

**CITY OF BALTIMORE
COUNCIL BILL 08-0162
(First Reader)**

Introduced by: The Council President
At the request of: The Administration (Baltimore Development Corporation)
Introduced and read first time: July 21, 2008
Assigned to: Taxation, Finance and Economic Development Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Board of Municipal and Zoning Appeals, Planning Commission, Baltimore Development Corporation, Department of Housing and Community Development, Department of Public Works, Baltimore City Parking Authority Board, Department of Finance, Board of Estimates

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **State Obligations Pledge for Westport Waterfront Development**

3 FOR the purpose of authorizing the pledge by the City of Tax Increment Revenues and Special
4 Tax Revenues (as such terms are defined herein), subject to appropriation, to the payment of
5 debt service on State Obligations (as defined herein), issued from time to time and in one or
6 more issues or series in an aggregate principal amount not exceeding \$160,000,000, the
7 replenishment of any reserves and the payment of certain expenses and administrative costs,
8 for the purpose of financing infrastructure improvements, including, without limitation, street
9 and road improvements, site removal, the acquisition of land, the construction of buildings
10 that will provide units of affordable housing and certain other infrastructure improvements
11 permitted by the Acts (as defined herein); authorizing the execution and delivery by the City
12 of a contribution agreement or other such agreement providing for such pledge; authorizing
13 the Board of Finance to specify, prescribe, determine, provide for and approve the method
14 and sources of such pledge, the details, forms, documents or procedures in connection with
15 such pledge, and any other matters necessary or desirable in connection with such pledge;
16 and providing for a special effective date.

17 By authority of
18 Article II - General Powers
19 Sections (62) and (62A)
20 Baltimore City Charter
21 (1996 Edition)

22 **Recitals**

23 Article II, Section (62) of the Baltimore City Charter (the "Tax Increment Act")
24 authorizes the Mayor and City Council of Baltimore (the "City") to establish a
25 "development district" (as defined in the Tax Increment Act) and a special, tax
26 increment fund into which the revenues and receipts from the real property taxes
27 representing the levy on the "tax increment" (as defined in the Tax Increment
28 Act) for the development district are deposited for the purpose of providing funds
29 for the development of the development district.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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1 Pursuant to an Ordinance enacted prior to or simultaneously with this Ordinance
2 (the “Tax Increment Ordinance”), the City has:

- 3 (i) designated the Westport Waterfront Development District (the “Development
4 District”);
- 5 (ii) created the Westport Waterfront Development District Tax Increment Fund;
- 6 (iii) provided that until Bonds or State Obligations (as such terms are defined
7 herein) issued with respect to the Development District have been fully paid,
8 the property taxes on real property in the Development District shall be
9 divided as provided in the Tax Increment Act; and
- 10 (iv) made other findings and determinations with respect to the Development
11 District.

12 Article II, Section (62A) of the Baltimore City Charter (the “Special Taxing
13 District Act”) authorizes the City to establish a “special taxing district” (as
14 defined in the Special Taxing District Act) and a special fund into which the
15 special taxes levied in the special taxing district are deposited, for the purpose of
16 providing financing, refinancing, or reimbursement for the cost (as defined in the
17 Special Taxing District Act) of infrastructure improvements (as defined in the
18 Special Taxing District Act).

19 Pursuant to an Ordinance enacted prior to or simultaneously with this Ordinance
20 (the “Special Taxing District Ordinance”), the City has:

- 21 (i) designated the Westport Waterfront Special Taxing District (the “Special
22 Taxing District”);
- 23 (ii) created the Westport Waterfront Special Taxing District Special Fund;
- 24 (iii) authorized the levy of a special tax on all real and personal property within the
25 Special Taxing District pursuant to the Rate and Method (as defined herein);
26 and
- 27 (iv) made certain other findings and determinations with respect to the Special
28 Taxing District.

29 The Tax Increment Act authorizes the City, subject to certain requirements, to pay
30 or be reimbursed for the payment of debt service and related costs which the City
31 is obligated to pay or has paid on Bonds or State Obligations, the proceeds of
32 which provided funds for the financing and refinancing of the development of an
33 industrial, commercial or residential area in Baltimore City.

34 The Special Taxing District Act authorizes the City, subject to certain
35 requirements, to pay or be reimbursed for the payment of debt service and related
36 costs which the City is obligated to pay or has paid on Bonds or State Obligations,
37 the proceeds of which provided funds for the financing, refinancing, or
38 reimbursement for the cost of infrastructure improvements.

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1 The City has determined to make a pledge of certain tax revenues to a State Issuer
2 in order to finance the costs of infrastructure improvements within the Special
3 Taxing District and the Development District.

4 MEDCO (defined herein), pursuant to a resolution adopted on February 25, 2008,
5 authorized the issuance of its non-recourse, tax-exempt, limited obligation
6 revenue bonds, from time to time and in one or more issues or series, pursuant to
7 the provisions of Sections 5-201 through 5-217, inclusive, of Article 83A of the
8 Annotated Code of Maryland, as amended, for the purpose of financing and
9 refinancing the costs of the Project (as defined herein).

10 The City wishes (i) to authorize the pledge of certain tax revenues and the
11 execution and delivery by the City of a written contribution agreement evidencing
12 such pledge and (ii) to approve the issuance of State Obligations to provide funds
13 for the costs of the infrastructure improvements permitted by the Acts, including,
14 without limitation, street and road improvements, the acquisition of land,
15 construction of buildings to provide units of affordable housing and public
16 improvements relating to the development of residential, commercial and office
17 uses within the Development District and the Special Taxing District or, if outside
18 the Special Taxing District, reasonably related to improvements within such
19 Special Taxing District.

20 The City also wishes to determine various matters in connection with the
21 foregoing, including authorizing the Board of Finance to undertake additional
22 actions in connection with the issuance of additional State Obligations to finance
23 the remaining costs of the Project.

24 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That for
25 the purposes of this Ordinance, the following terms have the meanings indicated:

26 (a) “Acts” means the Tax Increment Act and the Special Taxing District Act.

27 (b) “Bond” means any bond, note, or other similar instrument issued by the Mayor
28 and City Council of Baltimore under the Acts.

29 (c) “City expenses” means the expenses of the City in carrying out its duties under
30 this Ordinance, the Tax Increment Ordinance, the Special Taxing District
31 Ordinance and the Contribution Agreement, including:

32 (1) the expenses incurred in levying and collecting the Special Tax;

33 (2) any expenses incurred in complying with obligated person disclosure
34 requirements associated with applicable federal and state securities law,
35 including the costs of any employees of the City and fees of any professionals
36 retained by the City to provide these services; and

37 (3) all other costs and expenses of the City incurred in connection with the
38 discharge of its duties under the Contribution Agreement, including legal
39 expenses associated with those duties, and in any way related to the
40 administration of the Special Taxing District or the Development District.

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- 1 (d) “Contribution Agreement” means one or more contribution agreements or such
2 other agreements executed by the City and a State Issuer, pursuant to which the
3 City will evidence a pledge of certain tax revenues for the purpose of securing the
4 payment of debt service on the State Obligations, the replenishment of any
5 reserve fund, and the payment of other costs with respect to the State Obligations,
6 including, without limitation, any City expenses, State Issuer Expenses, and other
7 administrative costs.
- 8 (e) “Development District” means the Westport Waterfront Development District.
- 9 (f) “Districts” means the Development District and the Special Taxing District.
- 10 (g) “Includes” or “including” means by way of illustration and not by way of
11 limitation.
- 12 (h) “Indenture” means the indenture under which the State Obligations are issued.
- 13 (i) “Initial State Obligations” means the bonds issued by MEDCO in an aggregate
14 principal amount not to exceed \$40,000,000 for the purpose of financing and
15 refinancing a portion of the costs of the Project.
- 16 (j) “MEDCO” means the Maryland Economic Development Corporation.
- 17 (k) “Project” means the following improvements and activities completed in
18 accordance with all required City approvals:
- 19 (1) the design and construction of street and road improvements to, from or
20 within the Special Taxing District, including, without limitation, the
21 installation of curbs, gutters, sidewalks, lighting and landscaping, and the
22 construction of access and capacity improvements to the Waterview Avenue
23 bridge which are designed to improve traffic flow to and from the
24 Development District;
- 25 (2) the installation of utilities, including, without limitation, water and sewer, and
26 the construction of bike trails, parks and playgrounds, and other necessary
27 improvements including lighting, stormwater management facilities and other
28 facilities;
- 29 (3) the acquisition by purchase, lease, or condemnation of land or other property,
30 or an interest in them, in the Development District or as necessary for a right-
31 of-way or other easement to or from the Development District;
- 32 (4) the acquisition, design, construction, reconstruction, renovation, and
33 development of buildings that provide units of affordable housing and
34 condemning or otherwise acquiring structures, real or personal property,
35 rights, rights-of-way, franchises, easements, and interests in furtherance of
36 this purpose;
- 37 (5) parking facilities;

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- 1 (6) site removal, including site preparation, earthwork, clearing, grading, and
2 filling; and
- 3 (7) the acquisition, construction, renovation, and development of other related
4 infrastructure improvements and the financing or refinancing of any related
5 costs as permitted by the Acts that are necessary for the completion of the
6 foregoing for their intended public purposes.
- 7 (l) “Rate and Method” means the Rate and Method of Apportionment of the Special
8 Taxes attached to the Special Taxing District Ordinance as Exhibit 2.
- 9 (m) “Revenues” means collectively the Tax Increment Revenues and the Special Tax
10 Revenues, to the extent such revenues are expressly pledged pursuant to the
11 Contribution Agreement.
- 12 (n) “Special Tax” means the special tax authorized to be levied and collected in the
13 Special Taxing District by the Special Taxing District Ordinance.
- 14 (o) “Special Tax Fund” means the Westport Waterfront Special Tax Fund.
- 15 (p) “Special Tax Revenues” means the revenues and receipts from the Special Tax,
16 including amounts deposited in the Special Tax Fund and any other fund into
17 which all or any of these revenues and receipts are deposited after they are
18 appropriated by the City.
- 19 (q) “Special Taxing District” means the Westport Waterfront Special Taxing District.
- 20 (r) “Special Taxing District Act” means Article II, Chapter (62A) of the Baltimore
21 City Charter.
- 22 (s) “Special Taxing District Ordinance” means the Ordinance of the City designating
23 the Special Taxing District.
- 24 (t) “State Issuer” means MEDCO, the State of Maryland, or any agency, department,
25 or political subdivision thereof.
- 26 (u) “State Issuer Expenses” means administrative costs and other expenses related to
27 the State Obligations of the State Issuer permitted by the Acts and approved by
28 the Director of Finance to be paid by the City pursuant to a contribution
29 agreement.
- 30 (v) “State Obligations” means any bonds or bond, notes or note, or other similar
31 instruments or instrument issued by a State Issuer, the proceeds of which have
32 been used to finance a portion of the costs of the Project, including, without
33 limitation, bonds issued by MEDCO pursuant to the provisions of Sections 5-201
34 through 5-217, inclusive, of Article 83A of the Annotated Code of Maryland, as
35 amended.
- 36 (w) “Tax Increment” means for any tax year, the amount by which the assessable base
37 (as defined in the Tax Increment Ordinance) as of January 1 preceding that tax
38 year exceeds the original taxable value (as defined in the Tax Increment

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1 Ordinance), divided by the assessment ratio (as defined in the Tax Increment
2 Ordinance) used to determine the original taxable value.

- 3 (x) "Tax Increment Act" means Article II, Chapter (62) of the Baltimore City
4 Charter.
- 5 (y) "Tax Increment Fund" means the Westport Waterfront Development District Tax
6 Increment Fund.
- 7 (z) "Tax Increment Ordinance" means the Ordinance of the City designating the
8 Development District.
- 9 (aa) "Tax Increment Revenues" means the revenues and receipts from the taxes
10 representing the levy on the Tax Increment that would normally be paid to the
11 City, including amounts deposited in the Tax Increment Fund or any other fund
12 into which all or any part of these revenues and receipts are deposited after they
13 are appropriated by the City.
- 14 (bb) "Tax year" means the period from July 1 of a calendar year through June 30 of
15 the next calendar year.

16 **SECTION 2. AND BE IT FURTHER ORDAINED**, That the City finds and determines that the
17 pledge of certain tax revenues for the benefit of State Obligations issued, from time to time, for
18 the purpose of providing funds to finance a portion of the costs of the Project:

- 19 (a) accomplishes the purposes of the Acts;
- 20 (b) serves public purposes, including the direct and indirect enhancement of the taxable
21 base of the City, the facilitation of planned improvements to the Development District
22 and the Special Taxing District, the creation of new employment opportunities, the
23 encouragement of additional economic activities, the development or redevelopment
24 of slum, blighted or deteriorated areas, the undertaking of urban renewal projects and
25 the furtherance of economic development conducted pursuant to comprehensive
26 plans; and
- 27 (c) generally promotes the health, welfare, and safety of the residents of the State of
28 Maryland and of the City of Baltimore.

29 **SECTION 3. AND BE IT FURTHER ORDAINED**, That:

- 30 (a) The City approves the issuance from time to time of one or more issues or series of
31 State Obligations by a State Issuer in an aggregate principal amount not to exceed
32 \$160,000,000.
- 33 (b) The Initial State Obligations may be issued by MEDCO in an aggregate principal
34 amount not to exceed \$40,000,000. Thereafter, subsequent series or issues of State
35 Obligations may be approved from time to time by the Board of Finance.
- 36 (c) The proceeds of the State Obligations may be utilized solely for the following
37 purposes, as the Board of Finance determines pursuant to Section 10 of this
38 Ordinance:

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- 1 (1) to finance all or part of the costs of the Project;
- 2 (2) to establish a debt service reserve fund for the State Obligations;
- 3 (3) to fund capitalized interest on the State Obligations; and
- 4 (4) to pay costs and expenses of issuing the State Obligations, including any City
- 5 expenses and State Issuer Expenses.

6 (d) The State Obligations shall be issued pursuant to the provisions of an Indenture at any
7 time or from time to time in one or more issues or series. Each issue or series of the
8 State Obligations shall be identified by the year of issue or by other designation.
9 Such details shall be set forth further in any bond resolution to be adopted by the
10 State Issuer in connection with the issuance of the State Obligations.

11 **SECTION 4. AND BE IT FURTHER ORDAINED, That:**

- 12 (a) The Tax Increment Revenues are authorized to be pledged pursuant to the
- 13 Contribution Agreement to provide for the payment by the State Issuer of the
- 14 principal of and interest and other related costs on the State Obligations. However,
- 15 the Tax Increment Revenues shall not be irrevocably pledged, and the obligation of
- 16 the City under the Contribution Agreement to pay the Tax Increment Revenues to the
- 17 State Issuer is subject to annual appropriation by the City.

- 18 (b) If any State Obligations are outstanding, the Tax Increment Revenues may not be
- 19 used for the purposes set forth in Section 6 of the Tax Increment Ordinance unless the
- 20 amount in the Tax Increment Fund exceeds:
 - 21 (1) the amount necessary to satisfy the City’s obligations under the Contribution
 - 22 Agreement; and
 - 23 (2) the amount of City expenses and State Issuer Expenses due and payable and to
 - 24 become due and payable in that fiscal year.

25 **SECTION 5. AND BE IT FURTHER ORDAINED,** That the pledge of certain tax revenues and the
26 City’s obligations under the Contribution Agreement are special obligations of the City. The
27 pledge of certain tax revenues and the City’s obligations under the Contribution Agreement do
28 not constitute a general obligation debt of the City or a pledge of the City’s full faith and credit
29 or taxing power.

30 **SECTION 6. AND BE IT FURTHER ORDAINED,** That this Ordinance authorizes, but does not
31 require, the City to execute a Contribution Agreement. The City shall not create or incur any
32 obligation to any owner or State Issuer with regard to the matters contemplated or described in
33 this Ordinance unless and until the Contribution Agreement is executed and delivered on behalf
34 of the City, and then only to the extent provided in such Contribution Agreement or other
35 documents executed and delivered by the City in connection with the Contribution Agreement.

36 **SECTION 7. AND BE IT FURTHER ORDAINED,** That the obligations of the City under the
37 Contribution Agreement shall be payable:

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1 (a) first, from the Tax Increment Revenues, subject to annual appropriation by the City;
2 and

3 (b) second, to the extent the Tax Increment Revenues are not sufficient to satisfy the
4 City's obligations under the Contribution Agreement and to pay City expenses, from
5 the Special Tax Revenues, subject to annual appropriation by the City;

6 *provided* that, in each instance, the obligations of the City under the Contribution Agreement are
7 payable from the revenues set forth above only to the extent such revenues are pledged pursuant
8 to the Contribution Agreement.

9 **SECTION 8. AND BE IT FURTHER ORDAINED, That:**

10 (a) No Special Tax shall be levied unless the Tax Increment Revenues are not sufficient
11 to satisfy the City's obligations under the Contribution Agreement and to pay the City
12 expenses. The amount of the Special Tax required to be levied in any tax year to
13 provide for the satisfaction of the City's obligations under the Contribution
14 Agreement may be reduced to the extent that amounts are otherwise made available
15 to the State Issuer for the payment of the City's obligations under the Contribution
16 Agreement. The amount of the Special Tax required to be levied in any tax year to
17 provide for the payment of City expenses may be reduced to the extent that amounts
18 are held under the Indenture, or amounts are otherwise made available to the City are
19 available for the payment of City expenses in that tax year.

20 (b) The City covenants to levy the Special Tax, in accordance with the Rate and Method,
21 up to the maximum special tax provided in the Rate and Method, at a rate and amount
22 at least sufficient to satisfy the City's obligations under the Contribution Agreement
23 and to pay City expenses and State Issuer Expenses (to the extent these expenses are
24 not otherwise provided for), to the extent capitalized interest and other amounts
25 available under the Indenture, the Tax Increment Revenues, and any amounts in the
26 Tax Increment Fund are insufficient. The Special Tax also may be levied with
27 respect to refunding State Obligations without notice to or the consent of the property
28 owners in the Special Taxing District as provided in the Indenture.

29 (c) The Special Tax Revenues are authorized to be pledged pursuant to the Contribution
30 Agreement to provide for the payment by the State Issuer of the principal of and
31 interest and other related costs on the State Obligations. However, the Special Tax
32 Revenues are not irrevocably pledged, and the obligation to pay the obligations of the
33 City under the Contribution Agreement from the Special Tax Revenues is subject to
34 annual appropriation by the City.

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SECTION 9. AND BE IT FURTHER ORDAINED, That:

(a) Each of the following documents shall be executed in the name of the City and on its behalf by the Mayor or Director of Finance, by manual signature and, if necessary, the corporate seal of the City or a facsimile of it shall be impressed or otherwise reproduced on the documents and attested by the Custodian or Alternate Custodian of the City Seal, by manual signature:

(1) the Contribution Agreement;

(2) the development agreement(s) to be entered into among the City, the State Issuer or any other governmental entity, if necessary, and the developer(s) of the Development District to provide for the construction by the developer(s) of the Project; and

(3) any other documents the Board of Finance considers necessary for the issuance, sale and delivery of the State Obligations and the Contribution Agreement.

(b) If any officer whose signature or countersignature appears on any document ceases to be an officer before the delivery of such document, the signature or countersignature shall nevertheless be valid and sufficient for all purposes, as if the officer had remained in office until delivery.

(c) The Mayor, the Director of Finance, the Custodian of the City Seal and the Alternate Custodian of the City Seal, and other officials of the City are authorized and empowered to do all acts and things and execute all documents and certificates as the Board of Finance determines to be necessary to carry out the provisions of this Ordinance, subject to the limitations set forth in the Acts, the Tax Increment Ordinance, the Special Taxing District Ordinance, and this Ordinance.

SECTION 10. AND BE IT FURTHER ORDAINED, That the Board of Finance shall prescribe or approve by resolution any of the following as it deems appropriate to finance the Project:

(a) the principal amount of the State Obligations to be issued;

(b) the rate or rates of interest the State Obligations are to bear or the method for determining the same;

(c) the manner in which and the terms upon which the State Obligations are to be sold;

(d) the manner in which and the times and places that the interest on the State Obligations is to be paid;

(e) the time or times that the State Obligations may be executed, issued and delivered;

(f) the form and tenor of the State Obligations and the denominations in which the State Obligations may be issued;

(g) the manner in which and the times and places that the principal of the State Obligations is to be paid, within the limitations set forth in the Acts;

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- 1 (h) provisions pursuant to which any or all of the State Obligations may be called for
2 redemption prior to their stated maturity dates;
- 3 (i) the terms and provisions of any Indenture, development agreement(s) and
4 contribution agreement, including, without limitation, the Contribution Agreement to
5 be executed by or on behalf of the City and any person in connection with the pledge
6 of certain tax revenues;
- 7 (j) provisions establishing sinking funds or debt service reserve funds for the State
8 Obligations;
- 9 (k) provision for municipal bond insurance or any other type of financial guaranty of the
10 State Obligations;
- 11 (l) provisions pledging other assets and revenues towards the payment of the principal of
12 and interest on the State Obligations; and
- 13 (m) any other provisions not inconsistent with the Charter (including the Acts), the Tax
14 Increment Ordinance, the Special Taxing District Ordinance, this Ordinance and
15 other applicable law as the Board of Finance determines to be necessary or desirable
16 to finance the Project.

17 **SECTION 11. AND BE IT FURTHER ORDAINED, That:**

- 18 (a) Before the State Obligations are issued, the Director of Finance shall record among
19 the Land Records of the City, at the cost of the Special Taxing District, a declaration
20 that:
 - 21 (1) encumbers all real property located in the Special Taxing District, except for
22 property exempt by law or the Special Taxing District Ordinance; and
 - 23 (2) designates that property as subject to the Special Taxing District.
- 24 (b) The declaration shall terminate when the Director of Finance records a release stating
25 that all State Obligations are fully repaid or have been defeased.

26 **SECTION 12. AND BE IT FURTHER ORDAINED, That** any approvals, authorizations, or
27 activities provided in this Ordinance do not constitute and may not be deemed to constitute or
28 imply that the City Council, the Mayor, or any department, office or agency of the City has given
29 or will give, any approval, authorization or consent to any action or activity within or required
30 for the development of the Districts, including any land use approval, requirements for the
31 provision of public utilities or services, or any other administrative, judicial, quasi-judicial, or
32 legislative approval, authorization or consent.

33 **SECTION 13. AND BE IT FURTHER ORDAINED, That** the provisions of this Ordinance are
34 severable. If any provision, sentence, clause, section or other part of this Ordinance is held or
35 determined to be illegal, invalid, unconstitutional, or inapplicable to any person or
36 circumstances, that illegality, invalidity, unconstitutionality, or inapplicability does not affect or
37 impair any of the remaining provisions, sentences, clauses, sections, or parts of this Ordinance or
38 their application to other persons or circumstances. It is the intent of the City that this Ordinance
39 would have been passed even if the illegal, invalid, unconstitutional, or inapplicable provision,

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1 sentence, clause, section, or other part had not been included in this Ordinance, and as if the
2 person or circumstances to which this Ordinance or part are inapplicable had been specifically
3 exempted.

4 **SECTION 14. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it
5 is enacted.