

District of Columbia Pepco Region

I. Council Overview

Historical Overview

The District of Columbia Charter established the Council of the District of Columbia (“Council”) as an all-elected legislative body [D.C. Official Code Sec. 1-204.01] in 1974. Prior to this congressionally approved change, residents of the District of Columbia did not possess the legal authority to elect their legislative representative(s). The Charter change resulted in the government of the District of Columbia being granted the same rights and powers as its counterparts- *States*- possessed for decades, with two major exceptions:

- While Congress approved the establishment of the Council as an elected legislative body, the District of Columbia was still not granted actual voting representation in Congress.¹
- All legislative acts passed by the Council are subject to Congressional review, with the exception of emergency legislation which is effective for a period of only ninety days.²

Primary Roles of the Council of the District of Columbia (Legislative and Oversight)

While one cannot dispute or dismiss the fact that the central role of a legislative body is to make laws, in more recent years, the important role of oversight has received almost equal attention. From a historical perspective, this can be partially attributed to the continued growth of bureaucracies at the federal, state, and local levels of government. This growth has largely been in response to major events and an evolving and more complex society. Executive level growth, through the expansion and/or creation of new agencies and/or instrumentalities, inherently, resulted in an increased oversight role for the legislative branch of government at all levels.

The Council of the District of Columbia, pursuant to its structure and mandate is a co-equal branch of government. The legislature exercises oversight over multiple agencies, boards and commissions, and other instrumentalities of the District government that may be defined as independent or quasi-independent entities. The Council is responsible for evaluating the performance of executive agencies and approving the proposed budget and financial plan, submitted by the Executive Office of the Mayor. While the executive transmits a proposed budget to the legislature, it is the duty and responsibility of the legislative body to exercise appropriate oversight over agencies, including their prior year performance reports and expenditures, prior to making recommendations and voting on the proposed budget. This oversight is centrally exercised through standing committees.

¹ Note: This continues to be the premier federal legislative issue for the District of Columbia.

² The District of Columbia government continues to seek legislative and local budget autonomy.

District of Columbia Pepco Region

Organizational Structure

Standing Committees

An extensive amount of work, performed by any legislative body is conducted by standing committees, including the Council. The Council is comprised of ten standing committees and the Committee of the Whole (“COW”), which is chaired by the Chairman of the Council. Every Councilmember is a member of the COW. This entity exercises oversight over assigned offices and matters, including education, which has been defined as the number one policy priority for both the legislative and executive branches of government.

The role of standing committees is provided for in the Council Rules of Organization and Procedure, which is adopted at the commencement of every Council Period (2 years). The Council commenced Council Period XIX in January of 2011. The Committee structure provides for more detailed review and analysis of proposed legislative matters. All introduced legislation and proposed resolutions are referred to standing Committees by the Chairman of the Council, pursuant to the subject matter of the introduced bill. In some cases, legislation may be assigned sequentially to committees. While the Rules allow for matters to by-pass the Committee process, it is highly unlikely that this will take place. Councilmembers work extensively hard to legislate within the confines of the intent of the established Rules. By-passing critical oversight of standing committees runs counter to that established process. Prior to legislation being voted on by the full Council, legislation is required to be approved by the Committee of referral. Committees are responsible for conducting hearings on proposed measures and issues that may surface to assist them in making the appropriate recommendations for change and/or support for the introduced bill and other changes the Committee may deem necessary.

Committees

- Committee of the Whole
- Aging and Community Affairs
- Economic Development
- Finance and Revenue
- Government Operations and the Environment
- Health
- Housing and Workforce Development
- Human Services
- Libraries, Parks and Recreation
- Judiciary
- Public Services and Consumer Affairs
- Public Works and Transportation

District of Columbia Pepco Region

Independent Offices of the Council

Councilmembers enjoy an enormous degree of autonomy, due to the fact that each office is independently operated by the elected Councilmember. As currently structured, the Council is comprised of 13 members. Eight of the elected members represent identified Wards³ in the city, and the remaining members are elected at-large.

Centralized Offices of the Council of the District of Columbia

Although the Council's staffing structure is highly decentralized, the Council has begun to enhance its centralized offices, including creating two new offices. The central offices of the Council are:

- Office of the Secretary
- Office of the General Counsel
- Office of the Budget Director and Policy Analysis
- Office of Youth Programs
- Office of the D.C. Auditor
- Human Resources Division
- Office of Advisory Neighborhood Commission

Elected Leadership for Council Period XVIII

Members of the Council are elected for four-year terms. Pursuant to the Charter, elections for members of the Council are not held at the same time, but are staggered. This sequence results in elections being held every two years.

