

RE-ENROLLED ORIGINAL

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

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To establish a Natural Gas Trust Fund; to clarify the authority of the Public Service Commission to regulate outdoor pay telephones and to increase the penalty for unregistered pay telephones; to amend the District of Columbia Procurement Practices Act of 1985 to exempt electricity purchases by the District government from certain provisions of the act; to amend An Act To provide alternative methods of enforcement of orders, rules, and regulations of the Joint Board and of the Public Utilities Commission of the District of Columbia to increase a fine; to amend AN ACT Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes to require public utilities to notify both the Public Service Commission and the Office of the People's Counsel and submit a written report whenever there is an incident resulting in loss of human life, personal injury requiring hospitalization, or significant service interruption, to increase salaries for the Commissioners of the Public Service Commission, to reduce from 5 years to one year the time that Commission nominees are barred from holding a pecuniary interest in any utility company regulated by the Public Service Commission and limit the eligibility of individuals employed by a public utility or any other entity appearing before the Public Service Commission, to require that notice of rate applications or changes in condition of service be available on a public utility's website and either by written or electronic notice to customers, to require the Public Service Commission and the Office of the People's Counsel to refund assessments in inactive cases; to amend the Retail Electric Competition and Consumer Protection Act of 1999 to require emissions disclosure and to revise the date for filing annual agency fund deposit reports; to amend AN ACT Regulating the use of telephone wires in the District of Columbia and AN ACT Regulating the use of telegraph wires in the District of Columbia to revise or modernize the text authorizing government use of telephone conduit for its communications; to amend the Telecommunications Competition Act of 1996 to increase the authorized assessment in telecommunications cases; and to amend Title 15 of the District of Columbia Municipal Regulations to increase the penalty for unregistered pay telephones.

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BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Omnibus Utility Amendment Act of 2004".

Title I. NATURAL GAS

Sec. 101. Natural Gas Trust Fund; public purpose programs.

(a)(1) There is hereby established the Natural Gas Trust Fund, which shall be a proprietary fund in the nature of an enterprise fund as classified under D.C. Official Code § 47-373(1)(B).

(2) The gas company shall remit all proceeds collected under subsection (b) of this section to the Mayor on a monthly basis. The Mayor shall deposit those proceeds into the Natural Gas Trust Fund. All proceeds collected by the gas company under subsection (b) of this section shall be credited to the Natural Gas Trust Fund without regard to fiscal year limitation and shall not at any time be transferred to, lapse into, or be commingled with the General Fund of the District of Columbia or any other fund or account of the District of Columbia.

(3) All interest earned on monies deposited in the Natural Gas Trust Fund shall be credited to the Natural Gas Trust Fund and shall be used solely for the purposes designated in this section. All revenue credited to the Natural Gas Trust Fund shall be used solely to fund the programs mandated by subsection (c) of this section.

(b)(1) All customers other than those participating in the residential essential service program established by the Commission shall contribute to the Natural Gas Trust Fund through a non-bypassable charge listed on customers' bills and collected by the gas company.

(2)(A) The charge mandated by paragraph (1) of this subsection shall be determined by the Commission and may not vary by customer class.

(B) Notwithstanding any other provision of this section, the charge mandated by this subsection shall not exceed \$.016434 per therm nor shall it be less than \$.005478 per therm. The minimum charge shall be applicable beginning May 1, 2005, unless or until the Commission establishes a different charge pursuant to this subsection.

(3) On an annual basis, the Commission shall evaluate the charge mandated by paragraph (1) of this subsection to determine whether it is set at an appropriate level to fund the programs mandated by subsection (c) of this section. Subject to the restrictions in paragraph (2) of this subsection, the Commission shall adjust the charge if the Commission finds that the charge is not set at an appropriate level.

(c)(1) The Commission shall establish a universal service program to assist low-income natural gas customers in the District of Columbia.

(2) The program established under this subsection shall be administered by the District of Columbia Office of Energy.

(d) The Commission shall establish a program to promote energy efficiency in the District of Columbia. The program shall be administered by the District of Columbia Office of Energy, and it may include:

- (1) Rate discounts or other rate-related incentives;

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- (2) Financial incentives for owners of low-income residential properties; and
- (3) Energy efficiency assistance to customers who qualify for the universal service program under subsection (c)(1) of this section.

(e) At the discretion of the Commission, and to the extent allowed by District of Columbia or federal law, the universal service and energy efficiency programs developed under this section may be combined with any existing universal service and energy efficiency programs administered by the Commission or the District of Columbia Office of Energy.

TITLE II. PAY TELEPHONES

Sec. 201. Pay telephone service providers.

(a) The Public Service Commission shall have the power and authority to prescribe rules and regulations for the operation, maintenance, and location of outdoor pay telephones in the District of Columbia.

(b) The Commission shall, by rules or regulations, establish standards:

- (1) To certify a pay telephone service provider seeking to provide pay telephone services in the District of Columbia;
- (2) For the registration, renewal of a registration for a pay telephone, and transfer of ownership of a registered pay telephone;
- (3) For the installation and removal of a pay telephone;
- (4) To investigate a consumer complaint regarding pay telephone service; and
- (5) to establish operating requirements for all outdoor pay telephones.

(c) The Commission shall by regulation or order prescribe procedures for reviewing any complaint relating to pay telephone services in the District of Columbia. The regulation or order shall include provisions for a formal hearing, decision, and appeal arising from any complaint.

(d)(1) In weighing evidence regarding whether a pay telephone constitutes a public nuisance, the Public Service Commission shall give great weight to the:

(A) Written recommendation of the Advisory Neighborhood Commission in which the pay telephone is located or proposed to be located; and

(B) Written statement or testimony of a member of the Metropolitan Police Department.

(2) For the purpose of this section only, great weight means that, unless there is a compelling reason to do otherwise, the Public Service Commission shall defer to the opinion of the Metropolitan Police Department or Advisory Neighborhood Commission.

TITLE III. GENERAL

Sec. 301. Section 320 of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-303.20), is amended by adding a new subsection (r) to read as follows:

“(r)(1) Contracts for the delivery of electrical power and ancillary services for the District

Amend
§ 2-303.20

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of Columbia shall be exempt from the following requirements of this act:

"(A) Section 304(d);

"(B) Section 105a(j)(1) and (2).

“(2) Approval of the Council shall be required in accordance with section 451(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(a)).”.

Sec. 302. Section 8 of AN ACT To provide alternative methods of enforcement of orders, rules, and regulations of the Joint Board and of the Public Utilities Commission of the District of Columbia, approved April 5, 1939 (53 Stat. 569; D.C. Official Code § 34-731), is amended by striking the phrase “\$300” and inserting the phrase “\$10,000” in its place.

Amend
§ 34-731

Sec. 303. Section 8 of AN ACT Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 974; codified in scattered sections of Title 34 of the District of Columbia Official Code), is amended as follows:

(a) Paragraph 89 (D.C. Official Code § 34-401) is amended to read as follows:

"(a) Every public utility shall, whenever an incident occurs within the District of Columbia that results in the loss of human life, personal injury requiring hospitalization, or service disruption directly or indirectly arising from or connected with its maintenance or operation, give immediate notice thereof to the Public Service Commission and the Office of the People’s Counsel of the District of Columbia. In the event of any such incident, the public utility shall also submit a written report to the Commission that explains the cause of the incident, what steps if any the public utility will undertake to prevent such an occurrence in the future, and such other information which the Public Service Commission shall, by order or regulation, require. The Commission, by regulation or order, shall establish the minimum criteria for a service disruption (e.g., time period or minimum number of affected customers) that warrants notification and a report under this paragraph. The Commission, if it deems the public interest requires it, shall cause an investigation to be made of any incident.

Amend
§ 34-401

"(b) The report required by subparagraph (a) of this paragraph shall not be admitted into evidence for any purpose in any suit or action for damages arising out of the loss of life, injury, or service interruption referred to in this section.”.

(b) Paragraph 85(a) (D.C. Official Code § 34-706(a)) is amended by striking is amended by striking the phrase “\$300” and inserting the phrase "\$5,000" in its place

Amend
§ 34-706

(c) Paragraph 97(a) (D.C. Official Code § 34-801) is amended as follows:

(1) Strike the sentence “Each of the commissioners shall receive a salary equivalent to that received by an employee compensated at the top level of grade 16 pursuant to Title XI of the District of Columbia Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-611.01 *et seq.*)” and insert the phrase “The Chairperson shall

Amend
§ 34-801

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receive a salary equivalent to that received by an employee compensated at grade 17, step 10 pursuant to Title VIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.01). The Commissioners shall receive a salary equivalent to that received by an employee compensated at grade 17, step 8 pursuant to Title VIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-611.01 *et seq.*).

(2) Strike the sentence “No person shall be eligible to the office of commissioner of said Public Service Commission who is, or who shall have been during a period of 5 years next preceding his appointment, directly or indirectly interested in any public utility operating, owning, or having an interest in property in the District of Columbia; or in any stock, bond, mortgage, security, or contract of any such public utility.” and insert the phrase “No person shall be eligible to the office of commissioner of the Public Service Commission who is, or who shall have been during a period of one year preceding his appointment, directly or indirectly interested in any public utility or other entity appearing before the Commission or in any stock, bond, mortgage, security, or contract of any public utility or entity, except for stocks that are part of a publicly listed mutual fund other than a utility-focused mutual fund. A person shall not be eligible for appointment as a commissioner if the person, at any time during the 5 years preceding appointment, personally served as an officer, director, owner, manager, partner, or legal representative of a public utility, affiliate, or direct competitor of a public utility.” in its place.

(d) Paragraph 39(a) (D.C. Official Code § 34-909(a)) is amended by striking the second sentence and inserting the sentence “The notice shall be available for viewing at a utility’s website, and either by electronic notice to those ratepayers who have registered for electronic billing with the utility or by written notice in the affected ratepayer’s billing envelope.” in its place.

Amend
§ 34-909

(e) Paragraph 42(a) (D.C. Official Code § 34-912(a)) is amended as follows:

(1) Sub-subparagraph (2) is amended by striking the last sentence and inserting the phrase “The balance of any sums for a specific proceeding remaining in each fund after a 12-month period in which actual expenditures for that proceeding were 5% or less of the fund balance, shall be returned to the utility which made the deposit. The balance of any sums for a specific proceeding remaining after the final disposition of the proceeding or any litigation arising therefrom shall be returned promptly to the utility which made the deposit.” in its place.

Amend
§ 34-912

(2) Sub-subparagraph (7) is amended to read as follows:

“(7) The Commission and the Office shall issue reports to the Mayor and the Council by February 15 of the succeeding fiscal year on deposits to and disbursements from their respective agency funds during each fiscal year. Copies of the reports shall provided to each public utility.”.

Sec. 304. The Retail Electric Competition and Consumer Protection Act of 1999, effective

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May 9, 2000 (D.C. Law 13-107; D.C. Official Code § 34-1501 *et seq.*), is amended as follows:

(a) Section 104(c)(2)(D.C. Official Code § 34-1504(c)(2)) is amended to read as follows:

“(c)(2)(A)(i) Under criteria established by Commission regulation or order, the Commission shall determine for each electricity supplier licensed under section 105 whether it is feasible for that electricity supplier to disclose every 6 months emissions on a pound per megawatt-hour basis and the fuel mix of the electricity sold by that supplier in the District of Columbia. For fuel mix, the categories include electricity generated from coal, natural gas, nuclear energy, oil, hydroelectric, solar, biomass, wind, and other sources. For emissions, the categories include carbon dioxide, nitrogen oxide, sulfur dioxide, and any other pollutants specified by the Commission.

Amend
§ 34-1504

“(ii) The Commission shall make a determination of feasibility under sub-subparagraph (i) of this subparagraph either within 6 months after the date on which an electricity supplier receives a license under section 105 or within 6 months of the effective date of the Omnibus Utility Amendment Act of 2004, passed on 2nd reading on December 21, 2004 (Enrolled version of Bill 15-872).

“(B) If the Commission determines under subparagraph (A)(i) of this paragraph that it is feasible for an electricity supplier to disclose the emissions and fuel mix of the electricity sold by that supplier in the District of Columbia, the Commission, by regulation or order, shall require the electricity supplier to disclose every 6 months the emissions and fuel mix of the electricity sold by the supplier in the District of Columbia in the categories provided in subparagraph (A)(i) of this paragraph.

“(C) If the Commission determines under subparagraph (A)(i) of this paragraph that it is not feasible for an electricity supplier to disclose the emissions and fuel mix of the electricity sold by the supplier in the District of Columbia, the Commission, by regulation or order, shall require the electricity supplier to disclose to its customers every 6 months a regional emissions and fuel mix average in the categories provided in subparagraph (A)(i) of this paragraph.”.

(b) Section 114 is amended as follows:

(1) Subsection (b)(2)(C)(D.C. Official Code § 34-1514(b)(2)(C)) is amended by striking the period at the end of the last sentence and inserting the phrase “, but shall not be less than \$.0001 per kilowatt hour. Collection shall commence as of February 1, 2005.” in its place.

Amend
§ 34-1514

(2) A new subsection (e) is added to read as follows:

“(e) Proceedings regarding the establishment of programs under this section shall be legislative in nature and not be contested cases as defined in section 3(8) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-502(8)).”.

Sec. 305. Section 5 of AN ACT Regulating the use of telephone wires in the District of Columbia, approved June 20, 1902 (32 Stat. 395; D.C. Official Code § 34-1911.05), is amended

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to read as follows:

**Amend
§ 34-1911.05**

“All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of this Act shall be subject to such reasonable regulations as the Council of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires; provided, that in all conduits so constructed, such space shall be furnished to the District government as may be necessary for purposes related exclusively to the government and public safety, free of charge; provided further, that the number of ducts so reserved in any one conduit shall not be more than 2.”.

Sec. 306. Section 5 of AN ACT Regulating the use of telephone wires in the District of Columbia, approved March 3, 1905 (33 Stat. 986; D.C. Official Code § 34-1921.05), is amended to read as follows:

**Amend
§ 34-1921.05**

“All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of this Act shall be subject to such reasonable regulations as the Council of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires; provided, that in all conduits so constructed, such space shall be furnished to the District government and the United States as may be necessary for purposes related exclusively to the government and public safety, free of charge; provided further, that the number of ducts so reserved in any one conduit shall not be more than 2.”.

Sec. 307. Section 3(m) of the Telecommunications Competition Act of 1996, effective September 9, 1996 (D.C. Law 11-154; D.C. Official Code § 34-2002), is amended as follows:

(a) Strike the phrase "\$100,000" and insert the phrase "\$250,000" in its place.

(b) Strike the phrase "\$50,000" and insert the phrase "\$150,000" in its place.

**Amend
§ 34-2002**

Sec. 308. Section 617 of Title 15 of the District of Columbia Municipal Regulations is amended by adding a new subsection 617.2 to read as follows:

“617.2 Operation of a pay telephone without first registering the instrument with the Commission shall subject the PSP to a fine of \$3,000.”.

DCMR

Title IV. APPLICABILITY, FISCAL IMPACT, EFFECTIVE DATE

Sec. 401. Applicability.

Sections 303(c)(1) and 307 shall apply as of October 1, 2004.

**Note,
§§ 34-801,
34-2002**

Sec. 402. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact

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statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

Sec. 403. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia