

TITLE 4: ECONOMIC RESOURCES
DIVISION 10: COMMONWEALTH DEVELOPMENT AUTHORITY

§ 10460. Bonds Tax Exempt; First Charge on General Fund; Additional Security; Waiver of Sovereign Immunity.

(a) All bonds issued pursuant to this article and the income therefrom shall be exempt from all taxation by the Commonwealth or any political subdivision thereof, except inheritance, transfer, and estate taxes. Interest and principal payments of the bonds shall be a first charge on the General Fund of the Commonwealth. The full faith and credit of the Commonwealth shall be and are hereby pledged to the punctual payment of the principal thereof, and interest thereon, as the same shall become due, irrespective of whether or not the pledge is stated in the bonds, and sufficient revenues shall be raised or provided from time to time for the purpose of payment.

(b)(1) The act of the legislature authorizing the issuance of bonds may authorize the Authority, for and in the name and on behalf of the Commonwealth, to pledge specified revenues of the Commonwealth as additional security for such bonds, including fuel taxes and vehicle license and registration fees, judicial building fund revenues, alcohol and cigarette taxes, hotel occupancy and other transient accommodation taxes, container taxes, water, power, sewer and refuse taxes and revenues, federal financial assistance payments, and any other revenues authorized in the act of the legislature authorizing issuance of such bonds. In the case any such additional security is pledged to bonds, the Authority may provide for, in which case the Secretary of the Department of Finance shall, transfer to and deposit in a special trust account the pledged revenues promptly upon receipt until the balance in said special trust account is at least equal to the debt service due or to become due on such bonds during the next succeeding six months (or as otherwise provided in the act of the legislature authorizing the issuance of such bonds). If provided in the Act of the legislature authorizing the issuance of the bonds and also authorizing the pledge of specified revenues, in addition to pledging those specified revenues as aforesaid in this subsection, the Authority may elect in its resolution authorizing issuance of the bonds that the bonds be secured solely by the specified revenues so pledged without the benefit of the full faith and credit pledge, or the first charge on the General Fund, of the Commonwealth, notwithstanding anything to the contrary contained in subsection (a) of this section or elsewhere in this article. All other provisions of this article shall apply, except that the word "additional" in subsection (b)(4) of this section and the words "general obligation" in sections 10451(b), 10452, 10465, and 10466 shall not apply; and section (c) of this section and sections 10461 and 10465 shall be subject to the immediately preceding sentence.

(2) Alternatively, or in addition to the foregoing, the act of the legislature authorizing the issuance of the bonds may authorize the Authority, for and in the name and on behalf of the Commonwealth, to covenant to bondholders to, and in the event the Authority does so covenant the Secretary of the Department of Finance shall, transfer each month up to ten percent of all

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General Fund revenues of the Commonwealth received that month and deposit in a special trust account until the balance in said special trust account is at least equal to the debt service due or to become due on such bonds during the next succeeding six months (or as otherwise provided in the act of the legislature authorizing the issuance of such bonds).

(3) Any special trust account established pursuant to this section shall be held separately from all other funds of the Commonwealth by the Secretary of the Department of Finance, or by a corporate trustee, fiscal agent or other financial institution, depository, or custodian designated by the Authority. A special trust account may be established to provide additional security for a single issue of bonds or multiple issues of bonds issued or to be issued, in which case each bond issue shall be secured by the special trust account on a parity with every other bond issue secured by such special trust account, except to the extent that the pledge of revenues required to be deposited in the special trust account for one or more particular issues of bonds is expressly subordinate to the pledge for other issues of bonds.

(4) Any pledge of revenues as additional security for bonds made pursuant to this section shall be valid and binding from the time the pledge is made against all parties having claims of any kind in tort, contract, or otherwise against the Commonwealth or any institution holding the revenues irrespective of whether the parties have notice thereof; revenues so pledged and thereafter received by the Commonwealth shall be immediately subject to the lien of such pledge without any physical delivery thereof, recording or other further act; and such pledge shall have the priority provided by the Authority in establishing the pledge (subject only to any pledges previously made to the extent expressly senior). There is hereby appropriated all revenues pledged pursuant to this section for deposit into one or more special trust accounts or payment of principal and interest on the bonds to which such revenues are pledged, and this appropriation shall be a continuous and paramount appropriation upon the General Fund and the other funds of the Commonwealth in which such revenues may be held. All revenues pledged pursuant to this section and deposited into special trust accounts shall be available without need for further appropriation for payment of principal and interest on the bonds to which such revenues are pledged. All revenues pledged pursuant to this section shall be disregarded or excluded from the base when computing the distribution revenues pursuant to any law earmarking a specified percentage of designated revenues to a particular purpose or entity.

(c) The Commonwealth, to the fullest extent permitted by its Constitution, waives sovereign immunity and authorizes the holder of any bond to sue the Commonwealth for payment of principal of and interest on such bond with any moneys in the General Fund of the Commonwealth otherwise available therefor (or any specific revenues pledged therefor as additional security) and, if such moneys are insufficient, to compel the Commonwealth to raise funds sufficient

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therefor by any means not prohibited by the Constitution of the Commonwealth; or, in the case of bonds issued pursuant to an election by the Authority under subsection (b)(1) of this section that the bonds be secured solely by a pledge of specified revenues, waives sovereign immunity and authorized the holder of any such bond to sue the Commonwealth for payment of principal of and interest on such bond with any such specified revenues so pledged.

(d) For purposes of this section, the term “bonds” shall include any contract or agreement entered into pursuant to 4 CMC § 10459(a) and (b) to the extent provided by the Authority in such contract or agreement.

Source: PL 11-3, § 10, modified; subsections (b)(1) and (c) amended by PL 18-44 § 2 (Apr. 9, 2014), modified.

Commission Comment: With respect to the references to the “Secretary of the Department of Finance” and the agency itself, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the Commission comment to 1 CMC § 2001.

The Commission corrected the spelling of the word “subsection” in subsection (b)(1) pursuant to 1 CMC § 3806(g).

PL 18-44 (Apr. 9, 2014) contained, in addition to savings and severability clauses, the following Findings and Purpose section:

Section 1. Findings and Purpose. The CNMI Legislature finds that is necessary to amend the Commonwealth Development Authority Act to provide for the issuance of other than general obligation bonds.