

**ENROLLED ORIGINAL**

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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*Codification  
District of  
Columbia  
Official Code*

**2001 Edition**

**2008 Fall  
Supp.**

**West Group  
Publisher**

To amend Chapter 3 of Title 47 of the District of Columbia Official Code to authorize the issuance of revenue bonds of the District of Columbia payable from and secured by individual income tax and business franchise tax revenues for the purposes of financing capital projects of the District government.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Income Tax Secured Bond Authorization Act of 2008”.

Sec. 2. Chapter 3 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new Subchapter II-D to read as follows:

“Subchapter II-D. Income Tax Secured Bonds.

“47-340.26. Definitions.

“47-340.27. Creation of Income Tax Secured Bond Fund.

“47-340.28. Bond authorization.

“47-340.29. Bond details.

“47-340.30. Issuance of the bonds.

“47-340.31. Payment and security.

“47-340.32. Financing and closing documents.

“47-340.33. Limited liability.

“47-340.34. District officials.

“47-340.35. Maintenance of documents.

“47-340.36. Information reporting.”.

(b) New sections 47-340.26 through 47-340.36 are added to read as follows:

“§ 47-340.26. Definitions.

“For the purposes of this subchapter, the term:

“(1) “Additional Bonds” means additional District of Columbia Income Tax Secured Bonds that may be issued pursuant to § 1-204.90 and this subchapter and in satisfaction of the tests for additional bonds established in the Financing Documents, with a parity claim

**Nes  
Subchapter  
II-D,  
Chapter 3,  
Title 47**

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with the initial series of District of Columbia Income Tax Secured Bonds on the Available Tax Revenues.

“(2) “Authorized Delegate” means the Chief Financial Officer, the Treasurer, or any Deputy Mayor in the executive office of the Mayor to whom the Mayor has delegated any of the Mayor’s functions under this subchapter pursuant to § 1-204.22(6).

“(3) “Available Business Franchise Tax Revenues” means the revenues resulting from the imposition of the Business Franchise Tax, including penalty and interest charges.

“(4) “Available Income Tax Revenues” means the revenues resulting from the imposition of the Income Tax, including penalty and interest charges.

“(5) “Available Tax Revenues” means the sum of the Available Business Franchise Tax Revenues and Available Income Tax Revenues generated and to be generated in any fiscal year of the District.

“(6) “Bond Counsel” means a firm of attorneys designated as bond counsel from time to time by the Chief Financial Officer.

“(7) “Bonds” means the initial series of District of Columbia Income Tax Secured Bonds

and Additional Bonds, notes, or other obligations, including refunding bonds, notes, bond anticipation notes, and other obligations, in one or more series, and Subordinated Bonds, authorized to be issued pursuant to § 1-204.90 and this subchapter.

“(8) “Business Franchise Tax” means the franchise tax imposed on corporations and unincorporated businesses pursuant to §§ 47-1807.02, 47-1808.03, and 47-1817.06.

“(9) “Capital Projects” means the payment of the cost of acquiring, undertaking or refinancing capital projects authorized by § 1-204.90 for general governmental and enterprise purposes, including reimbursing amounts temporarily advanced from the General Fund of the District of Columbia, any enterprise fund, or other fund or account of the District, and the refunding of Outstanding Debt.

“(10) “Chief Financial Officer” means the Chief Financial Officer of the District of Columbia established by § 1-204.24a(a) .

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

“(12) “Collection Agent” means the financial institution acting as the trustee or as agent for the trustee and chosen by the Chief Financial Officer to receive Available Tax Revenues, to deposit those payments into the Income Tax Secured Bond Fund, to transfer the amounts to the trustee sufficient to pay debt service on the bonds, and to otherwise comply with the Financing Documents.

“(13) “Financing Documents” means the documents, other than Closing Documents, that relate to the financing or refinancing of transactions to be effected through the issuance, sale, and delivery of any series of the bonds, including contracts or agreements for an escrow

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agent, trustee, Collection Agent, registrar, Paying Agent, underwriting, legal services, accounting, financial advisory services, bond insurance or other credit enhancement or liquidity agreements, printing, or placement of any investment or obligation or program of investment, including any offering document, contract based on interest rate, currency, cash flow, or other basis, including Hedge Agreements, and any required supplements to any such documents.

