

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 10.
PARKS, PUBLIC BUILDINGS, GROUNDS,
AND SPACE.

CHAPTER 16.
BALLPARK DEVELOPMENT.

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CHAPTER 16. BALLPARK DEVELOPMENT.

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CHAPTER 16. BALLPARK DEVELOPMENT.

SUBCHAPTER I. CONSTRUCTION OF BALLPARK.

PART A. GENERAL.

§ 10-1601.01. FINDINGS.

The Council finds that:

(1) The ownership, construction, development, or renovation of a publicly financed stadium in the District of Columbia, after October 1, 2004, for use primarily for professional athletic team events is a municipal use that is in the interest of, and for the benefit of, the citizens of the District of Columbia because such a publicly-owned stadium or arena will contribute to the social and economic well-being of the citizens of the District of Columbia and significantly enhance the economic development and employment opportunities within the District of Columbia.

(2) To further that interest, it is appropriate for the District of Columbia to pay all or a portion of the cost of constructing, developing, or renovating a stadium and, to that end, to impose a ballpark fee based upon the gross receipts of certain persons doing business within the District of Columbia; to impose a tax on the sales of tickets, or rights to admission, to certain events at the stadium; to impose a tax on sales of personal property and certain services at the stadium and to utilize the revenues derived from such fees and taxes to pay all or a portion of the cost of development, construction, or renovation of the stadium or the debt service on bonds or other evidence of indebtedness issued to finance all or a portion of the cost of the development, construction, or renovation of the stadium; to acquire real property in furtherance of these public purposes; to lease the stadium to one or more professional baseball clubs; and for the District of Columbia and any duly designated District government agency or instrumentality to enter into binding and enforceable contracts to further these purposes.

(Apr. 8, 2005, D.C. Law 15-320, § 101, 52 DCR 1757.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

Law 15-320, the "Ballpark Omnibus Financing and Revenue Act of 2004", was introduced in Council and assigned Bill No. 15-1028, which was referred to the Committee of Finance and Revenue. The Bill was adopted on first and second readings on November 30, 2004, and December 21, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-717 and transmitted to both Houses of Congress for its review. D.C. Law 15-320 became effective on April 8, 2005.

Delegation of Authority

Delegation of Authority Pursuant to the Ballpark Omnibus Financing and Revenue Act of 2004, D.C. Law 15-320, effective April 8, 2005, see Mayor's Order 2005- 120, August 19, 2005, (52 DCR 8662).

Delegation of Authority for Acquisition of Real Property for Baseball Stadium, see Mayor's Order 2005-130, September 20, 2005 (53 DCR 144).

§ 10-1601.02. CREATION OF BALLPARK REVENUE FUND.

(a) For purposes of this section, the term "ballpark" shall have the meaning specified in § 47-2002.05(a)(1).

(b) There is established within the General Fund of the District of Columbia, a segregated, nonlapsing special revenue fund to be denominated as the Ballpark Revenue Fund. Except as provided in § 10-1203.07, the Chief Financial Officer of the District of Columbia shall pay into the Ballpark Revenue Fund all receipts from those fees and taxes specifically identified by any provision of District of Columbia law to be paid into the fund and any rent paid pursuant to a lease of the ballpark. The Chief Financial Officer of the District of Columbia shall create a sub-account within the Ballpark Revenue Fund for each type of fee

and tax that is to be paid into the fund and shall allocate the receipts from each type of fee and tax to the appropriate sub-account. The Mayor, or any District government agency or instrumentality that has been designated by the Mayor, may pledge and create a security interest in the funds in the Ballpark Revenue Fund, or any sub-account or sub-accounts within the fund, for the payment of the costs of carrying out any of the purposes set forth in subsection (c) of this section, for the payment of the debt service on any bonds or other evidence of indebtedness, any fees and charges incurred in connection therewith, any payments owing under any document or instrument entered into in connection with the indebtedness, including any credit enhancement agreement, insurance policy, security agreement, or other agreement or instrument establishing a swap or other derivative arrangement entered into by the District or any District government agency or instrumentality, and any of the purposes set forth in subsection (c) of this section, without further action as permitted by § 1-204.90(f). If bonds or other evidence of indebtedness are issued, the payment shall be made in accordance with the provisions of the documents entered into by the District or any District agency or instrumentality in connection with the issuance of the bonds or other evidence of indebtedness. Notwithstanding Article 9 of Subtitle I of Title 28, or any other provision to the contrary, any security interest created pursuant to this subsection shall be valid, binding, and perfected from the time that the security interest is created, with or without the physical delivery of any funds or any other property, with or without further action, and whether or not any statement, document, or instrument relating to the security interest is recorded or filed. The lien created by the security interest shall be valid, binding, and perfected with respect to any person, as defined in § 47-2001(i), having claims against the District, whether or not such person has notice of the lien.

(c) The purposes for which the funds deposited in the Ballpark Revenue Fund shall be used are as follows:

- (1) To directly pay, or to finance the reimbursement of, any fund of the General Fund of the District of Columbia which has been the source of the payment of any loan, reprogramming, or transfer of funds to any District government agency or instrumentality for the payment of any reasonable and verified predevelopment and development costs that have been borne by the District or the District government agency or instrumentality for the ballpark;
- (2) To directly pay, or to finance the reimbursement of the District or any District government agency or instrumentality for, any and all reasonable and verified predevelopment and development costs that were borne by the District or the District government agency or instrumentality for the ballpark;
- (3) To directly pay, or to finance the reimbursement of, the District or any District government agency or instrumentality for any or all costs arising out of or relating to the acquisition of real property, by purchase, lease, or condemnation in accordance with §§ 16-1311 through 16-1321, or other means of acquiring or assembling real property or interests in real property, including rights-of-way or other easements, that will serve as the site for the ballpark or are otherwise necessary to facilitate the construction of the ballpark or use of the site for the ballpark;
- (4) To directly pay or finance all or any of the costs of the demolition of buildings located on the future site of the ballpark and the cost of environmental remediation of the land that is the future site of the ballpark;
- (5) To directly pay or finance all or any of the costs of the design, development, construction, improvement, furnishing, and equipping of the ballpark;
- (6) To directly pay or finance all or any of the costs of renovating Robert F. Kennedy Stadium for use as a ballpark until construction of the new ballpark has been completed;
- (7) To directly pay or finance all or any of the costs of any future renovations, improvements, maintenance, or upgrades to Robert F. Kennedy Stadium or the new ballpark after its construction has been completed;
- (8) To directly pay or finance all or any other costs of the District or any District government agency associated with the financing, development, construction, or renovation of the ballpark;
- (9) To pay debt service on bonds issued in accordance with this part, which debt service includes funding any required reserves on, and making any other payments related to, the bonds; and
- (10) Subject to the provisions of the financing documents, for such purposes as may otherwise be authorized by law.

(d) To the extent that it does not violate the terms of any financing documents, closing documents, lien, pledge, security interest, or other covenants (collectively, "financing documents") under which the bonds or other evidence of indebtedness described in this section ("bonds") were issued, and, after accounting for transfers authorized to the General Fund of the District of Columbia under current law, if, at the end of a fiscal year the balance of cash and investments in the Ballpark Revenue Fund exceeds the balance of current liabilities, including debt service, required reserves, fund transfers previously authorized to balance the Fiscal Year 2011 budget and Fiscal Years 2012 through 2014 financial plan, and required sinking fund deposits under the bonds or financing documents required to be paid from the funds in the Ballpark Revenue Fund, the excess shall be used to pay in advance of scheduled maturity any principal amount and accrued interest thereon due on the bonds.

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 16-91, in subsec. (c)(8), deleted "and" at the end; in subsec.(c)(9) substituted "this subchapter, which debt service includes funding any required reserves on, and making any other payments related to, the bonds; and" for "this subchapter."; and added subsec. (c)(10).

D.C. Law 18-370 added subsec. (d).

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 782(a) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative History of Laws

For Law 15-320, see notes following § 10-1601.01.

Law 16-91, the "Technical Amendments Act of 2005", was introduced in Council and assigned Bill No. 16-477, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 1, 2005, and November 15, 2005, respectively. Signed by the Mayor on November 30, 2005, it was assigned Act No. 16-212 and transmitted to both Houses of Congress for its review. Title II of D.C. Law 16-91 became effective on November 30, 2005, pursuant to Pub. L. 109-115, Div. B, § 136.

Law 18-370, the "Fiscal Year 2011 Supplemental Budget Support Act of 2010", was introduced in Council and assigned Bill No. 18-1100, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 27, 2011, it was assigned Act No. 18-721 and transmitted to both Houses of Congress for its review. D.C. Law 18-370 became effective on April 8, 2011.

Effective Dates

Section 136 of Pub. L. 109-115, Nov. 30, 2005, 119 Stat. 2522, provides: 'Notwithstanding section 602(c)(1) of the District of Columbia Home Rule Act, amendments to the Ballpark Technical Amendments Act of 2005 shall take effect on the date of the enactment by the District of Columbia [Nov. 30, 2005].'

Miscellaneous Notes

Short title: Section 781 of D.C. Law 18-370 provided that subtitle I of title VII of the act may be cited as "Ballpark Debt Repayment Amendment Act of 2010".

§ 10-1601.03. BOND ISSUANCE.

(a) For the purposes of this section, the term:

(1) "Ballpark Revenue Fund" means the Ballpark Revenue Fund established by § 10-1601.02.

(2) "Bonds" means District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations) in one or more series, authorized to be issued pursuant to § 1-204.90 and this subchapter.

(3) "Home Rule Act" means Chapter 2 of Title 1.

(4) "Project" means:

(A) The financing, refinancing, or reimbursing of costs incurred in the site acquisition for, and the development, design, construction, improvement, furnishing, and equipping of, the ballpark as the term is defined in § 47-2002.05(a)(1);

(B) The funding of any required deposit to a debt service reserve fund or capitalized interest;

(C) The payment of certain costs of issuance, such as fees and premiums for any bond insurance or credit enhancement;

(D) The payment of any costs for which funds in the Ballpark Revenue Fund may be expended; and

(E) For which the aggregate expenditure of funds constituting the principal amount of bonds for the purposes set forth in subparagraphs (A) through (C) of this paragraph does not exceed \$534,800,000.

(b)(1) The Council authorizes the issuance by the Mayor of one or more series of bonds in a total amount not to exceed \$534,800,000 for payment of the costs of the project and to execute one or more declarations of intent pursuant to Treas. Reg. § 1.150-2 to reimburse the District for expenditures made prior to the issuance of the bonds.

(2) There is hereby allocated to the bonds the funds in the Ballpark Revenue Fund, or such portion of

the funds as shall be determined in accordance with the terms of the bonds, for the payment of debt service on the bonds and the payment of such other costs as are permitted to be paid with funds from the Ballpark Revenue Fund.

(c)(1) The Mayor may take any action 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:

- (A) The final form, content, designation, and terms of the bonds, including a determination that the bonds may be issued in certificated or book entry form;
- (B) The principal amount of the bonds to be issued and the denominations of the bonds;
- (C) The rate or rates of interest on, and the method or methods of determining the rate or rates of interest on, the bonds;
- (D) The date or dates of issuance, sale, and delivery of, the payment of interest on, and the maturity date or dates of, the bonds;
- (E) Whether the bonds are to be sold at a competitive or negotiated sale and the terms and conditions of the sale;
- (F) 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;
- (G) Provisions for the registration, transfer, and exchange of each series of the bonds and the replacement of mutilated, lost, stolen, or destroyed bonds;
- (H) The creation of any reserve fund, sinking fund, or other fund with respect to the bonds and the determination of the priority thereof;
- (I) The time and place of payment of the bonds;
- (J) Whether the bonds will be taxable, tax-exempt, or a combination thereof;
- (K) 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 subchapter;
- (L) Actions necessary to qualify the bonds under the blue sky laws of any jurisdiction where the bonds are marketed; and
- (M) The terms and types of credit enhancement under which the bonds may be secured.

(2) The bonds shall contain a legend, which shall provide that the bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve, the faith and credit or the taxing power of the District (other than the payments from the Ballpark Revenue Fund or any other security authorized by this subchapter), do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited by § 1-206.02(a)(2).

(3) 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 bonds.

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

(5) The bonds may be issued at any time or from time to time in one or more issues and one or more series and may be sold at public or private sale. A series of bonds may be secured by a trust agreement or trust indenture between the District and a corporate trustee having trust powers, and may be secured by a loan agreement or other instrument or instruments by means of which the District may:

(A) 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 relating to:

- (i) The application, investment, deposit, use, and disposition of the proceeds of bonds and the other funds, securities, and property of the District;
- (ii) The assignment by the District of its rights in any agreement;
- (iii) The terms and conditions upon which additional bonds of the District may be issued;
- (iv) 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
- (v) The 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;

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

(C) Provide for bond insurance, letters of credit, interest rate swaps, or other financial derivative products or otherwise enhance the credit of and security for the payment of the bonds or reduce or otherwise manage the interest costs of the bonds and provide security therefor; and

(D) Provide for any other matters of like or different character that in any way affects the security for or payment on the bonds.

(d) The bonds are declared to be issued for essential public and governmental purposes. The bonds, the interest thereon, 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.

(e) The District hereby pledges and covenants and agrees with the holders of the bonds that, subject to the provisions of the financing documents, the District will not limit or alter the revenues pledged to secure the bonds or the basis on which the 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 of the bonds, and will not modify in any way, with respect to the bonds, the exemptions from taxation provided for in this subchapter, 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 of the bonds, are fully met and discharged. This pledge and agreement for the District may be included as part of the contract with the holders of the bonds. This subsection shall constitute a contract between the District and the holders of the bonds. To the extent that any acts or resolutions of the Council may be in conflict with this subchapter, this subchapter shall be controlling.

(f) Consistent with § 1-204.90(a)(4)(B), and notwithstanding Article 9 of Subtitle I 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; 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.

(g) 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 holder 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 subchapter;

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

(h)(1) The members of the Council, the Mayor, or any person executing any of the bonds shall not be personally liable on the bonds by reason of their issuance.

(2) Notwithstanding any other provision of this subchapter, the bonds shall not be general obligations of the District and shall not be a debt or liability of the District within the meaning of any debt or other limit prescribed by law. The faith and credit or the general taxing power of the District (other than funds in the Ballpark Revenue Fund or any other security authorized by this subchapter) shall not be pledged to secure the payment of the bonds.

(i) The Mayor shall select the underwriter for the bonds through a request for proposals and recommend to the underwriter a counsel that shall serve as counsel to the underwriter regarding the issuance of bonds. The bonds shall be sold to the underwriter through a negotiated process.

(Apr. 8, 2005, D.C. Law 15-320, § 103, 52 DCR 1757; Nov. 30, 2005, D.C. Law 16-91, § 203(b), 52 DCR 10637.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 16-91, in subpar. (a)(4)(E), substituted "of funds constituting the principal amount of bonds" for "of bonds".

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 6 of Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Temporary Act of 2006 (D.C. Law 16-115, June 9, 2006, law notification 53 DCR 5353).

For temporary (225 day) amendment of section, see § 7 of Ballpark Hard and Soft Costs Cap Temporary Act of 2007 (D.C. Law 17-1, April 18, 2007, law notification 54 DCR 6580).

Emergency Act Amendments

For temporary (90 day) amendment of section, see §§ 3 and 6 of Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Emergency Act of 2006 (D.C. Act 16-277, February 14, 2006, 53 DCR 1341).

For temporary (90 day) amendment of section, see § 6 of Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Congressional Review Emergency Act of 2006 (D.C. Act 16-378, May 19, 2006, 53 DCR 4399).

For temporary (90 day) amendment of section, see § 7 of Ballpark Hard and Soft Costs Cap Emergency Act of 2007 (D.C. Act 17-11, January 26, 2007, 54 DCR 1514).

Legislative History of Laws

For Law 15-320, see notes following § 10-1601.01.

For Law 16-91, see notes following § 10-1601.02.

Effective Dates

Section 136 of Pub. L. 109-115, Nov. 30, 2005, 119 Stat. 2522, provides: 'Notwithstanding section 602(c)(1) of the District of Columbia Home Rule Act, amendments to the Ballpark Technical Amendments Act of 2005 shall take effect on the date of the enactment by the District of Columbia [Nov. 30, 2005].

§ 10-1601.04. LOCAL, SMALL, AND DISADVANTAGED BUSINESS ENTERPRISES, FIRST SOURCE EMPLOYMENT, AND APPRENTICE REQUIREMENTS.

(a) For purposes of this section, the term "ballpark" shall have the meaning specified in § 47-2002.05(a)(1).

(b) Notwithstanding any other provision of law, the Mayor shall take all measures as shall be reasonably necessary to assure that all contracts entered into by the District or any agency or instrumentality of the District with respect to the ballpark shall comply with the requirements of subchapter IX-A of Chapter 2 of Title 2.

(c) The Mayor shall take all measures as shall be reasonably necessary to assure that all contracts entered into by the District or any agency or instrumentality of the District with respect to each major phase of the development and construction of the ballpark, including contracts for architectural, engineering, and construction services, shall provide that at least 50% of the work in the aggregate under such contracts shall be awarded to local business enterprises, local small business enterprises, or local disadvantaged business enterprises, as such terms are defined in § 2-218.02; provided, that of the percentage of the work required by this section to be awarded to local business enterprises, local small business enterprises, or local disadvantaged business enterprises, 35% of the work shall be awarded to local small business enterprises or local disadvantaged business enterprises, as such terms are defined in § 2-218.02; provided further, that if the 35% requirement is unattainable, the Mayor shall report this to the Council for reconsideration. Of the percentage of the work required by this section to be awarded to local small business enterprises or local disadvantaged business enterprises, not less than 20% of the work shall be awarded to local disadvantaged business enterprises.

(d) Notwithstanding any other provision of law, the Mayor shall take all measures as shall be reasonably necessary to assure that all contracts entered into by the District or any agency or instrumentality of the District with respect to the development and construction of the ballpark shall comply with First Source Employment requirements of subchapter X of Chapter 2 of Title 2.

(e)(1) Notwithstanding any other provision of law, the Mayor shall take all measures as shall be reasonably necessary to assure that all contracts entered into by the District or any agency or instrumentality of the District with respect to the development and construction of the ballpark shall comply with the requirements of subchapter I of Chapter 14 of Title 32.

(2)(A) Notwithstanding any other provision of law, 50% of all apprenticeship hours performed pursuant to apprenticeship programs related to the construction and operation of the ballpark shall be performed by District of Columbia residents.

(B) Any prime contractor or subcontractor that fails to make a good faith effort to comply with the

requirements of this paragraph shall be subject to a monetary fine in the amount of 5% of the direct or indirect labor costs of the contract. Fines shall be imposed by the Contracting Officer and remitted to the Department of Employment Services to be applied to job training programs, subject to appropriations by Congress.

(f) The Mayor shall encourage the owner of any professional baseball franchise that operates in the ballpark to enter into broadcast media rights agreements with broadcast media companies that are local business enterprises and disadvantaged business enterprises as such terms are defined in § 2-218.02.

(Apr. 8, 2005, D.C. Law 15-320, § 104, 52 DCR 1757; Mar. 2, 2007, D.C. Law 16-191, § 38, 53 DCR 6794.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 16-191, in subsec. (b), substituted "subchapter IX-A of Chapter 2 of Title 2" for "subchapter IX of Chapter 2 of Title 2"; and, in subsecs. (c) and (f), substituted "§ 2-218.02" for "§ 2-217.01".

Legislative History of Laws

For Law 15-320, see notes following § 10-1601.01.

For Law 16-191, see notes following § 10-801.

§ 10-1601.05. BALLPARK DEVELOPMENT AND CONSTRUCTION.

(a) For the purposes of this section, the term:

- (1) "Ballpark" means a baseball-specific stadium owned by the District and constructed on the ballpark site.
- (2) "Ballpark site" means the site bounded by N Street, S.E., Potomac Avenue, S.E., South Capitol Street, S.E., and 1st Street, S.E., or such other site as determined in accordance with subsection (b)(2) of this section if this primary site shall be unavailable to be acquired by the Mayor.
- (3) "Baseball Stadium Agreement" means the Baseball Stadium Agreement dated as of September 29, 2004 by and among the Government of the District of Columbia, the Sports and Entertainment Commission, and Baseball Expos, L.P., a Delaware limited partnership.
- (4) "MLB Team" means the entity that owns the Major League Baseball franchise that will play its home games in the ballpark.

(b)(1) For purposes of this subsection, the term:

- (A) "Ballpark" shall have the meaning specified in § 47-2002.05(a)(1)(A).
- (B) "Baseball Stadium Agreement" shall have the meaning specified in subsection (a)(3) of this section.

(2) The Mayor, subject to such conditions as the Mayor shall determine, shall:

- (A) Acquire and convey to the Anacostia Waterfront Corporation, for use by the Sports and Entertainment Commission to satisfy its responsibilities under this subchapter, all necessary real property, including rights-of-way or other easements, that shall be required to develop, construct, and complete a ballpark within the site bounded by N Street, S.E., Potomac Avenue, S.E., South Capitol Street, S.E., and 1st Street, S.E.; provided, that if this site shall be unavailable or infeasible for the timely completion of a ballpark on or prior to March 1, 2008 relying only on the funding authority provided in this subchapter, any designated alternative site in the District of Columbia, including the site for Robert F. Kennedy Stadium, as defined in § 3-1402(4), that the Mayor determines, subject to the approvals required in section 4.01 of the Baseball Stadium Agreement, will be available and feasible for the timely completion of a ballpark relying only on the funding authority provided in this subchapter; provided further, that if the designated alternative site is not within the Anacostia Waterfront, as that term is defined in subchapter XII of Chapter 12 of Title 2, the alternative site shall be conveyed directly to the Sports and Entertainment Commission; and
- (B) Provide to the Sports and Entertainment Commission all funds from the Ballpark Revenue Fund or from the issuance of bonds secured by the Ballpark Revenue Fund as shall be required by the Sports and Entertainment Commission for the development, construction, completion, and leasing of the ballpark on the ballpark site in accordance with this section.

(3) The Mayor shall provide the Council with the following information associated with the ballpark:

- (A) A copy of any term sheet, loan commitment, or any other material obligation executed by the District or any District government agency or instrumentality to finance the District government's costs associated with the development of the ballpark;
- (B) A copy of each material contract executed by the District or any District government agency or instrumentality for goods or services associated with the development of the ballpark; and

(C) On or before July 1, 2005, and every 6 months thereafter, a semiannual report which provides an accounting and itemization of all financial obligations and expenditures of the District government and all revenues generated to the District government associated with the development of the ballpark.

(c) The Sports and Entertainment Commission shall develop and construct a ballpark on the ballpark site in accordance with the following requirements:

(1) The ballpark shall be a first-class, open air baseball stadium to be constructed on the ballpark site, having a natural grass playing field, a capacity of approximately 41,000 seats, and market-appropriate concession, entertainment, and retail areas, fixtures, furnishings, equipment, features, and amenities.

(2) The ballpark shall be designed to comply with all public safety, accessibility, and urban planning requirements generally applicable to buildings of such scale, purpose, and location in the District of Columbia.

(3)(A) The Sports and Entertainment Commission shall enter into a Construction Administration Agreement with the Mayor and the MLB Team. The Construction Administration Agreement shall require the Sports and Entertainment Commission, the Mayor, and the MLB Team to form a Project Coordination Team to perform the following functions:

(i) Make non-binding recommendations to the Sports and Entertainment Commission and the MLB Team with respect to the retention of various design, engineering, construction, consulting, and construction management firms that will assist in the development and construction of the ballpark;

(ii) Receive reports from such firms pertaining to schedule, budget and other aspects of the development and construction of the ballpark; and

(iii) Make or provide the consents, authorizations, approvals, decisions, and other actions expressly required of the Project Coordination Team, to the extent legally permitted, under the Construction Administration Agreement.

(B) The Construction Administration Agreement shall provide for periodic regular meetings of the Project Coordination Team and for special meetings upon reasonable prior notice. The Sports and Entertainment Commission and the Mayor together shall have one vote and the MLB Team shall have one vote on the Project Coordination Team, and each will have the right to appoint and replace its voting representative by written notice to the other party. The voting representative who represents the Sports and Entertainment Commission and the Mayor shall be chosen jointly by the Sports and Entertainment Commission and the Mayor. Each voting member of the Project Coordination Team may act on behalf of the party or parties it represents, and in connection with the development and construction of the ballpark, may sign documents, authorize action, and otherwise bind the party or parties that it represents in connection with matters properly before the Project Coordination Team. The Project Coordination Team shall take action only by unanimous vote of its voting members.

(4) The Sports and Entertainment Commission shall use a competitive procurement process in accordance with its procurement regulations to select and engage the design, engineering, construction, consulting, and construction management firms and shall require such firms to comply with subchapter X of Chapter 2 of Title 2.

(5) The ballpark shall be designed and constructed in a manner to promote the minimization of:

(A) The life cycle cost and environmental impact of the facility and dependence on petroleum-based fuels by utilizing energy efficiency, water conservation, or solar or other renewable energy technologies; and

(B) Waste production, water pollution, and storm water runoff from the facility, taking into account applicable criteria in effect, on April 8, 2005, of the Leadership in Energy and Environmental Design Green Building Rating System for New Construction and Major Renovation, LEED-NC version 2.1, as defined by the U.S. Green Building Council.

(6) The Sports and Entertainment Commission shall comply with the expenditure limitations set forth in §§ 10-1601.32 and 10-1601.33. The Sports and Entertainment Commission shall submit a monthly report of expenditures to the Council no later than the 15th of each month.

(d) The Sports and Entertainment Commission shall lease the ballpark, on behalf of the District, to the MLB Team pursuant to a lease agreement that has an initial term of at least 30 consecutive years, plus 5 2-year renewal options, and that is otherwise in accordance with the terms of the Baseball Stadium Agreement.

(e)(1) The Sports and Entertainment Commission and the Anacostia Waterfront Corporation shall promptly enter into a memorandum of understanding which shall address these agencies' shared responsibilities for developing the master urban site plan and exterior design guidelines for the ballpark and parcels adjacent to the ballpark site within the Anacostia Waterfront.

(2) Parts F and G of subchapter XII of Chapter 12 of Title 2, shall not apply to the ballpark or the Robert F. Kennedy Stadium.

(f) Except as provided in §§ 10-1601.32 and 10-1601.33, no funds in the General Fund of the District of Columbia shall be spent on the hard and soft costs (as the terms are defined in part B of this subchapter) for construction of the ballpark.

(g) References in this section to the Sports and Entertainment Commission shall be deemed to refer to the Washington Convention and Sports Authority, as successor to the Sports and Entertainment Commission, unless the context clearly indicates otherwise.

(Apr. 8, 2005, D.C. Law 15-320, § 105, 52 DCR 1757; Oct. 18, 2007, D.C. Law 17-22, § 6, 54 DCR 8006; Mar. 3, 2010, D.C. Law 18-111, § 2082(m)(1), 57 DCR 181.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 17-22 added subsecs. (c)(6) and (f).

D.C. Law 18-111 added subsec. (g).

Temporary Addition of Section

For temporary (225 day) addition, see § 5 of Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Temporary Act of 2006 (D.C. Law 16-115, June 9, 2006, law notification 53 DCR 5353).

For temporary (225 day) addition, see § 7 of Ballpark Hard and Soft Costs Cap Temporary Act of 2007 (D.C. Law 17-1, April 18, 2007, law notification 54 DCR 6580).

Emergency Act Amendments

For temporary (90 day) addition, see § 5 of Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Congressional Review Emergency Act of 2006 (D.C. Act 16-378, May 19, 2006, 53 DCR 4399).

For temporary (90 day) addition, see § 6 of Ballpark Hard and Soft Costs Cap Emergency Act of 2007 (D.C. Act 17-11, January 26, 2007, 54 DCR 1514).

For temporary (90 day) amendment of section, see § 2082(m)(1) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2082(m)(1) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative History of Laws

For Law 15-320, see notes following § 10-1601.01.

Law 17-22, the "Ballpark Hard and Soft Cost Cap Act of 2007", was introduced in Council and assigned Bill No. 17-11 which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on June 21, 2007, and July 10, 2007, respectively. Signed by the Mayor on July 27, 2007, it was assigned Act No. 17-84 and transmitted to both Houses of Congress for its review. D.C. Law 17-22 became effective on October 18, 2007.

For Law 18-111, see notes following § 10-303.

§ 10-1601.06. REQUIREMENT TO INVITE AND EVALUATE PRIVATE FINANCING.

(a) For purposes of this section, the term "ballpark" shall have the meaning specified in § 47-2002.05(a)(1)(A).

(b) There is hereby established the Baseball Financing Review Fund as a segregated, nonlapsing special revenue fund in the District separate and apart from the General Fund of the District of Columbia. All fees specifically identified by subsection (c) of this section shall be deposited into the Baseball Financing Review Fund without regard to fiscal year limitation pursuant to an act of Congress. All fees deposited into the Baseball Financing Review Fund shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, and shall be continually available to pay or reimburse the cost of services related to the evaluation and reporting of proposals as required by subsections (d) and (e) of this section, subject to authorization by Congress.

(c)(1) Within 30 days of April 8, 2005, the Chief Financial Officer shall cause to be published a notice that the District is seeking the submission of supplemental or alternative financing plans and proposals for the development and construction of the ballpark in accordance with §§ 10-1601.04 and 10-1601.05 that would provide for a meaningful and substantial reduction in:

- (A) The minimum annual amount of ballpark fees required to be collected under § 47-2762; and
- (B) The principal amount of bonds that the District would otherwise need to issue under §§ 10-1601.03 and 10-1601.05.

(2) Any party submitting a supplemental or alternative financing plan or proposal shall also submit a reasonable proposal fee, in an amount to be determined by the Chief Financial Officer, to defray the costs to the District of evaluating and reporting upon the supplemental or alternative financing plan or proposal. All proposal fees shall be deposited into the Baseball Financing Review Fund.

(d)(1) The Chief Financial Officer, in consultation with the Mayor and the Council, shall:

- (A) Establish criteria for the requested supplemental or alternative financing plans and proposals, and include this criteria within the notice required by subsection (c) of this section; and
- (B) Evaluate such proposals in accordance with the criteria.

(2) The criteria shall limit consideration to only bona fide supplemental or alternative financing plans and proposals that have been submitted by parties that:

- (A) Are financially capable of performing the supplemental or alternative financing plan and proposal; and
- (B) Substantially reduce the amount or duration of the proposed ballpark fee as set forth in § 47-2762.

(e)(1) Not later than March 15, 2005, and not less than 45 days prior to the issuance of bonds authorized by this subchapter, the Chief Financial Officer shall deliver a report to the Mayor and the Council, describing and evaluating all supplemental or alternative financing plans and proposals that were submitted in accordance with subsections (c) and (d) of this section.

(2) If the Chief Financial Officer finds that at least one supplemental or alternative financing plan or proposal meets the criteria established pursuant to subsection (c) and (d) of this section and certifies that at least 50% of the cost of constructing the ballpark can be financed privately, the Mayor, within 15 days of the submission of the report by the Chief Financial Officer, shall submit proposed legislation to the Council to replace part or all of the public financing otherwise required by this subchapter and thereby substantially reduce the amount or duration of the proposed ballpark fee; provided, that the private financing legislation otherwise preserves the obligations and economics of the Baseball Stadium Agreement.

(f) This section shall not create any legal obligation or liability on the part of the District to any party who submits a supplemental or alternative financing plan or proposal pursuant to this section.

(Apr. 8, 2005, D.C. Law 15-320, § 106, 52 DCR 1757.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 15-320, see notes following § 10-1601.01.

§ 10-1601.07. REQUIREMENT TO REVIEW COSTS AND PURSUE ALTERNATIVE BALLPARK SITE.

(a) For purposes of this section, the term "ballpark" shall have the meaning specified in § 47-2002.05(a)(1)(A).

(b) For the purposes of this section, land acquisition costs shall include the following:

- (1) One separate appraisal of each parcel of land to be acquired, which shall be performed after April 8, 2005;
- (2) An estimate of the environmental remediation costs; and
- (3) Legal expenses associated with land acquisition.

(c) For purposes of this section, infrastructure costs shall include the following:

- (1) The District Department of Transportation's estimate for basic road and sidewalk improvements;
- (2) The cost of expanding the Navy Yard Metro station to accommodate the additional usage anticipated by the stadium; and
- (3) Water and sewer relocation costs.

(d) Prior to May 15, 2005, and prior to the date upon which the District enters into any obligation to acquire or purchase any property on a site bounded by N Street, S.E., Potomac Avenue, S.E., South Capitol Street, S.E., and 1st Street, S.E. ("primary ballpark site"), the Chief Financial Officer shall re-estimate the costs to the District for land acquisition and infrastructure and provide a report on this re-estimate to the

Mayor and the Council.

(e) If the total amount of these re-estimated costs to the District exceeds \$165 million, the primary ballpark site shall be deemed financially unavailable by the District pursuant to this subchapter. Pursuant to this subchapter, the Mayor and the Sports and Entertainment Commission shall pursue replacement of the primary ballpark site with a substantially less costly site in the District, subject to the approval of Baseball Expos, L.P., or its assigns or successors, in accordance with the Baseball Stadium Agreement.

(Apr. 8, 2005, D.C. Law 15-320, § 107, 52 DCR 1757.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 15-320, see notes following § 10-1601.01.

§ 10-1601.08. CERTAIN REQUIRED PROVISIONS TO BE INCLUDED IN FUTURE AGREEMENTS.

