

Council Gets Off To A Fast Start On New Initiatives

As of February 23, 2011, the D.C. Register has published 119 bills introduced by the Council since the start of its current session in January, a number that promises to keep DCBIA very busy and the city's business community on edge.

First Source Legislation

Bill 19-50, the "D.C. Workforce Intermediary Establishment and Reform of First Source and Living Wage Amendment Act of 2011," introduced by Council Chair Kwame Brown and co-sponsored by Councilmembers Harry Thomas, Jr. and Michael Brown, was assigned to Michael Brown's Committee on Housing and Workforce Development. This bill has been scheduled for a public hearing on March 14, 2011.

The bill sets new quotas for District of Columbia resident employment on District contracts and assisted projects totaling \$300,000 or more. The quotas are not limited to new hires, as has been the case in all previous First Source legislation, but will apply to all jobs involved in such contracts and projects. The bill increases non-compliance penalties from 5% to 10% of project labor costs; directs a tightening of First Source controls; establishes a task force to recommend a District "workforce intermediary" program; and sets up a Workforce Trust Fund to support the intermediary.

DCBIA supports the bill's proposed establishment of the workforce intermediary task force, and is inclined to urge that its scope and duration be expanded to provide a more comprehensive examination of workforce issues and policies. The work of such a task force would then hopefully serve as the sound basis for any subsequent legislation. While DCBIA has long recognized that unemployment among District residents is a persistent and pernicious problem, the other proposals put forth in this bill to further alter the First Source program by imposing more stringent "compliance" and penalty provisions along with "hours worked" measurements on construction projects do not address the underlying challenges to *employability*. Moreover, the bill appears to focus on construction employment (which has been steadily declining for at least three years) as the principle solution, while ignoring the reality that current and future employment opportunities in the District's economy are found in other sectors. In a situation

where functional illiteracy is reaching some 37% of the local population, and job-readiness skills are at historically low levels, District policymakers must join with employers in cooperative efforts to increase the number of residents *capable* of obtaining and retaining daily employment. DCBIA will be joining with others in the business community to appear and present needed perspectives and comments during the up-coming hearing, and underscore the truth that employers are not simply "refusing" to hire District residents.

Ex-Offender Legislation

Bill 19-17, the "Human Rights for Ex-Offenders Amendment Act of 2011," introduced by Councilmember Marion Barry, amends the District's Human Rights Act of 1997 to prohibit discrimination in employment, housing and education based upon prior arrest or conviction. In effect, it extends to ex-offenders the same civil rights protections as now apply to, among other things, race, sex and religion.

The bill provides certain exemptions to its applicability and relies on the concept of "rational relationship," which permits an applicant's criminal record to be considered only when there is a clear relationship between the nature of the crime and the duties and responsibilities of the employment position sought.

The implementing rules and regulations will presumably further define the criteria that apply to the essentially subjective judgments that underlie a determination of rational relationship. An obvious danger is that Bill 19-17 will spawn a whole new area of litigation challenging any employer's interpretation that results in a rejection of an ex-offender's application for employment, housing or education.

Although it has attracted no co-sponsors thus far, the bill is expected to proceed to hearings since it has been referred to CM Barry's Committee on Aging and Consumer Affairs. Some seventeen states have reportedly enacted legislation to give residents with a conviction record a better opportunity for re-entry employment. Limiting an employer's discretion through an extension of ex-offender civil rights, however, raises a number of troubling issues of its own, which DCBIA will address.



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Bill 19-76, the "Inclusionary Zoning Amendment Act of 2011," introduced by Councilmember David Catania, extends access to IZ housing to victims of domestic violence, the chronically homeless, developmentally disabled and persons with mental illness and living with HIV/AIDS. In effect, the bill amends the current pre-requisite for access to subsidized IZ housing from a simple income requirement (low and moderate income households) to include those in need of specified social services, the result of which is to significantly transform IZ from a housing program to a social needs program. DCBIA intends to oppose this bill.

More Resident Hiring Regulation

Bill 19-81, the "Sunshine Employable Skills Act of 2011," was introduced by Councilmember Sekou Biddle. As the title suggests, the bill seeks to promote the hiring of District residents through the posting of the availability of residents receiving unemployment compensation and public benefits through the Temporary Assistance to Needy Families (TANF) program. The bill requires such listings of TANF recipients be included in the DOES First Source Register and in government contract solicitations that require the hiring of District residents (ie, First Source).

The posting of lists of residents who are, according to the bill, "ready for employment" suggests that they would, in fact, meet any reasonable criteria for hire. That, in turn, implies an obligation on the part of employers to choose to hire listed individuals or explain why not, at the risk of contract sanctions and/or litigation.

DCBIA will seek amendments to the bill that provide some mechanisms for insuring that "ready for employment" means just that in postings of the unemployed and recipients of TANF benefits.

Property Assessment Appeals Law

Legislation abolishing the Board of Real Property Assessments and Appeals (BRPAA) and establishing the new Real Property Tax Appeals Commission became law with Act 18-714.

The twelve-member Commission of full and part-time employees of the District, appointed by the Mayor and confirmed by the Council, will now hear all appeals of real property assessments made by the Office of Taxation and Revenue. OTR or a property owner may appeal a ruling by the Commission through a re-hearing of the case at the discretion of the

Commission. Property owners, but not OTR, may then further appeal rulings through the courts.

The new law is largely the product of an OTR and industry working group, which sought to address perceived weaknesses in the proceedings of the former BRPAA and to fashion an evenhanded compromise for resolving the often contentious issues arising from property assessments in a market of declining real estate values. The test of the effectiveness of the new Commission will now begin with FY 2012 property assessments, which are likely to be at least as contentious as those of recent years. ▲



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