“(14) “Hedge Agreement” means any financial arrangement that is a cap, floor, or collar; forward rate; future rate; swap, which swap may be based on an amount equal to either a principal amount or a notional principal amount relating to all or a portion of the principal amount of a series of bonds; asset, index, price, or market-linked transaction or agreement; other interest rate exchange or rate protection transaction agreement; other similar transactions, however designated; any combination thereof; any option with respect thereto; or any similar arrangement, which is executed by the District for purposes of debt management, including managing interest rate fluctuations on bonds, but not for purposes of speculation.

“(15) “Income Tax” means the income tax imposed on individuals by § 47-1806.03.

“(16) “Income Tax Secured Bond Fund” means the Income Tax Secured Bond Fund established by § 47-340.27.

“(17) “Outstanding Debt” means any tax-supported indebtedness of the District outstanding at any time, including any outstanding general obligation bonds and bond anticipation notes issued by the District, and certificates of participation issued on behalf of the District, but, unless expressly authorized by Council resolution, the term “Outstanding Debt” shall not include tax increment financing and payment in lieu of taxation debt.

“(18) “Parity Bonds” means, collectively, the initial series of District of Columbia Income Tax Secured Bonds and any Additional Bonds.

“(19) “Paying Agent” means the District or any bank, trust company, or national banking association designated to serve in that capacity by the Chief Financial Officer, and may be the trustee.

“(20) “Registrar” means the District or any bank, trust company, or national banking association designated to serve in that capacity by the Chief Financial Officer, and may be the trustee.

“(21) “Subordinated Bonds” means any bonds, notes, or other obligations, including refunding bonds, notes, bond anticipation notes, and other obligation, the payment of debt service thereon which is subordinate to the Parity Bonds and which are not equally and ratably secured with the Parity Bonds by the Available Tax Revenues and other funds in and to be in the Income Tax Secured Bond Fund.

“(22) “Treasurer” means the District of Columbia Treasurer established by § 1-204.24a(c)(3).

“(23) “Trustee” means the trustee for the bond owners selected by the Chief Financial Officer for one or more series of bonds.

“§ 47-340.27. Creation of the Income Tax Secured Bond Fund.

“(a) There is established separate and apart from the General Fund of the District of Columbia as a nonlapsing fund the Income Tax Secured Bond Fund.

“(b) The Chief Financial Officer may direct every taxpayer that is required to pay either

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the Business Franchise Tax or the Income Tax, or both, every employer that pays withholding taxes for employees, and every taxpayer that is required to pay estimated taxes, to send the payments directly to the Collection Agent for collection and disbursement in accordance with the collection instructions of the Chief Financial Officer. Tax payments or collections received pursuant to enforcement actions, received from bankruptcy trustees or through the Bankruptcy Courts, received as a result of garnished wages, received as collections of tax levies, including the release of liens at real estate closings, received as a result of closures of estates, received as a result of the sales of businesses or involving business licenses, and other collection activities shall be collected by the Chief Financial Officer and forwarded to the Collection Agent or deposited in the Income Tax Secured Bond Fund upon reconciliation of accounts.

“(c) The Collection Agent may collect, receive, hold, and invest Available Tax Revenues, and shall promptly deposit all receipts into the Income Tax Secured Bond Fund, along with any other taxes or fees specifically designated by law for deposit in the Income Tax Secured Bond Fund.

“(d) The Mayor, through the Chief Financial Officer, shall pledge, assign, and create a security interest in the Available Tax Revenues and all other funds in the Income Tax Secured Bond Fund, or any sub-account within the Income Tax Secured Bond Fund, for the payment of the costs of carrying out any of the purposes described in subsection (g) of this section without further action by the Council as permitted by § 1-204.90. If bonds are issued, the payment shall be made in accordance with the provisions of the Financing Documents entered into by the District in connection with the issuance of the bonds. If the District pays or makes provision to pay, pursuant to the terms of the Financing Documents, to the owners of bonds the principal or redemption price, and the interest due or to become due, at the time and in the manner stipulated, such that the bonds are no longer considered outstanding within the meaning of the Financing Documents, the security interest in the Available Tax Revenues shall be terminated with respect to the defeased bonds.

