates, Inc. for Western Development Corporation. The neighborhood example is adapted from the analysis of a project proposal prepared for an 11-acre old school site in University City, Missouri by Development Strategies, Inc., of St. Louis. In both examples, the revenue pool that forms the basis for allocation to the TIF project is drawn from increments in real property and sales tax revenues, with sales taxes accounting for about three-quarters of the available revenue.

The examples were drawn principally from materials made available by the U.S. Department of the Treasury. The information shown in these examples emphasizes the revenue aspects of the projects and does not attempt to weigh all of the costs and benefits of such projects. The appropriate role for TIF in any particular project and the proportion of revenue increments that would be allocated are only determined on a project-by-project basis after detailed negotiations involving developers, city officials, and representatives of financial institutions that would manage the sales of TIF bonds.

The hypothetical examples describe TIF proposals for projects that are expected to be successful from the perspectives of the locality and of private investors. The hypothetical examples illustrate how the District can minimize its downside risks:

- Exercise due diligence. Due diligence involves evaluating the reasonableness of the assumptions in a project proposal and the capabilities of the project developer. In the hypothetical downtown TIF project, for example, due diligence includes examining assumptions about retail development, in light of the experiences of similar projects in other cities, of previous retail projects undertaken by the developer, and of existing retail and restaurant establishments in the District. Some successful high-volume retail and restaurant businesses in the District appear to operate with sales tax collections per square foot less than those that are forecast for establishments in the TIF project.

- Negotiate project agreements that make use of market mechanisms for identifying and controlling risk. In each of these two hypothetical projects the tax increment is shared on a 50-50 basis by the project and the city. If the project performs poorly, the bondholders would lose money. By negotiating agreements in which no more of the tax increment than necessary is allocated to the TIF project, the District not only helps to protect general fund revenues needed for financing other services; such agreements also help the District to control its risk by benefiting from well-established private sector mechanisms for evaluating risk and weeding out proposals that are too risky. Thus, a project will only go forward if bondholders (as represented in the negotiations by the financial firm or firms responsible for distributing the bonds) are satisfied that the assumptions underlying the project are sound and that the developers are capable of carrying out the planned project. In addition, to provide inducements for project success, bondholders also will likely seek to have some recourse against the development sponsors if bond payments are not made on time. To accomplish this, the bondholders could require the developers to obtain bond insurance or letters of credit. This gives yet another independent private sector scrutiny of the project, because the financial institution providing the insurance or the letter of credit will also assess the developer's equity investment in the project, the developer's track record, and the reasonableness of project assumptions.

1. Downtown Project

The following hypothetical example shows how an appropriately structured TIF financing could be used in stimulating housing and retail/entertainment projects in the downtown area. A projected development might consist of 1 million square feet of retail, 600,000 square feet of office space, and 1,000 residential units, along with parking for 4,000 autos. The retail space would include general retail as well as entertainment and theater facilities. In order to provide sufficient financing to enable the project to be undertaking, a TIF arrangement might be negotiated to provide a 50-50 split of the incremental amounts of retail and restaurant sales taxes and of real property taxes within the boundaries of the TIF-district during a stated period of time (such as 12 to 15 years). The District would also receive all income, personal property and parking tax generated by the project as well as sales taxes from purchases made during the construction phase.

Estimated project costs, and the portion borne by the developer and TIF, are summarized in the following table:

Cost Category	Developer Funded	TIF-Funded*	Total
Site acquisitions, development costs, and improvements	$100,000,000	$125,000,000	$225,000,000
Construction	$450,000,000	--	$450,000,000
Total costs	$550,000,000	$125,000,000	$675,000,000

* Paid by a bond issue amortized by annual tax increments of approximately $15,500,000. This example assumes that the tax increment will cover only about 100% of the debt service payments. The market may require up to 125% to 150% coverage, and negotiations for the project would also include the establishment of a reserve fund.

In this example, $125 million in TIF bonds, which represent 18.5% of total project costs, pay for 56% of the site acquisition, development, and site improvement costs.

The proposal for this hypothetical project anticipates that the project will generate annual direct net new tax revenues of about $42.3 million (in constant 1997 dollars):

- a majority of the direct revenues come from $22.9 million in retail and restaurant sales taxes and $8.2 million in real property taxes. Of this $31.1 million, 50 percent or $15.5 million is allocated to TIF and the same amount is allocated to the District.

- in addition, the District would receive $8.1 million in income taxes (85% of which is from tenants occupying office space and residents of the housing units), $1.9 million in parking sales taxes, $0.7 million in franchise taxes, and $0.5 million in personal property taxes.

The $15.5 million allocated annually to TIF represents about 37% of anticipated direct revenue increases. Of the $26.7 allocated to the District, 58% comes from retail and restaurant sales taxes shared with the TIF project, and the remainder is from other projected tax increases.

No adjustment has been made to take account of taxable sales that may represent a transfer from some other location in the District. The proposal does, however, also estimate that the project could generate taxes of $4.6 million annually from spin off sales outside the project area. In addition, in this example the District would receive about $4.4 million in tax revenues from real and personal property taxes during construction.

2. Neighborhood Project

For a number of years, the District has been attempting to address the scant opportunities retail shopping in of many of the city's moderate and lower income neighborhoods. As a result, District residents do much of their shopping in Virginia and Maryland and retail space in many neighborhoods remains vacant or underutilized, resulting in the loss of potential property and sales tax revenues. These circumstances also contribute to more general neighborhood deterioration, reflected in declining property values and the loss of middle income households. In order to turn this situation around, this example shows how an appropriately structured TIF could support the kind of neighborhood retail investments that can compete with that available in the suburbs.

This hypothetical example involves a small shopping center that houses a supermarket (63,200 square ft.), an in-line retail store (16,800 square ft.), two free standing commercial facilities (a total of 8,000 square feet, assumed to be for a restaurant and a bank), and free off-street parking. The example assumes that a shopping center would be made feasible if TIF were available to fund portions of the development cost and fees and site improvements. The analysis of the key cost components might be as follows:

Cost Category	Developer Funded	TIF Funded*	Total Costs
Land Acquisition	$1,600,000		$1,600,000
Development Costs/Fees	1,400,000	500,000	1,900,000
Site Improvements	400,000	2,300,000	2,700,000
Building Construction	8,800,000		8,800,000
Totals	$12,200,000	$2,800,000	$15,000,000

*Paid by a bond issue amortized by annual tax increments of approximately $347,000. This example assumes that the tax increment will cover only about 100% of the debt service payments. The market may require up to 125% to 150% coverage, and negotiations for the project would also include the establishment of a reserve fund.

Without development, the site remains vacant, generating $80,000 in property taxes (assuming the land is privately held, is vacant, and does not to go to tax sale) and no sales taxes. When the project is operational, it is estimated that in about 2 years the shopping center will generate annual increments of $144,000 in property taxes (as the value of the property rises from $1,600,000 to $10,400,000), and $550,000 in sales taxes (on sales volumes of $23.4 million for the supermarket, $4.2 million for other retail, and $1.2 million for the restaurant). Of the $694,000 increase in annual tax revenue associated with the project, approximately $347,000 (50%) would be devoted to paying interest and principal on TIF bonds, and an equal amount would go to the District's general fund. (As in the previous example, no attempt has been made to estimate the percentage of retail sales that represent transfer of taxable sales from elsewhere in the District.) The District general fund also stands to receive other taxes from personal property and utility taxes if the project is successful.

Other Considerations

In addition to the above example, TIF has been used to fund training and job-placement programs, brownfield redevelopment, opportunities for the expansion of small and mid-sized businesses, and a wide variety of traditional public improvements such as access roads and water/sewer lines. Further, the costs of negotiating and implementing a TIF deal are either negligible or, if substantial, can be covered directly by the TIF.

D. Conclusion

Although there are clearly some start-up costs related to the administration of this bill, these will be more than offset by the positive revenues generated by the economic development resulting from this bill.

Sec. 14. 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), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code §47-392.3(a)), 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. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

Linda W. Cropp

Chairman
Council of the District of Columbia

Marion Barry

Mayor
District of Columbia

APPROVED: May 4, 1998

COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD TWELVE

RECORD OF OFFICIAL COUNCIL VOTE

Docket No. B12-498

[ ] ITEM ON CONSENT CALENDAR

[X] ACTION & DATE ADOPTED FIRST READING, 3-3-98

[X] VOICE VOTE APPROVED
RECORDED VOTE ON REQUEST

ABSENT EVANS AND THOMAS

[ ] ROLL CALL VOTE - Result ______ (__ __ __ __)

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote AB - Absent NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

April 17, 1998
Date

[ ] ITEM ON CONSENT CALENDAR

[X] ACTION & DATE ADOPTED FINAL READING, 4-7-98

[X] VOICE VOTE APPROVED
RECORDED VOTE ON REQUEST

ABSENT ALL PRESENT

[ ] ROLL CALL VOTE - Result ______ (__ __ __ __)

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote AB-Absent NV-Present not voting

CERTIFICATION RECORD

Secretary to the Council

April 17, 1998
Date

[ ] ITEM ON CONSENT CALENDAR

[ ] ACTION & DATE ______

[ ] VOICE VOTE ______
RECORDED VOTE ON REQUEST

ABSENT ______

[ ] ROLL CALL VOTE - Result ______ (__ __ __ __)

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Cropp					Chavous					Schwartz				
Allen					Evans					Smith, Jr.				
Ambrose					Jarvis					Thomas, Sr.				
Brazil					Mason									
Catania					Patterson									

X - Indicates Vote AB - Absent NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date