(a) The Construction Administration Agreement, referenced in § 10- 1601.05(c)(3), shall require a risk management program that minimizes the exposure of the Sports and Entertainment Commission and the District to cost overrun and late completion risk under section 8.04(c)(iii) of the Baseball Stadium Agreement, as defined in § 10-1601.05(a)(3), including, but not limited to provisions that:

(1) Require the team to share equally with the District or the Sports and Entertainment Commission the cost of a program that includes:

(A) A mutually selected insurance consultant engaged to advise on the procurement of construction period insurance and the cost effective allocation of late completion risk in the construction documents;

(B) Mutually approved construction period insurance carried pursuant to section 4.05 of the Baseball Stadium Agreement; and

(C) A mutually selected value engineering consultant engaged to advise the project coordination team on mitigation of cost overrun risk;

(2) To the extent that the team is entitled to compensatory damages under section 8.04(c)(iii) of the Baseball Stadium Agreement as a result of a *force majeure* event for which there is insurance coverage under subparagraph (1)(A) of this subsection, provide that the team's recourse to the District or the Sports and Entertainment Commission for the recovery of such damages shall be limited exclusively to the proceeds of the insurance; and

(3) To the extent that the team is entitled to compensatory damages under section 8.04(c)(iii) of the Baseball Stadium Agreement with regard to a missed deadline, provide that the team's recourse to the District or the Sports and Entertainment Commission for the recovery of such damages, after giving effect to any insurance or other third party recoveries, shall be limited exclusively to:

(A) With regard to the first 12 months following the missing deadline, the right of offset against the license fees for the use of Robert F. Kennedy Stadium after March 1, 2008; and

(B) With regard to the second 12 months following the missed deadline, an amount calculated in accordance with the Baseball Stadium Agreement that shall not exceed \$19 million.

(b) The ballpark lease agreement and the license agreement for interim use of Robert F. Kennedy Stadium shall each include provisions requiring Baseball Expos, L.P., or its assigns or successors, to maintain its Major League Baseball franchise in the District for the term of the agreement, and shall each include such other provisions and remedies as shall be necessary to ensure enforcement of this obligation, including all remedies available under District law, and provisions requiring Baseball Expos, L.P., or its assigns or successors, if the team relocates from the District prior to the expiration of the term of the agreement, to directly pay, or to finance the reimbursement of the District or any other party, for any and all outstanding costs to be borne by the District or any other party related to the ballpark as set forth in § 10-1601.02(c), and for any lost revenue that the District or any other party would have received if the team had completed its term.

(Apr. 8, 2005, D.C. Law 15-320, § 108, 52 DCR 1757.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 15-320, see notes following § 10-1601.01.

PART B. BALLPARK HARD AND SOFT COSTS CAP.

§ 10-1601.31. DEFINITIONS.

For the purposes of this part, the term:

- (1) "Ballpark", "Ballpark Site", and "MLB Team" shall have the same meanings as provided in § 10-1601.05(a)(1), (2), and (4), respectively.
- (2) "Bonds" shall have the same meaning as in § 10-1601.03(a)(2).
- (3) "Hard costs" means the direct construction costs and builders contingency costs, estimated as \$295,075,993 and \$24,924,007, respectively, in the revised budget for the ballpark transmitted by the District of Columbia Sports and Entertainment Commission to the Council on February 3, 2006, for the construction of the ballpark.
- (4) "Soft costs" means the soft, ancillary, contingency, completion guarantee fee, and financing fee costs for the construction of the ballpark, excluding the land acquisition, environmental remediation, relocation, and demolition costs, estimated as \$117,342,193, and excluding the \$24 million utilized for the renovation of RFK Stadium, as reflected in the May 31, 2007 revised budget for the ballpark transmitted by the District of Columbia Sports and Entertainment Commission to the Council on June 15, 2007.

(Oct. 18, 2007, D.C. Law 17-22, § 2, 54 DCR 8006.)

HISTORICAL AND STATUTORY NOTES

Temporary Addition of Section

For temporary (225 day) addition, see § 2 of Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Temporary Act of 2006 (D.C. Law 16-115, June 9, 2006, law notification 53 DCR 5353).

For temporary (225 day) addition, see § 2 of Ballpark Hard and Soft Costs Cap Temporary Act of 2007 (D.C. Law 17-1, April 18, 2007, law notification 54 DCR 6580).

Emergency Act Amendments

For temporary (90 day) addition, see § 2 of Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Emergency Act of 2006 (D.C. Act 16-277, February 14, 2006, 53 DCR 1341).

For temporary (90 day) addition, see § 2 of Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Congressional Review Emergency Act of 2006 (D.C. Act 16-378, May 19, 2006, 53 DCR 4399).

For temporary (90 day) addition, see § 2 of Ballpark Hard and Soft Costs Cap Emergency Act of 2007 (D.C. Act 17-11, January 26, 2007, 54 DCR 1514).

Legislative History of Laws

Law 17-22, the "Ballpark Hard and Soft Cost Cap Act of 2007", was introduced in Council and assigned Bill No. 17-11 which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on June 21, 2007, and July 10, 2007, respectively. Signed by the Mayor on July 27, 2007, it was assigned Act No. 17-84 and transmitted to both Houses of Congress for its review. D.C. Law 17-22 became effective on October 18, 2007.

§ 10-1601.32. LIMITATION ON CONTRIBUTION OF BOND PROCEEDS AND EXPENDITURE OF FUNDS.

(a) The District's contribution of bond proceeds from public financing to the project budget, and the expenditure of funds, for the construction of the ballpark shall not exceed \$300 million for the hard costs and \$175,184,218 for the soft costs.

(b) The expenditure limits of \$300 million and \$175,184,218 shall include public funds from any source expended by the District government or any of its independent agencies or instrumentalities.

(Oct. 18, 2007, D.C. Law 17-22, § 3, 54 DCR 8006.)

HISTORICAL AND STATUTORY NOTES

Temporary Addition of Section

For temporary (225 day) addition, see § 3 of Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Temporary Act of 2006 (D.C. Law 16-115, June 9, 2006, law notification 53 DCR 5353).

For temporary (225 day) addition, see § 3 of Ballpark Hard and Soft Costs Cap Temporary Act of 2007 (D.C. Law 17-1, April 18, 2007, law notification 54 DCR 6580).

Legislative History of Laws

For Law 17-22, see notes following § 10-1601.31.

§ 10-1601.33. PAYMENT IN EXCESS OF EXPENDITURE LIMITS.

(a) Notwithstanding any other provision of law, and in accordance with Council approval of contract CA 16-185, the lease agreement between the District of Columbia Sports and Entertainment Commission and Baseball Expos, L.P., and the Construction Administration Agreement as set forth in the Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Temporary Act of 2006, effective June 8, 2006 (D.C. Law 16-115; 53 DCR 2542), and subject to § 10-1601.32, the amount of the hard costs in excess of \$300 million and the soft costs in excess of \$175,184,218 shall be paid by:

(1) The MLB Team;

(2) Savings realized from value engineering; or

(3)(A) Federal;

(B) Private; or

(C) Other non-District government funds, except that District government funds, other than funds in the General Fund of the District of Columbia, may be used if required by the bond indenture to finance the construction of the ballpark.

(b) The funds required by the bond indenture to finance construction of the ballpark, referred to in subsection (a)(3)(C) of this section, include approximately \$37 million of baseball revenue collected in 2005 (plus interest), approximately \$30 million of interest earned from the borrowing, and approximately \$9 million of premium received on the sale of the bonds. These fees shall not exceed the total expenditure limits set forth in this part.

(c) Any revenue derived from development rights on the Ballpark Site by the Anacostia Waterfront Corporation or any District government entity, independent agency, or instrumentality shall not be used for any overruns on the hard and soft costs, but may be used for any overruns on the land acquisition and remediation costs that are documented.

(d) The funds from the sources listed in subsection (a) of this section may be expended to cover any amount of the hard costs in excess of \$300 million and any amount of the soft costs in excess of \$175,184,218.

(Oct. 18, 2007, D.C. Law 17-22, § 4, 54 DCR 8006.)

HISTORICAL AND STATUTORY NOTES

Temporary Addition of Section

For temporary (225 day) addition, see § 3 of Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Temporary Act of 2006 (D.C. Law 16-115, June 9, 2006, law notification 53 DCR 5353).

For temporary (225 day) addition, see § 4 of Ballpark Hard and Soft Costs Cap Temporary Act of 2007 (D.C. Law 17-1, April 18, 2007, law notification 54 DCR 6580).

Emergency Act Amendments

For temporary (90 day) addition, see § 3 of Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Congressional Review Emergency Act of 2006 (D.C. Act 16-378, May 19, 2006, 53 DCR 4399).

For temporary (90 day) addition, see § 4 of Ballpark Hard and Soft Costs Cap Emergency Act of 2007 (D.C. Act 17-11, January 26, 2007, 54 DCR 1514).

Legislative History of Laws

For Law 17-22, see notes following § 10-1601.31.

§ 10-1601.34. DEVELOPMENT RIGHTS.

(a) The District government, or one of its instrumentalities, such as the Anacostia Waterfront Corporation, shall control development rights on the north side of the Ballpark Site and all but 210,000 square feet of development rights reserved for the MLB Team purposes on the south side of the Ballpark Site. Development on the east side of the Ballpark Site, on First Street, S.E., shall generate revenue to the District and shall be developed in accordance with a plan approved by the Council.

(b) Any excess revenues derived from development rights that are not used for cost overruns for land acquisition and environmental remediation shall be deposited into the Community Benefits Fund established by § 10-1602.02.

(Oct. 18, 2007, D.C. Law 17-22, § 5, 54 DCR 8006.)

HISTORICAL AND STATUTORY NOTES

Temporary Addition of Section

For temporary (225 day) addition, see § 4 of Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Temporary Act of 2006 (D.C. Law 16-115, June 9, 2006, law notification 53 DCR 5353).

For temporary (225 day) addition, see § 5 of Ballpark Hard and Soft Costs Cap Temporary Act of 2007 (D.C. Law 17-1, April 18, 2007, law notification 54 DCR 6580).

Emergency Act Amendments

For temporary (90 day) addition, see § 4 of Ballpark Hard and Soft Costs Cap and Ballpark Lease Conditional Approval Congressional Review Emergency Act of 2006 (D.C. Act 16-378, May 19, 2006, 53 DCR 4399).

For temporary (90 day) addition, see § 5 of Ballpark Hard and Soft Costs Cap Emergency Act of 2007 (D.C. Act 17-11, January 26, 2007, 54 DCR 1514).

Legislative History of Laws

For Law 17-22, see notes following § 10-1601.31.

SUBCHAPTER II. COMMUNITY BENEFIT ASSOCIATED WITH BALLPARK.

§ 10-1602.01. FINDINGS.

The Council finds that it is appropriate that the District of Columbia seek to utilize the economic benefits that will be derived from the construction of the ballpark for the benefit and well-being of the residents of the District.

(Apr. 8, 2005, D.C. Law 15-320, § 201, 52 DCR 1757.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

Law 15-320, the "Ballpark Omnibus Financing and Revenue Act of 2004", was introduced in Council and assigned Bill No. 15-1028, which was referred to the Committee of Finance and Revenue. The Bill was adopted on first and final readings on November 30, 2004, and December 21, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-717 and transmitted to both Houses of Congress for its review. D.C. Law 15-320 became effective on April 8, 2005.

§ 10-1602.02. CREATION OF COMMUNITY BENEFIT FUND.

(a)(1) There is hereby established within the General Fund of the District of Columbia, a segregated, nonlapsing special revenue fund to be denominated as the Community Benefit Fund. The Chief Financial Officer of the District of Columbia shall pay into the Community Benefit Fund all receipts from those fees and taxes specifically identified by any provision of District of Columbia law to be paid into the fund.

(2) The Chief Financial Officer of the District of Columbia shall create a sub-account within the Community Benefit Fund for each type of fee and tax that is to be paid into the fund and shall allocate the receipts from each type of fee and tax to the appropriate sub-account. The Mayor, or any District government agency or instrumentality which has been designated by the Mayor, may pledge and create a security interest in the funds in the Community Benefit Fund, or any sub-account or sub-accounts within the fund for the payment of the costs of carrying out any of the purposes described in subsection (b) of this section, the payment of the debt service on any bonds or other evidence of indebtedness issued by the District, or any District government agency or instrumentality, or any of the purposes described in subsection (b) of this section, without further action as permitted by § 1-204.90(f).

(3) If bonds or other evidence of indebtedness are issued, the payment shall be made in accordance with the provisions of the documents entered into by the District or any District agency or instrumentality in connection with the issuance of the bonds or other evidence of a security interest created pursuant to this subsection shall be valid, binding, and perfected from the time the security interest is created, with or without the physical delivery of any funds or any other property and with or without further action. 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. The lien created by the security interest is valid, binding, and perfected with respect to any person (as defined in § 47-

2001(i)) having claims against the District, whether or not the person has notice of the lien.

(b) The funds deposited in the Community Benefit Fund shall be used to directly pay or to finance community area priorities, including recreation centers, small business development incentives, job training and readiness programs, school athletic facilities, and such other projects that the Mayor shall find to be of benefit to any area of the District. Any working capital or operating expenses permitted by this section shall be derived from sources from which the funds may be authorized. In addition to the purpose set forth above for the funds deposited in the Community Benefit Fund, there shall be the following expenditures made from the Fund. All expenditures from the Fund shall be submitted to the Council, by legislation for approval.:

- (1) \$5 million shall be made available to the Department of Parks and Recreation for capital investment for a Learning and Sports Center facility to be located adjacent to Fort Greble Recreation Center;
- (2) \$5 million shall be available for school-based athletics, which funds shall be allocated to the Washington Convention and Sports Authority and expended based upon a needs assessment prepared by the Superintendent of the District of Columbia Public Schools;
- (3) \$5 million shall be available for future allocation to projects located within the boundaries of Ward 6;
- (4) \$5 million shall be available for future allocation to projects located within the boundaries of Ward 7;
- (5) \$2 million shall be available for equipment and supplies at McKinley Technology High School to deliver the specialized curriculum in biotechnology, information technology, and broadcast technology;
- (6) \$10 million shall be made available to assess the feasibility of, and begin planning for, the National Capital Medical Center on the grounds of the former D.C. General Hospital;
- (7) Ten percent of the revenue generated by the bonds authorized pursuant to § 10-1602.03(b) shall be allocated for commercial development in specified areas including the Good Hope Road, South Capitol Street, Martin Luther King Jr. Avenue, and Minnesota Avenue corridors; provided, that boundaries for the aforementioned development shall be designated by the Office of Planning within 120 days of April 8, 2005;
- (8) An amount not to exceed \$125 million shall be made available exclusively for school construction and modernization; and
- (9) An amount not to exceed \$45 million shall be made available for capital improvements for public neighborhood libraries in the District of Columbia.

(c) This section shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

(Apr. 8, 2005, D.C. Law 15-320, § 202, 52 DCR 1757; Mar. 3, 2010, D.C. Law 18-111, § 2082(m)(2), 57 DCR 181; Sept. 14, 2011, D.C. Law 19-21, § 8132, 58 DCR 6226.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 18-111, in subsec. (b)(2), substituted "Washington Convention and Sports Authority" for "Sports and Entertainment Commission".

D.C. Law 19-21 added subsec. (c).

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2082(m)(2) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2082(m)(2) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 8022 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative History of Laws

For Law 15-320, see notes following § 10-1602.01.

For Law 18-111, see notes following § 10-303.

For history of Law 19-21, see notes under § 47-305.02.

Miscellaneous Notes

Short title: Section 8131 of D.C. Law 19-21 provided that subtitle N of title VIII of the act may be cited as "Community Benefits Fund Amendment Act of 2011".

§ 10-1602.03. BOND ISSUANCE.

(a) For the purposes of this section, the term:

- (1) "Community Benefit Fund" means the Community Benefit Fund established by § 10-1602.02.
- (2) "Bonds" means the District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations) in one or more series, authorized to be issued pursuant to § 1-204.90, as implemented by this subchapter.
- (3) "DC Ballpark TIF area" means the tax increment financing area designated and established by § 2-1217.12.
- (4) "Home Rule Act" means Chapter 2 of Title 1.
- (5) "Projects" means the financing, refinancing, or reimbursing of costs incurred in the site acquisition for, and the development, design, construction, improvement, furnishing, and equipping of recreation centers, libraries, small business development incentives, job training and readiness programs, school athletic facilities, and such other projects to be of benefit to any community of the District.

(b) The Council hereby authorizes the issuance of one or more series of Bonds in an aggregate amount not to exceed \$450 million for payment of the costs of the projects, of which \$50 million shall be used for infrastructure improvements in the DC Ballpark TIF Area. There is hereby allocated to the bonds the funds in the Community Benefit Fund, or such portion of the funds as shall be determined in accordance with the terms of the bonds, for the payment of debt service on the bonds and the payment of such other costs as are permitted to be paid with funds from the Community Benefit Fund. The issuance of any series of bonds shall be approved by resolution of the Council.

(c) The Mayor may take any action necessary or appropriate in accordance with this subchapter 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 the denominations of the bonds;
- (3) The rate or rates of interest on, and the method or methods of determining the rate or rates of interest on, the bonds;
- (4) The date or dates of issuance, sale, and delivery of, the payment of interest on, and the maturity date or dates of, the bonds;
- (5) Whether the bonds are to be sold at a competitive or negotiated sale and the terms and conditions of the sale;
- (6) The terms under which the bonds may be paid, optionally or mandatorily redeemed, accelerated, called or put for redemption, repurchase, or remarketing before their respective stated maturities;
- (7) Provisions for the registration, transfer, and exchange of each series of 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 the bonds and the determination of the priority thereof;
- (9) The time and place of payment of the bonds;
- (10) Whether the bonds will be taxable, tax-exempt, or a combination thereof;
- (11) Procedures for monitoring the use of the proceeds received from the sale of the bonds to ensure that they are properly applied to the projects and used to accomplish the purposes of this subchapter; and
- (12) Actions necessary to qualify the bonds under the blue sky laws of any jurisdiction where the bonds are marketed.

(d) 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 payments from the Community Benefit Fund or any other security authorized by this subchapter), shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited by § 1-206.02(a)(2).

(e) 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 bonds.

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

(g) The bonds may be issued at any time or from time to time in one or more issues and one or more

series and may be sold at public or private sale. A series of bonds may be secured by a trust agreement or trust indenture between the District and a corporate trustee having trust powers, and may be secured by a loan agreement or other instrument or instruments by means of which the District may:

(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 relating 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) The terms and conditions upon which additional bonds of the District may be issued;

(D) 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) The 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 in hand or to be received in the future, or both;

(3) Provide for bond insurance, letters of credit, interest rate swaps, or other financial derivative products or otherwise enhance the credit of and security for the payment of the bonds or reduce or otherwise manage the interest costs of the bonds; and

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

(h) The bonds are declared to be issued for essential public and governmental purposes. The Bonds, the interest thereon, 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.

(i) The District does hereby pledge and covenant and agree with the holders of the 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 the 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 of the bonds, and will not modify in any way, with respect to the bonds, the exemptions from taxation provided for in this subchapter, 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 of the bonds, are fully met and discharged. This pledge and agreement for the District may be included as part of the contract with the holders of the bonds. This subsection shall constitute a contract between the District and the holders of the bonds. To the extent that any acts or resolutions of the Council may be in conflict with this subchapter, this subchapter shall be controlling.

(j) Consistent with § 1-204.90(a)(4)(B), and notwithstanding Article 9 of Subtitle I 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; 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.

(k) 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 holder 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 subchapter;

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

(l) The members of the Council, the Mayor, or any person executing any of the bonds shall not be

personally liable on the bonds by reason of their issuance.

(m) Notwithstanding any other provision of this subchapter, 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 faith and credit or the general taxing power of the District (other than monies in the Community Benefit Fund or any other security authorized by this subchapter) shall not be pledged to secure the payment of the bonds.

(Apr. 8, 2005, D.C. Law 15-320, § 203, 52 DCR 1757.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 15-320, see notes following § 10-1602.01.

§ 10-1602.04. COMMUNITY INVESTMENT PLAN.

(a) The Mayor shall make a request for an appropriation for expenditures from the Community Benefit Fund, based on a community investment plan, which shall be:

(1) Developed with input from Advisory Neighborhood Commissions, community groups, the faith community, representatives of the labor community, representatives of the business community, and other community stakeholders;

(2) Submitted to the affected Advisory Neighborhood Commissions, community groups, the faith community, representatives of the labor community, representatives of the business community, and other community stakeholders for a comment period of one month; and

(3)(A) Submitted by the Mayor to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess.

(B) If the Council does not approve or disapprove the proposed plan, in whole or in part, by resolution within this 30-day review period, the proposed plan shall be deemed approved.

(b) The request shall be designed to ensure that expenditures from the Community Benefit Fund are used to supplement, rather than supplant, capital funds already appropriated to District of Columbia agencies for similar purposes. The plans shall also seek to coordinate the expenditures of capital funds already appropriated to District government agencies to support community investment goals.

(c) The request shall outline the manner in which funds shall be used to develop, maintain, and improve physical facilities and infrastructure owned by the District of Columbia, particularly for projects or improvements in community plans that do not qualify for capital budget funding.

(Apr. 8, 2005, D.C. Law 15-320, § 204, 52 DCR 1757.)

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 15-320, see notes following § 10-1602.01.