“(e) Although payment of debt service on the bonds does not require an appropriation for that purpose pursuant to § 1-204.90, the Council may, in establishing the annual budget of the District, include in each annual budget for a fiscal year of the District sufficient funds to pay the principal of, and interest on, the bonds becoming due and payable for any reason during that fiscal year.

“(f) When deposited in the Income Tax Secured Bond Fund, the funds in the Fund and all investments or earnings on these funds shall be irrevocably dedicated and pledged to the payment of the principal of, and interest on, the bonds and costs as provided in subsection (g) of this section. Any escrow or other agreement entered into by the Chief Financial Officer providing for holding funds for the benefit of the holders of the bonds shall be maintained so long as any of the bonds are outstanding under the Financing Documents.

“(g) The funds deposited in the Income Tax Secured Bond Fund may be used to pay:

“(1) The costs of the Collection Agent and the trustee; and

“(2) Debt service on the bonds and such other applications as may be set forth in the Financing Documents.

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“(h) If, at the end of any period determined in the Financing Documents, the balance of cash and investments in the Income Tax Secured Bond Fund exceeds the amount required to be held in the Income Tax Secured Bond Fund pursuant to the Financing Documents, the excess shall be transferred to the unrestricted fund balance of the General Fund of the District of Columbia in accordance with the Financing Documents.

“§ 47-340.28. Bond authorization.

“(a) Bonds in one or more series may be issued in an aggregate amount not to exceed \$2,918,815,000 to fund costs of Capital Projects (including the issue of bond anticipation notes from time to time in one or more series in anticipation of all or a portion of the bonds; provided, that the principal amount of any such notes shall not be included in the total amount authorized by this subsection upon their repayment from bond proceeds), such amount being subject to adjustment by Council act, plus the costs and expenses of structuring, issuing, delivering, and maintaining the bonds, including, underwriting, rating agency fees, legal fees, accounting fees, financial advisory fees, trustee and Paying Agent fees, Collection Agent fees, bond insurance and other credit enhancements, liquidity enhancements, printing costs, and expenses.

“(b) The bonds, which may be issued from time to time in one or more series by Council resolution approving the amount of the series of bonds to be issued and the Capital Projects to be funded with the proceeds of that series of bonds, shall be tax-exempt or taxable as the Chief Financial Officer shall determine and shall be payable in the manner set forth in § 47-340.31.

“(c) The Chief Financial Officer may pay from the proceeds of the bonds the costs and expenses specified in subsection (a) of this section, plus amounts, to the extent necessary, to establish or maintain the tax-exempt status of any of the bonds issued on a tax-exempt basis.

“(d) Subject to applicable law, the District shall maintain a capital projects fund separate and apart from other funds of the District into which it will deposit the proceeds of any series of the bonds, less any capitalized interest accrued interest and costs of issuance. The District shall expend the bond proceeds only to finance Capital Projects or to refund Outstanding Debt. Subject to applicable law, the proceeds of any series of the bonds may be escrowed in appropriate accounts with escrow agents or the trustee to be applied to the applicable purposes. Interest or other investment earnings of proceeds in the capital projects fund shall be credited to the General Fund of the District of Columbia, subject to provisions for any deposit requirements to a rebate fund or other funds in accordance with agreements pertaining to the bonds.

“§ 47-340.29. Bond details.

“(a) The Chief Financial Officer may take any action reasonably necessary or appropriate in accordance with this subchapter in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the bonds of each series, including, determinations of:

“(1) Whether the bonds are to be issued in one or more series and the principal amount of each series;

“(2) The final form, content, denominations, lettering, numbering, designation, and terms of each series of the bonds, or the manner of determining the designations and

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denominations, lettering, and numbering, including a determination that the bonds may be issued in certificated or book-entry form;

“(3) The rate or rates of interest or the method for determining the rate or rates of interest on each series of the bonds;

“(4) The date or dates of issuance, sale, and delivery of, and the payment of interest on each series of the bonds, and the maturity date or dates of the bonds;

“(5) The price and terms under which any series of 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) The maximum debt service payable in any fiscal year for each series of the bonds;

“(7) Provisions for the registration, transfer, and exchange of each series of the bonds and the replacement of mutilated, lost, stolen, or destroyed bonds;

“(8) The creation of any reserve fund, sinking fund, or other fund with respect to each series of the bonds;

“(9) The method of collection and deposit of Available Tax Revenues into the Income Tax Secured Bond Fund and the distributions from the Income Tax Secured Bond Fund to the trustee;

“(10) The dates and place of payment of each series of the bonds;

“(11) Procedures for monitoring the use of the proceeds received from the sale of each series of the bonds to ensure that the proceeds are properly applied and used to accomplish the purposes of Chapter 2 of Title 1 and this subchapter;

“(12) The designation of the Collection Agent, trustee, Paying Agent, and registrar for each series of the bonds;

“(13) Actions necessary to qualify each series of the bonds under blue sky laws of any jurisdiction where the bonds are marketed;

“(14) Whether to enter into a Hedge Agreement related to all or a portion of a series of bonds; and

“(15) The terms and types of security granted to the holders of each series of the bonds, including bond insurance and other credit enhancement.

“(b) 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.

“(c) 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 the trustee, and may be subject to the terms of one or more agreements entered into by the Mayor, through the Chief Financial Officer, pursuant to § 1-204.90.

“(d) The bonds may be issued at any time or from time to time in one or more issues and in one or more series.

“(e) The bonds are declared to be issued for essential public and governmental purposes. The bonds, the interest thereon, and the income therefrom shall at all times be exempt from

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taxation by the District, except for estate, inheritance, and gift taxes.

“(f) The District irrevocably pledges for and on behalf of the owners of the bonds as further security for the due and punctual payment of the principal and redemption price, if any, and interest on, the bonds as they shall become due and payable for any reason, all of its right, title, and interest now owned or later acquired in and to the Available Tax Revenues, whether received or to be received, or held at the time, by a Collection Agent, custodian, escrow agent, or District officials. This pledge creates and grants a security interest as contemplated in § 1-204.90, subject to the terms, conditions, and limitations in this subchapter.

“(g)(1) The District pledges, covenants, and agrees with the holders of the bonds that, subject to the provisions of the Financing Documents, the District will not:

“(A) Limit or alter the revenues pledged to secure the bonds or the basis on which the revenues are collected or allocated in a manner that would generate Available Tax Revenues below the levels required to pay or secure the payment of the bonds;

“(B) Impair the contractual obligations of the District to fulfill the terms of any agreement made with the holders of the bonds; provided, that the District may modify the Business Franchise Tax or Income Tax rates or the income subject to those rates only if the modification, if in effect, would not have reduced the ratio of Income Tax generated by the withholding portion of the Available Income Tax Revenues for any 12-consecutive-month period during the 15-month period immediately preceding the calculation to the maximum annual debt service on the Parity Bonds then outstanding, below 2.0 times, pursuant to the Financing Documents;

“(C) In any way impair the rights or remedies of the holders of the bonds; and

“(D) Modify in any way the exemptions from taxation provided for in subsection (e) of this section until the bonds, together with interest thereon, and all costs and expenses in connection with any suit, action, or proceeding by or on behalf of the holders of the bonds, are fully met and discharged.

“(2) The pledge and agreement of the District under this subsection may be included as part of the contract with the holders of the bonds and this subsection shall constitute a contract between the District and the holders of the bonds. To the extent that any acts or resolutions of the Council may be in conflict with this subchapter, this subchapter shall be controlling.

“(h) Consistent with § 1-204.90(a)(4)(B) and notwithstanding Article 9 of Title 28:

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

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

“§ 47-340.30. Issuance of the bonds.

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

“(b) The Chief Financial Officer may prepare or cause to be prepared and 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 bonds.

“(c) The Chief Financial Officer may deliver executed 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 Chief Financial Officer receives an approving opinion from Bond Counsel as to the validity of the bonds of such series and, if the interest on the bonds is expected to be exempt from federal income taxation, the treatment of the interest on the bonds for purposes of federal income taxation.

“(e) No series of the bonds shall be issued unless the Chief Financial Officer provides certification that the issue of that series of the bonds shall not create a violation of § 1-206.03(b), treating the bonds as general obligation bonds solely for the purpose of determining whether § 1-206.03(b) would be violated with this treatment of the bonds, and, for purposes of the certification, pursuant to § 1-204.75:

“(A) The Chief Financial Officer shall include in any calculation, while any bond anticipation notes are outstanding, the estimated maximum annual debt service amount for the bonds anticipated by such bond anticipation notes;

“(B) The Chief Financial Officer shall not include in any such calculation the debt service on the bond anticipation notes; and

“(C) The estimated maximum annual debt service on the bonds anticipated by the bond anticipation notes shall be as estimated at the time the bond anticipation notes are issued.

“(f) Chapter 3 of Title 2 and subchapter III of this Chapter shall not apply to any contract the Mayor or Chief Financial Officer may from time to time enter into, or the Mayor or Chief Financial Officer may determine to be necessary or appropriate, for purposes of this subchapter, including the selection of Bond Counsel, underwriters, financial advisors, or other professionals for a particular bond issue.

“§ 47-340.31. Payment and security.

“(a) The bonds shall be special obligations of the District payable solely from the Available Tax Revenues pledged therefor under this subchapter and other receipts, revenues, and funds in the Income Tax Secured Bond Fund and payable to the Income Tax Secured Bond Fund pursuant to this subchapter and the Financing Documents. The Available Tax Revenues shall constitute dedicated taxes and fees and available revenues within the meaning of § 1-204.90(n). As such, the holders of the bonds shall have a first lien on and pledge of the



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Available Tax Revenues superior to that of any other person, including holders of general obligation bonds or notes secured by the full faith and credit of the District pursuant to § 1-204.82.

“(b) The bonds shall be without recourse to the District, are not a pledge of, and do not involve, the faith and credit or the taxing power of the District (other than the Available Tax Revenues and any other taxes and fees allocated to the Income Tax Secured Bond Fund), do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited in § 1-206.02(a)(2). The bonds shall contain a legend expressly setting forth the limitations set forth in the preceding sentence.

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

“(d) The Collection Agent and trustee, respectively, may deposit, invest, and disburse the Available Tax Revenues received pursuant to the Financing Documents.

“(e) The trustee may disburse the proceeds of the bonds to the District.

“§ 47-340.32. Financing and closing documents.

“(a) The Chief Financial Officer may prescribe the final form and content of all Financing Documents and all Closing Documents to which the District is a party that may be necessary or appropriate to issue, sell, and deliver the bonds.

“(b) The Chief Financial Officer may, through a trust agreement or other instrument, make additional covenants of the District and agree to other provisions to better secure, administer funds for, and protect the bonds and the owners thereof.

“(c) The Chief Financial Officer may 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. The Mayor or an Authorized Delegate may execute the bonds, in the name of the District, by the Mayor’s or Authorized Delegate’s manual or facsimile signature.

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

“(e) The Chief Financial Officer’s execution and delivery of the Financing Documents and Closing Documents to which the District is a party, and the Mayor’s execution of the bonds, shall constitute conclusive evidence of the Chief Financial Officer’s and Mayor’s approval, on behalf of the District, of the final form and content of the executed Financing Documents and the executed Closing Documents.

“(f) The Chief Financial Officer may 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.

“§ 47-340.33. Limited liability.

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“No person, including 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 subchapter, 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.

“§ 47-340.34. District officials.

(a) Except as otherwise provided § 47-340.33, 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 subchapter, 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.

“(c) To the extent permitted by law, the Mayor may delegate to any Authorized Delegate the performance of any act authorized to be performed by the Mayor under this subchapter.

“§ 47-340.35. 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.

“§ 47-340.36. Information reporting.

“Within 3 days after the Chief Financial Officer’s receipt of the transcript of proceedings relating to the issuance of the bonds, the Chief Financial Officer shall transmit a copy of the transcript to the Secretary to the Council.”.

### Sec. 3. 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. 4. 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

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

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia