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# COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT

ELISSA SILVERMAN, CHAIRPERSON  
FISCAL YEAR 2020 COMMITTEE BUDGET REPORT

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**TO:** Members of the Council of the District of Columbia

**FROM:** Councilmember Elissa Silverman  
Chairperson, Committee on Labor and Workforce Development

**DATE:** June 24, 2020

**SUBJECT:** Report and Recommendations of the Committee on Labor and Workforce Development on the Fiscal Year 2021 Budget for Agencies Under Its Purview

The Committee on Labor and Workforce Development (“Committee”), having conducted hearings and received testimony on the Mayor’s proposed operating and capital budgets for Fiscal Year 2021 (“FY 2021”) for the agencies under its purview, reports its recommendations for review and consideration by the Committee of the Whole. The Committee also comments on several sections in the Fiscal Year 2021 Budget Support Act of 2020, as proposed by the Mayor.

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CIRCULATION DRAFT

## I. SUMMARY

### A. EXECUTIVE SUMMARY

The coronavirus public health emergency and the ensuing economic crisis has put an inescapable spotlight on racial inequity in our city. It has also shown that years of underinvestment in government programs and infrastructure that provide critical safety nets for our most vulnerable residents, who in the District of Columbia are overwhelmingly Black and Latino, have led to systems that are woefully outdated and incapable of helping residents and the city in its greatest time of need. The Fiscal Year 2021 budget presents an opportunity not only to demonstrate the political will to truly address these pernicious inequities that are damaging not only financially but physically and psychologically to people of color in our city, but start truly correcting these harmful injuries by making the investments of taxpayer dollars in programs, capital projects, and people that will lead to racial justice in DC. This will lead to a healthier and more prosperous city overall.

The Committee on Labor and Workforce Development believes that the agencies and programs under its oversight play a key role in the District's recovery from this public health and economic crisis. The Committee is also firm in its belief that making decisions based on demonstrated outcomes, research-driven best practices, and – this is key – input from community members including residents, workers, and employers who actually use these programs will lead to government programs and agencies that truly tackle poverty, racism, and income inequality in our city.

With these budget recommendations to the full Council of the District of Columbia, we are demonstrating our commitment to continue addressing racial injustice by making sure that Black and Latino residents benefit from their taxpayer dollars paid to District government. When District government puts money into two new hospitals, this committee is going to do everything in its power to make sure that District residents have every shot to get the living wage jobs created in both construction and healthcare. When District government puts money into a training academy, this committee is going to do everything in its power to make sure District residents who invest their time and energy in learning will get not only good paying jobs but careers in infrastructure, IT, and other high-demand industries that can support their families. And that when workers and businesses put their hard work into our city, they will get a level playing field in which a fair day's work leads to a fair day's pay. Contractors to District government shouldn't be able to underbid because they misclassify workers or don't pay them fairly. This can't continue.

The Committee on Labor and Workforce Development is charged with oversight over DC agencies that provide job training and promote job creation, particularly for workers with barriers to employment; ensure that workers are treated fairly and paid properly; and support workers economically through social insurance and safety net programs such as Unemployment Insurance (UI) and the new Universal Paid Leave (UPL) program. In its role, the Committee oversees and its Chair sits on the Workforce Investment Council, which is responsible for developing government-wide workforce development strategy.

The biggest agency in the Committee’s purview is the Department of Employment Services (DOES), which as noted is the implementing agency for UI, UPL, workforce development including the District’s one-stop centers, workers’ compensation, and wage and hour enforcement including First Source. The Committee also oversees several agencies dedicated to the District’s public sector workers and the District’s relationship with organized labor.

The Committee has heard for years from workers, advocates, and businesses about the need for significant improvements in workforce development, UI, and labor law enforcement. Through past budgets and oversight hearings the Committee has tried to draw attention to these important matters. But COVID-19, sadly, focused the attention of the public and political leadership on these issues more aggressively. Since mid-March, more than 115,000 DC workers have attempted to keep their households stable in the midst of layoffs by attempting to access unemployment. Additionally, coronavirus impacted not only those considered most vulnerable in our city, but many workers who do not typically use DOES programs, such as white, higher-earning hotel and restaurant workers, and independent contractors.