- Kwame Brown, Chairman of the Council of the District of Columbia (At-Large)
- Mary Cheh, Chairman Pro Tempore, (Ward 3)
- Phil Mendelson (At-Large)
- David Catania (At-Large)
- Michael Brown (At-Large)
- Vincent Orange (At-Large)
- Jim Graham (Ward 1)
- Jack Evans (Ward 2)
- Muriel Bowser (Ward 4)
- Harry Thomas (Ward 5)
- Tommy Wells (Ward 6)
- Yvette Alexander (Ward 7)
- Marion Barry (Ward 8)

³ Note: Also referred to as Districts in other cities and states.

District of Columbia Pepco Region

II. The Legislative Process (Abbreviated)

Introduction of Bills

Bills can be introduced by: (1) Members of the Council; (2) the Mayor; and (3) Charter independent agencies. However, bills that are introduced by the Mayor and/or an independent Charter agency must be introduced through the Chairman of the Council. On an informal level: citizens, organizations, executive agencies and instrumentalities, may also recommend bills to individual Councilmembers for introduction.

Bill Referral

Upon the introduction of a bill, the Chairman refers the introduced measure to a standing committee, based on the subject matter of the bill. The measure can also be retained by the Council. If a measure is retained by the Council, hearings are convened by the Committee of the Whole, which is chaired by the Chairman of the Council and is comprised of all Councilmembers. It is important to note that a Committee does not have to convene a hearing on referred bills. However, if the Committee does not take action on an introduced measure, within a 2 year period, the legislation will die in Committee. If a member has an interest in having the same measure considered by the Council, a new bill would have to be introduced in the next Council Period. Within the Rules of Organization and Procedure, measures can be discharged from a Committee; however, this vehicle is rarely used by members and is not supported by the Chair of Committees.

Committee Action

The Committee acts on legislation through formal hearings and public roundtables. These scheduled sessions provide the public and other interested stakeholders the opportunity to testify on proposed legislation and/or oversight matters. Statements and/or concerns are to be taken into consideration and could help to influence revisions to the introduced legislation. Members of Committees may vote on and revise legislation, during scheduled Committee meetings. In order for legislation to be voted on by the Council, it must be approved by the Committee of subject matter jurisdiction. The Rules of Organization and Procedure provides for a motion of discharge. This allows the Council to vote on a measure, without it being approved in Committee. This mechanism is also very rarely utilized and is not supported by Committee chairs.⁴ The Committee must file a report on the legislation with the Office of the Secretary, which includes the Committee Print. The report provides an overview of the legislation; the legislative history; summary of testimony presented and/or received; an analysis of the legislation; Committee Action; the voting record of the Committee; and the fiscal impact statement. In certain instances, measures are approved in Committee, without a fiscal impact statement; however, prior to final vote by the Council, a fiscal impact statement must be made available for the Council.

⁴ Ten of the 13 elected Councilmembers Chair Standing Committees.

District of Columbia Pepco Region

The Committee of the Whole (“COW”)

During the Committee of the Whole Session, bills are placed on the agenda of the upcoming Council legislative session, for consideration and vote. All bills must have two readings. At this stage, other Councilmembers may amend the Committee Print of the bill that has been filed by the Committee of subject matter jurisdiction. Should a measure be approved by a majority of the Council, on second reading, the measure is then forwarded to the Mayor for review and approval. The Mayor has active options, when considering approved bills of the Council: (1) he can sign the legislation; (2) he can execute a pocket veto (not providing a signature and the legislation would become effective); and (3) exercise his power to veto the measure. Should the Mayor veto a bill, the Council could override the veto by a two-thirds majority vote of the Council. Upon the Mayor approving legislation submitted by the Council, the measure is assigned an Act number. The legislation must then be forwarded to Congress for review and approval. Upon its review and approval, the act then becomes law, with an assigned D.C. Law number.

III.

Key Initiatives and Legislation

Reliability

On September 30, 2010, Pepco filed its Comprehensive Reliability Enhancement Plan (“REP”) with the Public Service Commission of the District of Columbia. This measure is designed to improve the reliability of the Company’s electric distribution system and requires the investment of over a quarter of a billion dollars over a five year period. The REP improvement areas include both infrastructure improvements and enhanced vegetation management. Since last fall, Pepco has trimmed more than 203 miles of power lines to obtain increased clearance between the overhead electric wires and existing trees. In addition, Pepco is also rebuilding and enhancing poorly performing feeders. Throughout the District of Columbia, we are installing advanced technologies such as digital meters, which will help us pinpoint outages more quickly, and advanced switches on power lines, which will allow us to remotely and automatically re-route power to minimize the frequency and duration of outages by automatically restoring power to the greatest number of affected customers within minutes. Pepco is also addressing its response procedures to ensure maximum effectiveness should an outage event occur and enhancing direct customer communications options.

- On July 7, 2011, the Public Service Commission of the District of Columbia issued Revised Electricity Quality of Service Standards.
- Also, on July 7, 2011, the Council of the District of Columbia convened a Public Hearing on Bill 19-9 entitled, the “Reliable Electric Service Amendment Act of 2011.”

District of Columbia Pepco Region

Implementation of an Advanced Metering Infrastructure in the District of Columbia

Pepco is in the process of implementing an Advanced Metering Infrastructure in the District of Columbia. Meter exchanges commenced on October 4, 2010 and, to date, over 100,000 meters have been successfully installed. Pepco projects to complete “smart meter” exchanges by the 1st quarter of 2012 and to activate the new meters in the 2nd quarter of 2012.

- Pepco will be installing 280,000 “smart meters” in the District of Columbia.

Background

Authorization to implement an Advanced Metering Infrastructure (“AMI”) in the District was facilitated by legislative and executive action, with the support of the PSC. AMI is the centerpiece of Pepco’s *Blueprint for the Future* application which was filed with the Public Service Commission on April 4, 2007. This application consisted of a suite of programs proposed to assist Pepco customers to help manage and reduce their energy use.

While this application was pending before the Commission, federal grant funding became available, pursuant to the American Recovery and Reinvestment Act. Pepco successfully secured the maximum award level through the Smart Grid Investment Grant for its implementation (50% (\$44.6M) of implementation costs). Pepco will be deploying 280,000 “smart” meters in the District of Columbia which will enhance outage detection and crew response times, provide customers with more granular energy use data, which will assist them in conserving energy; significantly reduce estimated bills; help to facilitate increased renewable alternatives and plug-in vehicle infrastructure, to name a few.

A Comprehensive Customer Education Plan was filed with the Commission on March 1, 2011 by the Advanced Metering Infrastructure Education Task Force which consists of Pepco, the Office of the People’s Counsel, the Public Service Commission, the District Department of the Environment, AARP, Politics and Prose, and the Sustainable Energy Utility.

Mandatory Unitary Combined Reporting

Overview

The Council of the District of Columbia approved emergency and permanent legislation mandating that the Council shall pass legislation to require, for tax years beginning after December 31, 2010, that all corporations taxable in the District of Columbia shall determine the income apportionable or allocable to the District of Columbia by reference to the income and apportionment factors of all commonly controlled corporations organized within the United States with which they are engaged in a unitary business.

District of Columbia Pepco Region

This means in very basic terms that taxes will be determined based on revenue information provided, relative to all entities that are defined as being a part of the “unitary” group.

Concerns:

- Difficult for taxpayers to administer and file;
- Difficult for the District to audit and resolve differences in interpretations; and
- Potential litigation risks to resolve disputes, as seen in other jurisdictions which have adopted this approach.

The Council On State Taxation provides that this type of reporting arbitrarily assigns income because of the assumption that all corporations in an affiliated unitary group have the same level of profitability. This is inconsistent with economic theory and business experience. Consequently, uniformed combined reporting may reduce the link between income tax liabilities and where income is actually earned. Many corporate taxpayers may conclude that there is a significant risk that Mandatory Unitary Combined Reporting will arbitrarily attribute more income to a State than is justified by the level of a corporation’s real economic activity in the State.⁵

GAPP has led efforts requesting that regulated utilities be exempted from the requirements. The Corporate Tax Division of PHI has noted that this measure will be unfair to utilities whose prices are regulated and cannot be easily recovered.

On June 14, 2011, the Council of the District of Columbia approved legislation authorizing its implementation in the Fiscal Year 2012 Budget Support Act of 2011. However, an amendment was approved by the Council to address the impact the measure would have had to earnings when it is final for remeasurement of net deferred tax assets and liabilities.

- This measure also modified the authority of the Commission to penalize public utilities should these entities not meet performance standards. The Commission could fine the utility “up to \$100k” for each standard not met. These standards will have to be expressly identified in the established Regulations

Sustainable Energy Utility

D.C. Law 17-250, the “Clean and Affordable Energy Act of 2008” significantly alters the historical paradigm for addressing the sustainable use of energy in the District of Columbia. This measure establishes a Sustainable Energy Utility, which is defined pursuant to existing law, as the private contractor selected to develop, coordinate, and

⁵ COST, Mandatory Unitary Combined Reporting, Policy Position.

District of Columbia Pepco Region

provide programs for the purpose of promoting the sustainable use of energy in the District of Columbia. The District of Columbia Department of Energy has selected the new Sustainable Energy Utility, which is currently implementing EE programs in the District of Columbia. Vermont Energy Investment Corporation was selected as the new SEU. At a minimum, the SEU is mandated to achieve the following: (1) Reduce per-capita energy consumption in the District of Columbia; (2) Increase renewable energy generating capacity in the District of Columbia; (3) Reduce the growth of peak electricity demand in the District of Columbia; (4) Improve the energy efficiency of low-income housing in the District of Columbia; (5) Reduce the growth of the energy demand of the District of Columbia's largest energy users; and (6) Increase the number of green-collar jobs in the District of Columbia.

At present, the SEU contract is funded solely by an assessment on the sales of electricity and gas.

Complementary legislation has been introduced that will facilitate financing options for commercial and residential customers to invest in energy efficiency retrofits.

Pepco will be working with the SEU to provide data and information that may be of assistance.

Bill 19-44, the "Electrician Equality Act of 2011"

On June 17, 2011, External Affairs submitted formal comments to the Committee on Public Services and Consumer Affairs, relative to Bill 19-44, the Electrician Equality Act of 2011. As drafted, the legislation, if enacted, would require the District of Columbia Board of Industrial Trades ("Board") to accept a certificate from a recognized national trade organization certifying that an applicant has passed its required examination and is considered and classed by that organization as a journeyman electrician. Further, the Board shall be required to accept, in lieu of an examination, a certificate from a recognized national trade organization certifying that the applicant has passed its required examination. Pepco has raised concerns with the intent of the legislation, which would allow unspecified entities to certify electricians in the District of Columbia; fails to embrace uniformity concerning this certification; impedes the Board's authority to set forth these requirements; and subjects the individuals and those that seek such services to potential health and safety risks.

D.C. Law 18-369, the "Brownfield Revitalization Amendment Act of 2011"

On May 13, 2011, D.C. Law 18-369 entitled, the "Brownfield Revitalization Amendment Act of 2011" was published in the District of Columbia Register. This measure amends the Brownfield Revitalization Amendment Act of 2000 to "enhance the public health, welfare and the environment of the District by strengthening the Mayor's oversight and enforcement authority to clean up polluted hazardous waste sites and to compel polluters to pay for past hazardous waste contamination.

District of Columbia Pepco Region

Law 17-250, the "Clean and Affordable Energy Act of 2008"

The Energy Act continues to be classified as an emerging legislative issue because its implementation, associated costs, and potential outcomes are evolving and are not definitive. Further, an earlier analysis by GAPP revealed that the Energy Act is consistent, in many critical areas, with recently passed state energy plans and/or programs; however, the act should not be classified as a comprehensive energy plan for the District. Pepco should be acutely aware that this void will ultimately be filled by amendments to the new law, in coming years, that will likely expand the role and defined powers of the newly established Sustainable Energy Utility.

The corporation will also have to comply with the following sections of the Act:

- Renewable Portfolio Standards (Compliance and Reporting Required)
- Energy Benchmarking (Compliance required, commencing in 2011)

Buildings that are over 200,000 sq. feet will have to begin reporting their energy use to the District of Columbia Department of the Environment through the Energy Portfolio Manager tool. Pepco will be instrumentally involved as the requirements of the act are implemented annually. Many entities will be requesting this data from Pepco. Pepco will have to adhere to both statutory and regulatory guidelines concerning customer privacy, specific to buildings that have multiple tenants. Pepco is currently working with DDOE and the Council as this measure is implemented. Pepco will also be reaching out to the Commission.

Energy Efficiency Financing Act of 2009 (Evolving)

This legislation is premised on the belief that the upfront cost of making residential, commercial, or other real property more energy efficient prevents many property owners from making energy efficient improvements. Therefore, in order to make energy efficient improvements more accessible and to promote the installation of those improvements, it is necessary to authorize a procedure and to establish an entity that could provide loans for the initial cost of installing energy efficiency improvements.

Legislative Highlights:

- Authorizes and provides for the issuance, sale, and delivery of District of Columbia revenue bonds, payable from special assessment revenues, to provide funding for the initial installation of clean energy improvements.
- Establishes a voluntary assessment program that provides the authority and the means to provide funds for the initial installation of energy efficient improvements that are permanently attached to residential, commercial, industrial, or other real property;

District of Columbia Pepco Region

- Proposes the creation of a Special Energy Assessment Fund, which would receive all applicable funds, including those generated from the special assessment, plus all investments or earnings on those amounts. These funds will be irrevocably dedicated and pledged to the payment of the principal of, and interest on, the bonds and costs as provided in the act.
- Authorizes the issuance of one or more series of bonds in a total principal amount not to exceed \$250 million (The Mayor is authorized to pay from the proceeds of the bonds the financing costs and expenses of issuing and delivering the bonds, including, but not limited to, underwriting, legal, accounting, financial advisory, bond insurance or other credit enhancement, marketing and selling the bonds, and printing costs and expenses and the cost funding capitalized interest and required reserves. The remaining proceeds of the Bonds will be paid into the National Capital Energy Fund, created by Title II of the act and used to provide funds for the initial installation of energy efficiency improvements).
- Authorizes the Mayor to use the funds in the National Capital Energy Fund to make energy efficiency loans to property owners for the initial cost of the installation of energy efficiency improvements and each energy efficiency loan shall be repaid by the revenues generated by the special assessment authorized by Title III of the act.

To qualify for a loan from the National Capital Energy Fund, the property owner will be required to file a loan application with the Administrator of the fund and agree to paying the special assessment authorized by the act; describe the energy efficiency improvement that the property owner proposes to install and an estimate of the cost of the installation; provide an energy efficiency audit stating the amount of energy used by the subject property and the amount of the energy to be saved by the installation of the energy efficiency improvement; and provide a statement establishing that the value of the energy saved by the installation of the energy efficiency improvement exceeds the amount of the principal of, and interest on, the energy efficiency loan.

The special assessment district will consist of those lots, which the property owner has entered into a voluntary agreement to pay a special assessment to repay an energy efficiency loan. Consent will be established through the energy efficiency loan agreement with the District. The special assessment will be levied and collected with respect to each lot owned by a property owner that has entered into the loan agreement with the District of Columbia government.

- Pending (RFP)

Heat Wave Safety Legislation

The legislation has emerged in various forms since its initial introduction. In 2007, the Council approved emergency and temporary legislation that prohibited Pepco from disconnecting residential electric service when the temperature was forecasted to be 93

District of Columbia Pepco Region

degrees Fahrenheit or above. Subsequently, in 2008, the Council approved emergency and temporary legislation prohibiting residential electric service disconnection when the heat index is projected to be 95 degrees Fahrenheit or above. In 2007, Pepco was on record as supporting a 94 degree threshold, as a compromise between the policy the corporation adhered to and the proposal of 93 degrees. A new emergency and temporary measure was approved by the Council in June 2011.

Pepco has always been on record as cautioning the Council against approving a broad-based disconnection policy for all residential electric consumers in the District. GAPP views the measure as bad public policy because of the potential outcome(s). The Council has taken an approach of extending this protection to all residential electric consumers, regardless of income level, while the actual intent of the legislation was to protect those individuals that cannot afford to pay their electric bills, during summer months, when the temperature is considered to be extreme, as defined by the Council. Pepco has reviewed internal quantitative data and has utilized this information to support its assertion that electric consumers who have difficulty in paying their electric bills will incur higher arrearages and will experience greater difficulty in having their electric service restored after their service has been disconnected. The Council fails to realize that disconnection, for this population, is inevitable because temperature fluctuates. The legislation simply delays the inevitable and increases the debt level for the electric consumer. If passed the legislation would not benefit the electric consumer from a long-term perspective; will result in an increased debt level for Pepco; and will result in all electric consumers paying for the incurred arrearages. Pepco encourages customer education and information concerning assistance and payment options to assist customers. This prevents utility bills from becoming unmanageable for customers.

Benning Road Retirement/230kV Construction Project

The District of Columbia Public Service Commission approved Pepco's request to construct a new 230kV transmission line in the District of Columbia. The construction is necessary to ensure adequate electric reliability as a result of the planned retirement of the Benning Road Generating facilities. Pepco is on target to de-commission these plants in 2012.

District of Columbia
Pepero Region