SENATE BILL 733

Unofficial Copy 2001 Regular Session
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By: **Senator McFadden (Baltimore City Administration) and Senators**
Blount, Bromwell, Hoffman, Hughes, Mitchell, and Sfikas
Introduced and read first time: February 2, 2001
Assigned to: Budget and Taxation

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: February 28, 2001

CHAPTER 170

AN ACT concerning

Baltimore City Charter Amendment - General Powers - Tax Increment Financing

FOR the purpose of altering the definition of "development district" under certain provisions authorizing certain tax increment financing for the development of certain areas in Baltimore City; altering the definition of "tax increment" relating to the taxable value of property to account for the transition to full value assessments; altering the purposes for which the proceeds of certain bonds issued by the Mayor and City Council of Baltimore City shall be applied; ~~exempting certain contracts payable from certain bonds issued by the Mayor and City Council of Baltimore City from certain requirements regarding competitive bidding;~~ and generally relating to tax increment financing in Baltimore City.

BY repealing and reenacting, with amendments,
The Charter of Baltimore City
Article II - General Powers
Section (62)
(1996 Edition, as amended)
(As enacted by Chapter 66 of the Acts of the General Assembly of 2000)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

The Charter of Baltimore City

Article II - General Powers

The Mayor and City Council of Baltimore shall have full power and authority to exercise all of the powers heretofore or hereafter granted to it by the Constitution of Maryland or by any Public General or Public Local Laws of the State of Maryland; and in particular, without limitation upon the foregoing, shall have power by ordinance, or such other method as may be provided for in its Charter, subject to the provisions of said Constitution and Public General Laws:

(62) (a) (1) To borrow money by issuing and selling bonds, at any time and from time to time, for the purpose of financing and refinancing the development of an industrial, commercial, or residential area in Baltimore City. Such bonds shall be payable from and secured by a pledge of the special fund described in subsection (d)(3)(ii) of this section and the Mayor and City Council of Baltimore may also establish sinking funds, establish debt service reserve funds, or pledge other assets and revenues towards the payments of the principal and interest, including revenues received by the Mayor and City Council of Baltimore pursuant to a development agreement.

(2) (i) In lieu of the pledges set forth in paragraph (1) of this subsection, the authorizing ordinance or trust agreement, subject to subparagraphs (ii) and (iii) of this paragraph, may pledge or assign:

1. All or any part of that portion of the revenues and receipts from the taxes representing the levy on the tax increment that would normally be paid to the Mayor and City Council of Baltimore to the payment of such principal and interest; ~~and~~

2. The special fund described in subsection (d)(3)(ii) of this section and any other fund into which all or any part of such revenues and receipts are deposited after such revenues and receipts are appropriated by the Mayor and City Council of Baltimore to the payment of such principal and interest; AND

3. ANY OTHER ASSETS AND REVENUES OF THE MAYOR AND CITY COUNCIL OF BALTIMORE.

(ii) The revenues and receipts may not be irrevocably pledged to the payment of such principal and interest and the obligations to pay such principal and interest from such revenues and receipts shall be subject to annual appropriation by the Mayor and City Council of Baltimore.

(iii) The Mayor and City Council of Baltimore may not pledge its full faith and credit or unlimited taxing power to the payment of such bonds.

(b) (1) In this section the following words have the meanings indicated, unless the context clearly indicates another or different meaning or intent:

(2) "Adjusted assessable base" means, for real property that qualifies for farm or agricultural use under § 8-209 of the Tax - Property Article of the Annotated Code of Maryland, as amended, replaced, or supplemented from time to time, the fair market value of the property without regard to its agricultural use assessment as of January 1 of that year preceding the effective date of the ordinance creating the development district under subsection (d) of this section.

(3) "Assessable base" means the total assessable base of all real property in a development district subject to taxation as determined by the Supervisor of Assessments.

(4) (i) "Assessment ratio" means any real property tax assessment ratio, however designated or calculated, which is used or applied under applicable general law in determining the assessable base.

(ii) "Assessment ratio" includes the assessment percentage as provided under § 8-103(c) of the Tax - Property Article of the Annotated Code of Maryland, as amended, replaced, or supplemented from time to time.

(5) "Bonds" or "bond" means any bonds or bond, notes or note, or other similar instruments or instrument issued by the Mayor and City Council of Baltimore pursuant to and in accordance with this section.

(6) "Development" includes new development, redevelopment, revitalization, and renovation.

(7) "Development agreement" means an agreement between the Mayor and City Council of Baltimore and any person involved in or responsible for development of property within a development district pursuant to which such person shall agree to pay in each year in which any bonds are outstanding an amount equal to all or a portion of the debt service on bonds issued pursuant to this section to finance or refinance development in such development district.

(8) "Development district" means [a contiguous] AN area OR AREAS within the City of Baltimore designated by an ordinance of the Mayor and City Council of Baltimore.

(9) "Original assessable base" means the assessable base as of January 1 of that year preceding the effective date of the ordinance creating the development district under subsection (d) of this section.

(10) "Original full cash value" means the dollar amount which is determined by dividing the original assessable base by the assessment ratio used to determine the original assessable base.

(11) "Original taxable value" means for any tax year the dollar amount that is the lesser of:

(i) the product of the original full cash value times the assessment ratio applicable to that tax year;

(ii) the original assessable base; or

(iii) if an adjusted assessable base applies, then the "original taxable value" is the adjusted assessable base.

(12) "Supervisor of Assessments" means the Supervisor of Assessments for Baltimore City.

(13) "Tax increment" means for any tax year the amount by which the assessable base as of January 1 preceding that tax year exceeds the original taxable value, DIVIDED BY THE ASSESSMENT RATIO USED TO DETERMINE THE ORIGINAL TAXABLE VALUE.

(14) "Tax year" means the period from July 1 of a calendar year through June 30 of the next calendar year.

(c) All proceeds received from any bonds issued and sold pursuant to this section shall be applied solely for:

(1) the cost of purchasing, leasing, condemning, or otherwise acquiring land or other property, or an interest in them, in the designated development district area or as necessary for a right-of-way or other easement to or from the development district area;

(2) site removal;

(3) surveys and studies;

(4) relocation of businesses or residents;

(5) installation of utilities, construction of parks and playgrounds, and other necessary improvements including streets and roads to, from, or within the development district, ~~SURFACE parking,~~ lighting, and other facilities;

(6) construction or rehabilitation of buildings provided that such buildings are to be devoted to a governmental use or purpose;

(7) reserves and capitalized interest on the bonds;

(8) necessary costs of issuing bonds; [and]

(9) STRUCTURED <u>AND SURFACE</u> PARKING FACILITIES THAT ARE:

(I) PUBLICLY OWNED; OR

(II) PRIVATELY OWNED BUT SERVE A PUBLIC PURPOSE; AND

(10) payment of the principal and interest on loans, money advanced, or indebtedness incurred by the Mayor and City Council of Baltimore for any of the purposes set out in this section.

(d) Before issuing any bonds under this section, the Mayor and City Council of Baltimore shall:

(1) designate by ordinance [a contiguous] AN area OR AREAS within the City of Baltimore as a "development district";

(2) receive from the Supervisor of Assessments a certification as to the amount of the original assessable base, or if applicable, the adjusted assessable base; and

(3) provide that until the bonds have been fully paid or thereafter, the property taxes on real property within the development district shall be divided as follows:

(i) that portion of the taxes which would be produced by the rate at which taxes levied each year by the Mayor and City Council of Baltimore upon the original taxable value shall be allocated to and when collected paid into the funds of the Mayor and City Council of Baltimore in the same manner as taxes by the Mayor and City Council of Baltimore on all other property are paid; and

(ii) that portion of the taxes representing the levy on the tax increment that would normally be paid to the Mayor and City Council of Baltimore shall be paid into a special fund to be applied in accordance with the provisions of subsection (e) of this section. This yield shall not be considered as municipal taxes for the purposes of any constant yield tax limitation or State or local restriction. No State real property taxes may be paid into the special fund.

(e) (1) The Mayor and City Council of Baltimore may enact an ordinance creating a special fund described in subsection (d)(3)(ii) of this section with respect to a development district, even though no bonds authorized by this section have been issued by the Mayor and City Council of Baltimore with respect to that development district or are then outstanding. The taxes allocated to such special fund by subsection (d)(3)(ii) of this section shall thereafter be paid over to such special fund, as long as such ordinance remains in effect.

(2) When no bonds authorized by this section are outstanding with respect to a development district and the Mayor and City Council of Baltimore by ordinance so determines, moneys in the special fund for that development district created pursuant to subsection (d)(3)(ii) of this section may be:

(i) used for any of the purposes described in subsection (c) of this section;

(ii) accumulated for payment of debt service on bonds subsequently issued under this section;

(iii) used to pay or to reimburse the Mayor and City Council of Baltimore for debt service which the Mayor and City Council of Baltimore is obligated to pay or has paid (whether such obligation is general or limited) on bonds issued by the Mayor and City Council of Baltimore, the State of Maryland, or any agency,

department, or political subdivision thereof, the proceeds of which have been used for any of the purposes specified in subsection (c) of this section; or

(iv) paid to the Mayor and City Council of Baltimore to provide funds to be used for any legal purpose as may be determined by the Mayor and City Council of Baltimore.

(3) When any bonds authorized by this section are outstanding with respect to a development district and the Mayor and City Council of Baltimore so determines, moneys in the special fund for that development district created pursuant to subsection (d)(3)(ii) of this section may be used as provided in paragraph (2) of this subsection in any fiscal year by the Mayor and City Council of Baltimore, but only to the extent that:

(i) the amount in such special fund exceeds the unpaid debt service payable on such bonds in such fiscal year and is not restricted so as to prohibit the use of such moneys; and

(ii) such use is not prohibited by the ordinance of the Mayor and City Council of Baltimore or resolution of the Board of Finance authorizing the issuance of such bonds.

(f) (1) Before issuing any bonds under this section the Mayor and City Council of Baltimore shall enact an ordinance which:

(i) specifies and describes the proposed undertaking and states that it has complied with subsection (d) of this section; and

(ii) specifies the maximum principal amount of bonds to be issued, from time to time or at any time, pursuant to such ordinance.

(2) The ordinance, if such bonds constitute debt of the Mayor and City Council of Baltimore under Section 7 of Article XI of the State Constitution, shall be submitted to the legal voters of the City of Baltimore at the time and place specified therein. Such ordinance shall become effective only if it is approved by the majority of the votes cast at the time and place specified in such ordinance. Except as otherwise provided herein, this section may not be construed as requiring the submission to the legal voters of the City of Baltimore of any ordinance creating a development district pursuant to subsection (d) of this section.

(3) Such ordinance may specify that the bonds authorized thereunder may be issued from time to time or at any time.

(4) Such ordinance may authorize the Mayor and City Council of Baltimore by ordinance or the Board of Finance by resolution to specify and prescribe any of the following as it deems appropriate to effect the financing or refinancing of the proposed undertaking:

(i) the actual principal amount of the bonds to be issued;

(ii) the actual rate or rates of interest the bonds are to bear or the method for determining the same;

(iii) the manner in which and the terms upon which the bonds are to be sold;

(iv) the manner in which and the times and places that the interest on the bonds is to be paid;

(v) the time or times that the bonds may be executed, issued, and delivered;

(vi) the form and tenor of the bonds and the denominations in which the bonds may be issued;

(vii) the manner in which and the times and places that the principal of the bonds is to be paid, within the limitations set forth in this subsection;

(viii) provisions pursuant to which any or all of the bonds may be called for redemption prior to their stated maturity dates;

(ix) the terms and provisions of any development agreement to be executed by the Mayor and City Council of Baltimore and any person in connection with the issuance of such bonds; and

(x) any other provisions not inconsistent with this section, the Charter and applicable law as shall be determined by the Mayor and City Council of Baltimore or the Board of Finance (as the case may be) to be necessary or desirable to effect the financing or refinancing of the proposed undertaking.

(g) The principal amount of the bonds, the interest payable thereon, their transfer, and any income derived therefrom, including any profit made in the sale or transfer thereof, shall be exempt from taxation by the State of Maryland and by the several counties and municipalities of the State of Maryland but shall be included, to the extent required under Title 8, Subtitle 2 of the Tax - General Article of the Annotated Code of Maryland, as amended, replaced, or supplemented from time to time, in computing the net earnings of financial institutions.

(h) (1) All bonds may be in bearer form or in coupon form or may be registrable as to principal alone or as to both principal and interest. Each of the bonds shall be deemed to be a "security" within the meaning of § 8-102 of the Commercial Law Article of the Annotated Code of Maryland, as amended, replaced, or supplemented from time to time, whether or not it is either one or a class or series or by its terms is divisible into a class or series of instruments.

(2) All bonds shall be signed manually or in facsimile by the Mayor of the City of Baltimore, and the seal of the Mayor and City Council of Baltimore shall be impressed thereon manually or by facsimile and attested by the custodian of the City seal, manually or by facsimile. If any officer whose signature or countersignature appears on the bonds ceases to be such officer before delivery of the bonds, his

signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until delivery thereof.

(3) All bonds shall mature not later than 40 years from their date of issuance.

(4) All bonds shall be sold in such manner, either at public or private sale, and upon such terms as the Mayor and City Council of Baltimore by ordinance or (if authorized in the ordinance authorizing such bonds) the Board of Finance by resolution deems best. Any contract for the acquisition of property may provide that payment shall be in bonds.

(i) (1) The Mayor and City Council of Baltimore, acting by and through the Board of Finance thereof, is hereby authorized and empowered to issue its bonds for the purpose of refunding any bonds authorized to be issued under the provisions of this section by payment at maturity or the purchase or redemption of bonds in advance of maturity. The validity of any refunding bonds shall in no way be dependent upon or related to the validity or invalidity of the bonds being refunded. Such refunding bonds may be issued by the Mayor and City Council of Baltimore, acting by and through the Board of Finance thereof, for the purpose of providing it with funds to pay any of its outstanding bonds authorized to be issued under the provisions of this section at maturity, to purchase in the open market any of its outstanding bonds authorized to be issued under the provisions of this subsection prior to their maturity, to redeem prior to their maturity any outstanding bonds which are, by their terms, redeemable, to pay interest on any outstanding bonds prior to their payment at maturity or purchase or redemption in advance of maturity, or to pay any redemption or purchase premium in connection with the refunding of any of its outstanding bonds authorized to be issued under the provisions of this subsection.

(2) Any refunding bonds authorized to be issued and sold under the provisions of this section may be issued for the public purpose of:

(i) realizing savings to Baltimore City in the aggregate cost of debt service on either a direct comparison or present value basis; or

(ii) debt restructuring that:

1. In the aggregate effects such a reduction in the cost of debt service; or

2. is determined by the Board of Finance or the Mayor and City Council of Baltimore to be in the best interest of Baltimore City, to be consistent with Baltimore City's long-term financial plan, and to realize a financial objective of Baltimore City, including, without limitation, improving the relationship of debt service to a source of payment such as taxes, assessments, or other charges.

(3) Any refunding bonds authorized to be issued and sold under the provisions of this section may be issued in whatever principal amount shall be required to achieve the purpose for the issuance of the refunding bonds, which amount may be in excess of the principal amount of the bonds refunded or the

maximum principal amount of bonds authorized to be issued under subsection (f)(4)(i) of this section.

(4) Any refunding bonds authorized to be issued and sold under the provisions of this section may be issued to mature on such dates and in such amounts as the Board of Finance may determine; provided that the entire principal amount represented by the refunding bonds shall be discharged not more than 40 years from the date of issuance of the bonds being refunded.

(5) Any refunding bonds authorized to be issued and sold under the provisions of this section may be sold at public sale by the solicitation of competitive bids or at private (negotiated) sale without advertisement or solicitation of competitive bids, for a price or prices which may be at, above, or below the par value of the refunding bonds, as determined by resolution of the Board of Finance of the Mayor and City Council of Baltimore. If the Board of Finance determines to sell the refunding bonds at public sale, the refunding bonds shall be sold to the highest responsible bidder or bidders therefor after due notice of such sale, but the Mayor and City Council of Baltimore, acting by and through the Board of Finance thereof, shall have the right to reject any or all bids therefor for any reason.

(6) Any refunding bonds authorized to be issued and sold under the provisions of this section shall bear interest at such rate or rates as may be determined by the Board of Finance of the Mayor and City Council of Baltimore, which rate or rates may be fixed or variable or as determined by a method approved by the Board of Finance, and such interest shall be payable at such time or times as may be determined by the Board of Finance.

(7) The proceeds of the sale of any refunding bonds authorized to be issued and sold under the provisions of this section, after the payment of issuance costs relating thereto, shall be set aside by the Mayor and City Council of Baltimore as a separate trust fund to be used solely for the purposes stated in this subsection.

(8) Except as otherwise provided in this subsection, the powers granted in, the limitations and obligations imposed by, and the procedures specified in this section with respect to the issuance of bonds shall be applicable to the issuance of refunding bonds.

(9) Any refunding bonds authorized to be issued and sold under the provisions of this section shall not be subject to any debt policy limitation that may from time to time be established by the Mayor and City Council of Baltimore.

(j) Whenever the Mayor and City Council of Baltimore, as lessor, leases its property within the development district, the property shall be assessed and taxed in the same manner as privately owned property, and the lease or contract shall provide that the lessee shall pay taxes or payments in lieu of taxes upon the assessed value of the entire property and not merely the assessed value of the leasehold interest.

~~(K) ANY CONTRACTS FOR THE PURCHASE OF INFRASTRUCTURE IMPROVEMENTS, GOODS, OR SERVICES THAT ARE PAYABLE FROM THE PROCEEDS OF~~

~~BONDS ISSUED UNDER THIS SECTION ARE NOT SUBJECT TO CITY REQUIREMENTS REGARDING COMPETITIVE BIDDING.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2001.