Many ran into challenges seeking unemployment assistance right away. Workers without internet or computer access were unable to easily file claims, system failures were rife for those who were able to access the system online, and the UI call center was not able to scale up easily due to underinvestment in technology, hardware, and its own workforce. That led to unacceptably long waits for service and responses – with many ultimately receiving no response to requests for help or information.

Coronavirus exposed these problems with our safety net, but many Black and Latino residents particularly those who live in Wards 7 and 8 where unemployment is unacceptably high, already knew of the underlying cancer. The District’s economic prosperity has been uneven; the rising tide has not lifted all boats. Median household income for Black households, for example, has remained stagnant at approximately \$45,200 in 2018 despite the overall increase in prosperity in the District.<sup>1</sup> The median household income of white residents, by contrast, was \$142,500. Black District workers are also more likely to hold jobs in occupations with very low wages.<sup>2</sup> Economic disparities like these create and exacerbate other disparities, such as health access and outcomes. In the District, 80 percent of COVID-19 deaths have been Black residents, even though Black people make up only 46 percent of the total population.<sup>3</sup> Black workers are also more likely

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<sup>1</sup> DC Fiscal Policy Institute, “Black Workers Matter: How the District’s History of Exploitation & Discrimination Continues to Harm Black Workers,” Jan. 28, 2020, p. 8, <https://www.dcfpi.org/wp-content/uploads/2020/01/Black-Workers-Matter-PDF-5.pdf>.

<sup>2</sup> DC Fiscal Policy Institute, “Black Workers Matter,” p. 8.

<sup>3</sup> Jenny Gathright, “D.C.’s Black Residents Make Up Less Than Half The Population, 80% Of COVID-19 Deaths,” WAMU 88.5, May 11, 2020, available at <https://www.npr.org/local/305/2020/05/11/853892794/d-c-s-black-residents-make-up-less-than-half-the-population-80-of-c-o-v-i-d-19-deaths>.

to hold jobs that required physically reporting for duty during the pandemic, further increasing their exposure and potential health risks.<sup>4</sup>

This reality cannot go on any longer, and this Committee is demonstrating its political will to change it with these recommendations for budget allocations and legislation that will reshape our workforce and safety net programs to be more effective, accessible, and equitable.

Herein is a summary of the Report and Recommendations of the Committee on Labor and Workforce Development for the Fiscal Year 2021:

### **Investing in High-Demand Industry Training that Leads to Living-Wage Careers**

- Establish a **healthcare sector partnership** through the Workforce Investment Council to increase the number of District residents employed in the healthcare industry. The partnership will focus on jobs at the two new hospitals in the District that will be financed with taxpayer dollars during the financial plan. It will also focus on meeting the staffing needs of the hospitals, as well as the District’s managed care organizations, private insurers, and other healthcare providers. The partnership will heavily invest in employer engagement by creating a **sector intermediary** to connect business and training providers, and to help trainees moving directly into employment with partner employers.
- Create **industry advisory committees** to guide training at DOES’ DC Infrastructure Academy that will meet the needs of employers and help more District residents get living-wage jobs and stable careers in high-demand fields.
- **Invest in training for healthcare careers** for District residents through the Workforce Investment Council.
- Invest in **training for Commercial Drivers Licenses and Information Technology** at the DC Infrastructure Academy, and add an FTE to manage training.
- Continue and enhance funding a best-practice of helping low-literacy DC residents get jobs through **integrated education and training**, which has been a highly success approach to adult education and workforce development, through support of proposed funding at the Workforce Investment Council.
- Establish a **paid internship pilot program** in Spring 2021 for 250 District high school students to help them gain the skills and experience they need for future success.

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<sup>4</sup> Elise Gould and Valerie Wilson, “Black workers face two of the most lethal preexisting conditions for coronavirus—racism and economic inequality,” Economic Policy Institute, June 1, 2020, p. 17, available at <https://files.epi.org/pdf/193246.pdf>.

- Require the Executive review options for the **DC Infrastructure Academy to remain East of the Anacostia River** and preferably within Ward 8 prior to expending funds for the design on 2500 Benning Road NE location.

### **Making the District's Safety Net Work For Everyone**

- Establish firm deadlines to **modernize the Unemployment Insurance system** capital project under DOES. Require that UI applications can be made on mobile devices including cell phones, that the claimant portal is compatible with all major internet browsers, and that the system will comport with the legal rights of all District workers, including non-English speakers and people with disabilities.
- Create a fair UI system so that workers without Wi-Fi or computer access can **file claims and complaint forms**.
- Fund **enforcement of the Universal Paid Leave Act's** prohibition on retaliation against individuals exercising their rights through the Office of Human Rights.
- Establish a new grant program to fund businesses and worker organizations' efforts to **help employers and workers navigate the District's workplace leave laws**, including universal paid leave, family and medical leave, and paid sick time.
- Reform the **Paid Leave Fund structure** to clarify how administrative and enforcement money flows and ensure all needs will be funded in the future.
- Update the **unemployment insurance shared work program** law to be in line with U.S. Department of Labor model legislation, a program passed into law in 2010 but not implemented until 2020.

### **Keeping a Fair Playing Field by Investing in Labor Law Enforcement**

- Invest in an additional attorney at the Office of the Attorney General to **combat wage theft**.
- Improve **protections against wage theft** that are already included in current law, which is the legislation that repealed Initiative 77.
- Fund a **public education campaign** on tipped workers' wage rights, required under the legislation that repealed Initiative 77.

## Investing in and Respecting DC government workers

- **Respect District public servants' collective bargaining rights** by requiring that up to \$35 million in revenues in excess of the April 2020 estimate are used first to honor two executed collective bargaining agreements, covering 10,000 workers.
- Conduct a study on the employment of and employment practices related to **transgender and non-binary individuals** in District government agencies.

CIRCULATION DRAFT

## B. FISCAL YEAR 2021 AGENCY OPERATING BUDGET SUMMARY

Operating Budget Summary					
Fund Type	FY Actuals	FY Revised	Mayor's FY 2021 Proposed	Committee Variance	Committee's FY 2021 Recommendation
<b>CITY ADMINISTRATOR / DEPUTY MAYOR</b>					
LOCAL FUND	\$2,187,483	\$2,243,467	\$2,402,694		\$2,402,694
OPERATING INTRA-DISTRICT FUNDS	\$99,557	\$295,000	\$0		\$0
<b>TOTAL GROSS FUNDS</b>	<b>\$2,287,040</b>	<b>\$2,538,467</b>	<b>\$2,402,694</b>	<b>\$0</b>	<b>\$2,402,694</b>
<b>D.C. DEPARTMENT OF HUMAN RESOURCES</b>					
LOCAL FUND	\$11,257,823	\$11,491,648	\$10,368,875	\$150,000	\$10,518,875
SPECIAL PURPOSE REVENUE FUNDS ('O'TYPE)	\$624,277	\$448,232	\$593,214		\$593,214
OPERATING INTRA-DISTRICT FUNDS	\$11,320,999	\$8,858,399	\$7,346,834		\$7,346,834
<b>TOTAL GROSS FUNDS</b>	<b>\$23,203,099</b>	<b>\$20,798,279</b>	<b>\$18,308,922</b>	<b>\$150,000</b>	<b>\$18,458,922</b>
<b>DC UNEMPLOYMENT COMPENSATION FUND</b>					
LOCAL FUND	\$4,966,061	\$5,272,323	\$5,480,390		\$5,480,390
<b>TOTAL GROSS FUNDS</b>	<b>\$4,966,061</b>	<b>\$5,272,323</b>	<b>\$5,480,390</b>	<b>\$0</b>	<b>\$5,480,390</b>
<b>DEPARTMENT OF EMPLOYMENT SERVICES</b>					
LOCAL FUND	\$69,650,011	\$60,609,507	\$54,416,172	\$260,420	\$54,676,592
FEDERAL GRANT FUND	\$28,178,698	\$38,861,057	\$42,083,598		\$42,083,598
PRIVATE GRANT FUND	\$1,424,908	\$2,146,908	\$260,005		\$260,005
SPECIAL PURPOSE REVENUE FUNDS ('O'TYPE)	\$39,561,459	\$49,779,787	\$57,848,273	\$1,249,424	\$59,097,697
ENTERPRISE AND OTHER FUNDS	\$0	\$69,300,000	\$0		\$0
OPERATING INTRA-DISTRICT FUNDS	\$3,168,761	\$2,725,920	\$1,573,947		\$1,573,947
<b>TOTAL GROSS FUNDS</b>	<b>\$141,983,839</b>	<b>\$223,423,179</b>	<b>\$156,181,995</b>	<b>\$1,509,844</b>	<b>\$157,691,839</b>
<b>DEPUTY MAYOR FOR EDUCATION</b>					
LOCAL FUND	\$0	\$4,459,710	\$2,894,923	\$789,625	\$3,684,548
OPERATING INTRA-DISTRICT FUNDS	\$0	\$2,177,080	\$1,401,831		\$1,401,831
<b>TOTAL GROSS FUNDS</b>	<b>\$0</b>	<b>\$6,636,790</b>	<b>\$4,296,754</b>	<b>\$789,625</b>	<b>\$5,086,379</b>
<b>EMPLOYEES' COMPENSATION FUND</b>					
LOCAL FUND	\$24,131,582	\$31,641,678	\$22,542,849	(\$396,280)	\$22,146,569
<b>TOTAL GROSS FUNDS</b>	<b>\$24,131,582</b>	<b>\$31,641,678</b>	<b>\$22,542,849</b>	<b>(\$396,280)</b>	<b>\$22,146,569</b>
<b>OFFICE OF EMPLOYEE APPEALS</b>					
LOCAL FUND	\$2,153,202	\$2,235,527	\$2,234,311		\$2,234,311
<b>TOTAL GROSS FUNDS</b>	<b>\$2,153,202</b>	<b>\$2,235,527</b>	<b>\$2,234,311</b>	<b>\$0</b>	<b>\$2,234,311</b>
<b>OTHER POST EMPLOYMENT BENEFITS FUND</b>					
ENTERPRISE AND OTHER FUNDS	\$6,763,096	\$9,069,423	\$9,088,000		\$9,088,000
<b>TOTAL GROSS FUNDS</b>	<b>\$6,763,096</b>	<b>\$9,069,423</b>	<b>\$9,088,000</b>	<b>\$0</b>	<b>\$9,088,000</b>
<b>PUBLIC EMPLOYEE RELATIONS BOARD</b>					
LOCAL FUND	\$1,225,676	\$1,321,488	\$1,295,666		\$1,295,666
<b>TOTAL GROSS FUNDS</b>	<b>\$1,225,676</b>	<b>\$1,321,488</b>	<b>\$1,295,666</b>	<b>\$0</b>	<b>\$1,295,666</b>
<b>UNEMPLOYMENT COMPENSATION FUND</b>					
FEDERAL PAYMENTS	\$0	\$745,701,024	\$215,292,455		\$215,292,455
ENTERPRISE AND OTHER FUNDS	\$185,382,095	\$457,276,289	\$464,778,369		\$464,778,369
<b>TOTAL GROSS FUNDS</b>	<b>\$185,382,095</b>	<b>\$1,202,977,313</b>	<b>\$680,070,824</b>	<b>\$0</b>	<b>\$680,070,824</b>
<b>UNIVERSAL PAID LEAVE</b>					
ENTERPRISE AND OTHER FUNDS	\$0	\$0	\$271,370,337		\$271,370,337
<b>TOTAL GROSS FUNDS</b>	<b>\$0</b>	<b>\$0</b>	<b>\$271,370,337</b>	<b>\$0</b>	<b>\$271,370,337</b>
<b>WORKFORCE INVESTMENTS</b>					
LOCAL FUND	\$447,335	\$48,465,553	\$0		\$0
<b>TOTAL GROSS FUNDS</b>	<b>\$447,335</b>	<b>\$48,465,553</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>GRAND TOTAL</b>	<b>\$392,543,024</b>	<b>\$1,554,380,019</b>	<b>\$1,173,272,742</b>	<b>\$2,053,189</b>	<b>\$1,175,325,931</b>



## C. FISCAL YEAR 2021 AGENCY FULL-TIME EQUIVALENT

Agency Full-Time Equivalent Summary					
Fund Type	FY Actuals	FY Revised	Mayor's FY 2021 Proposed	Committee Variance	Committee's FY 2021 Recommendation
<b>CITY ADMINISTRATOR / DEPUTY MAYOR</b>					
LOCAL FUND	16.00	17.00	17.00		17.00
OPERATING INTRA-DISTRICT FUNDS	2.00	0.00	0.00		0.00
<b>TOTAL FTE</b>	<b>18.00</b>	<b>17.00</b>	<b>17.00</b>	<b>0.00</b>	<b>17.00</b>
<b>D.C. DEPARTMENT OF HUMAN RESOURCES</b>					
LOCAL FUND	94.00	106.00	100.00		100.00
SPECIAL PURPOSE REVENUE FUNDS ('O'TYPE)	6.00	3.00	5.00		5.00
OPERATING INTRA-DISTRICT FUNDS	52.00	62.00	39.00		39.00
<b>TOTAL FTE</b>	<b>152.00</b>	<b>171.00</b>	<b>144.00</b>	<b>0.00</b>	<b>144.00</b>
<b>DEPARTMENT OF EMPLOYMENT SERVICES</b>					
LOCAL FUND	320.00	211.00	229.00	-6.59	222.41
FEDERAL GRANT FUND	261.00	199.00	217.00		217.00
PRIVATE GRANT FUND	10.00	6.00	0.00		0.00
SPECIAL PURPOSE REVENUE FUNDS ('O'TYPE)	150.00	300.00	314.00	4.75	318.75
OPERATING INTRA-DISTRICT FUNDS	25.00	18.00	3.00		3.00
<b>TOTAL FTE</b>	<b>766.00</b>	<b>734.00</b>	<b>763.00</b>	<b>0.00</b>	<b>761.16</b>
<b>DEPUTY MAYOR FOR EDUCATION</b>					
LOCAL FUND	0.00	5.00	9.00	1.00	10.00
OPERATING INTRA-DISTRICT FUNDS	0.00	3.00	3.00		3.00
<b>TOTAL FTE</b>	<b>0.00</b>	<b>8.00</b>	<b>12.00</b>	<b>0.00</b>	<b>13.00</b>
<b>EMPLOYEES' COMPENSATION FUND</b>					
LOCAL FUND	52.00	52.00	52.00	-3.00	49.00
<b>TOTAL FTE</b>	<b>52.00</b>	<b>52.00</b>	<b>52.00</b>	<b>0.00</b>	<b>49.00</b>
<b>OFFICE OF EMPLOYEE APPEALS</b>					
LOCAL FUND	14.00	14.00	14.00		14.00
<b>TOTAL FTE</b>	<b>14.00</b>	<b>14.00</b>	<b>14.00</b>	<b>0.00</b>	<b>14.00</b>
<b>PUBLIC EMPLOYEE RELATIONS BOARD</b>					
LOCAL FUND	10.00	9.00	8.00		8.00
<b>TOTAL FTE</b>	<b>10.00</b>	<b>9.00</b>	<b>8.00</b>	<b>0.00</b>	<b>8.00</b>
<b>GRAND TOTAL</b>	<b>1,012.00</b>	<b>1,005.00</b>	<b>1,010.00</b>	<b>0.00</b>	<b>1,006.16</b>

## D. FY 2021 - 2026 AGENCY CAPITAL BUDGET SUMMARY

Project No	Project Title	Fund Detail	Fund	Allotment Scenario	Unspent Allotment as of 5-16-20	Allotment as of 5-16-20	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	6-yr Total	
<b>DEPARTMENT OF EMPLOYMENT SERVICES (CFO)</b>														
PFL08C	PAID FAMILY LEAVE IT APPLICATION	304	Short-term Bonds	Available Balances	43,552,096	43,536,700	0	0	0	0	0	0	0	
				Committee's FY21 Recommendation										
		314	Restricted Paygo	Available Balances	10,164,709	5,281,917	0	0	0	0	0	0	0	
				Committee's FY21 Recommendation										
<b>PFL08C Total</b>					<b>53,716,805</b>	<b>48,818,617</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	
SNTRCC	DC INFRASTRUCTURE ACADEMY	300	GO/IT Bonds	Mayor's Proposed FY21 CIP Change	0	0	0	26,473,850	14,255,150	0	0	0	40,729,000	
				Available Balances	7,476,858	7,476,858	0	0	0	0	0	0	0	
				Committee's FY21 Recommendation										
				Approved FY20 CIP for FY21-25	0	0	2,300,000	4,300,000	4,300,000	0	0	0	10,900,000	
		301	Paygo	Mayor's Proposed FY21 CIP Change	0	0	(2,300,000)	(4,300,000)	(4,300,000)	0	0	0	(10,900,000)	
				Available Balances	3,635,000	3,635,000	0	0	0	0	0	0	0	
		306	Private Donations	Available Balances	0	0	0	0	0	0	0	0	0	
				Committee's FY21 Recommendation										
<b>SNTRCC Total</b>					<b>11,111,858</b>	<b>11,111,858</b>	<b>0</b>	<b>26,473,850</b>	<b>14,255,150</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>40,729,000</b>	
UIM02C	UI MODERNIZATION PROJECT-FEDERAL	300	GO/IT Bonds	Available Balances	(100,900)	(749,166)	0	0	0	0	0	0	0	
				Committee's FY21 Recommendation										
				Approved FY20 CIP for FY21-25	0	0	7,450,000	0	0	0	0	0	7,450,000	
				Mayor's Proposed FY21 CIP Change	0	0	(5,450,000)	5,450,000	0	0	0	0	0	
		304	Short-term Bonds	Available Balances	21,647,605	12,279,552	0	0	0	0	0	0	0	
				Committee's FY21 Recommendation										
		350	Federal HTF	Available Balances	6,639,899	6,639,899	0	0	0	0	0	0	0	
				Committee's FY21 Recommendation										
<b>UIM02C Total</b>					<b>28,186,605</b>	<b>18,170,286</b>	<b>2,000,000</b>	<b>5,450,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>7,450,000</b>	
<b>CFO Total</b>					<b>93,015,268</b>	<b>78,100,761</b>	<b>2,000,000</b>	<b>31,923,850</b>	<b>14,255,150</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>48,179,000</b>	

## E. TRANSFERS IN FROM OTHER COMMITTEES

<i>Sending Committee</i>	<i>Amount</i>	<i>FTEs</i>	<i>Receiving agency</i>	<i>Program</i>	<i>Purpose</i>	<i>Recurring or One-Time</i>
Judiciary	\$150,000	0	Department of Human Resources (BE0)	4520 Policy	To fund BSA subtitle "District Government Transgender Employment Study Act of 2020"	One-time
<b>Total</b>	\$150,000	0				\$150,000 total

## F. TRANSFERS OUT TO OTHER COMMITTEES

<i>Receiving Committee</i>	<i>Amount</i>	<i>FTEs</i>	<i>Receiving agency</i>	<i>Program</i>	<i>Purpose</i>	<i>Recurring or One-Time</i>
Committee on Government Operations	\$1,853,227	10	Office of Human Rights (HM0)	2000 Equal Justice	To fund staff and expenses for enforcement of the Universal Paid Leave Act anti-retaliation	Recurring
Committee on Judiciary	\$127,986	1	Office of the Attorney General (CB0)	5406 Social Justice Section	Enhancement for 1 FTE (Wage Theft Attorney)	Recurring
<b>Total</b>	\$1,981,213					\$1,981,213

## G. FUNDING OF BUDGET SUPPORT ACT SUBTITLES

<i>Subtitle</i>	<i>Agency</i>	<i>Program</i>	<i>Amount</i>	<i>FTEs</i>
District Government Transgender Employment Study Act of 2020	DCHR (BE0)	4250 (Policy)	\$150,000	0
Healthcare Workforce Partnership Establishment Act of 2020	WIC (GW0 Program 3000)	3012 (Workforce Investment)	\$689,625	1
DC Infrastructure Academy Employer Engagement Amendment Act of 2020	DOES (CF0)	4260 (DCIA)	\$129,462	1
School Year Internship Pilot Program Amendment Act of 2020	DOES (CF0)	4810 (Year Round Youth)	\$915,669	5
Workplace Leave Navigators Program Establishment Amendment Act of 2020	DOES (CF0)	6200 (PFL Benefits)	\$750,000	0

## H. FUNDING OF PENDING BILLS OR LAWS PASSED SUBJECT TO APPROPRIATION

<i>Bill or Law #</i>	<i>Status</i>	<i>Agency</i>	<i>Program</i>	<i>Amount</i>	<i>FTEs</i>
L22-196: Tipped Wage Workers Fairness Amendment Act of 2018	Passed subject to appropriations	DOES	3200, Office of Wage Hour	One-time \$100,000	0

## **I. SUMMARY OF COMMITTEE BUDGET RECOMMENDATIONS**

Please see the Executive Summary (Chapter I.A) and Attachment A to this report.

CIRCULATION DRAFT

## II. AGENCY FISCAL YEAR 2020 BUDGET RECOMMENDATIONS

### A. INTRODUCTION

The Committee on Labor and Workforce Development is responsible for oversight of public and private sector employee and employer issues. This includes District employee personnel, disciplinary, appeal, and union matters; private sector labor standards including the minimum wage, paid sick and safe time, paid family and medical leave; private sector workers' compensation; unemployment insurance; and job training and workforce development programs.

The District agencies, boards, and commissions that come under the committee's purview are as follows:

- Adult Career Pathways Taskforce
- Apprenticeship Council
- Department of Employment Services
- Department of Human Resources
- Employees' Compensation Fund
- Labor/Management Partnership Council
- Occupational Safety and Health Board
- Office of Employee Appeals
- Office of Labor Relations and Collective Bargaining
- Public Employees Relations Board
- Unemployment Compensation Fund
- Workforce Investment Council
- Youth Apprenticeship Advisory Committee

The committee is also taking responsibility for the budget of Universal Paid Leave (UL0), which is a new agency created in the FY2021 budget that collects contributions to and pays for expenses of the Universal Paid Leave program, as established by D.C. Law 21-264.

The committee is chaired by Councilmember Elissa Silverman (At-Large). The other members of the committee are Councilmembers Charles Allen (Ward 6), David Grosso (At-Large), Kenyan McDuffie (Ward 5), and Robert White (At-Large).

The committee held performance and budget oversight hearings on the following dates:

<b><i>Performance Oversight Hearings</i></b>	
<b>February 21, 2019</b>	Department of Human Resources Office of Labor Relations and Collective Bargaining
<b>March 4, 2020</b>	Department of Employment Services (Public Witnesses) Workforce Investment Council (Public Witnesses)
<b>March 6, 2020</b>	Department of Employment Services (Government Witnesses) Workforce Investment Council (Government Witnesses)

<b><i>Budget Oversight Hearings</i></b>	
<b>May 28, 2020</b>	All agencies within the committee's purview (public witnesses)
<b>June 4, 2020</b>	Department of Employment Services (government witnesses)

The committee received important comments from members of the public and government witnesses during these hearings. Copies of witness lists and witness testimony from the two budget hearings are included in this report as Attachment C. Copies of witness lists and witness testimony from the three performance oversight hearings may be found on the Legislative Information Management System at [http://lims.dccouncil.us/\(HR23-75 and HR23-77, and HR23-78\)](http://lims.dccouncil.us/(HR23-75%20and%20HR23-77,%20and%20HR23-78)). A video recording of all hearings can be obtained through the DC Council video archive at <http://dccouncil.us/video-archive/>.

## **B. DC DEPARTMENT OF HUMAN RESOURCES (BE0)**

### **1. AGENCY MISSION AND OVERVIEW**

The mission of the D.C. Department of Human Resources (“DCHR”) is to strengthen individual and organizational performance and enable the District government to attract, develop, and retain a highly qualified, diverse workforce.

DCHR offers executive management to District government officials and agencies by providing personnel-related services to help each agency meet daily mission mandates. Specific services provided include position classification and recruitment services, the interpretation of personnel-related policy, as well as oversight control (such as the adherence to regulatory requirements) for effective recruitment and staffing, strategic and financial restructuring through realignment assistance, and resource management. In addition, the agency provides District government employees with a variety of services, including employee benefits and compensation guidance, performance management, compliance, audit assessments, legal guidance on personnel matters, and learning and development.

### **2. FISCAL YEAR 2021 OPERATING BUDGET**

<b>D.C. DEPARTMENT OF HUMAN RESOURCES</b>					
<b>Operating Budget Summary</b>					
<b>Fund Type</b>	<b>FY 2019 Actuals</b>	<b>FY 2020 Revised</b>	<b>Mayor's FY 2021 Proposed</b>	<b>Committee Variance</b>	<b>Committee's FY 2021 Recommendation</b>
LOCAL FUND	\$11,257,823	\$11,491,648	\$10,368,875	\$150,000	\$10,518,875
SPECIAL PURPOSE REVENUE FUNDS ('O'TYPE)	\$624,277	\$448,232	\$593,214		\$593,214
OPERATING INTRA-DISTRICT FUNDS	\$11,320,999	\$8,858,399	\$7,346,834		\$7,346,834
<b>TOTAL GROSS FUNDS</b>	<b>\$23,203,099</b>	<b>\$20,798,279</b>	<b>\$18,308,922</b>	<b>\$150,000</b>	<b>\$18,458,922</b>
<b>Agency Full-Time Equivalent Summary</b>					
<b>Fund Type</b>	<b>FY 2019 Actuals</b>	<b>FY 2020 Revised</b>	<b>Mayor's FY 2021 Proposed</b>	<b>Committee Variance</b>	<b>Committee's FY 2021 Recommendation</b>
LOCAL FUND	94.00	106.00	100.00		100.00
SPECIAL PURPOSE REVENUE FUNDS ('O'TYPE)	6.00	3.00	5.00		5.00
OPERATING INTRA-DISTRICT FUNDS	52.00	62.00	39.00		39.00
<b>TOTAL FTE</b>	<b>152.00</b>	<b>171.00</b>	<b>144.00</b>	<b>0.00</b>	<b>144.00</b>
<b>Agency Operating Budget by Comptroller Source Group</b>					
<b>Comptroller Source Group</b>	<b>FY 2019 Actuals</b>	<b>FY 2020 Revised</b>	<b>Mayor's FY 2021 Proposed</b>	<b>Committee Variance</b>	<b>Committee's FY 2021 Recommendation</b>
11-REGULAR PAY - CONT FULL TIME	\$11,767,877	\$11,196,133	\$11,975,675		\$11,975,675
12-REGULAR PAY - OTHER	\$4,242,194	\$1,964,000	\$517,774		\$517,774
14-FRINGE BENEFITS - CURR PERSONNEL	\$3,183,888	\$2,845,888	\$2,665,233		\$2,665,233
20-SUPPLIES AND MATERIALS	\$91,865	\$148,120	\$148,120		\$148,120
31-TELECOMMUNICATIONS	\$15,250	\$15,000	\$15,000		\$15,000
40-OTHER SERVICES AND CHARGES	\$654,869	\$1,585,027	\$464,625	\$150,000	\$614,625
41-CONTRACTUAL SERVICES - OTHER	\$2,884,695	\$3,021,610	\$2,500,122		\$2,500,122
70-EQUIPMENT & EQUIPMENT RENTAL	\$362,462	\$22,500	\$22,373		\$22,373
<b>TOTAL GROSS FUNDS</b>	<b>\$23,203,099</b>	<b>\$20,798,279</b>	<b>\$18,308,922</b>	<b>\$150,000</b>	<b>\$18,458,922</b>
<b>Agency Operating Budget by Program</b>					
<b>Program</b>	<b>FY 2019 Actuals</b>	<b>FY 2020 Revised</b>	<b>Mayor's FY 2021 Proposed</b>	<b>Committee Variance</b>	<b>Committee's FY 2021 Recommendation</b>
1000 - AGENCY MANAGEMENT	\$4,953,022	\$5,586,956	\$5,071,380		\$5,071,380
2100 - GENERAL COUNSEL	\$921,086	\$940,906	\$1,516,989		\$1,516,989
2200 - BENEFITS AND RETIREMENT SERVICES	\$3,418,578	\$2,843,865	\$3,228,779		\$3,228,779
2700 - HR SOLUTIONS	\$4,811,925	\$4,979,875	\$4,725,031		\$4,725,031
3000 - LEARNING AND DEVELOPMENT	\$5,274,160	\$3,029,216	\$1,998,134		\$1,998,134
4300 - STRATEGIC HUMAN CAPITAL	\$650,660	\$523,239	\$503,177		\$503,177
4500 - POLICY AND COMPLIANCE	\$3,173,668	\$2,894,221	\$1,265,433	\$150,000	\$1,415,433
<b>TOTAL GROSS FUNDS</b>	<b>\$23,203,099</b>	<b>\$20,798,279</b>	<b>\$18,308,922</b>	<b>\$150,000</b>	<b>\$18,458,922</b>

## Summary of Proposed Operating Budget

The Mayor's FY 2021 budget proposal for DCHR is \$18,308,922, a decrease of \$1,285,094, or 6.6 percent, from the FY 2020 approved budget of \$19,594,016. (The FY 2021 proposal is a 11.9 percent reduction from the FY 2020 revised budget of \$20,798,279, as of May 2020.) This budget would support 145.4 FTEs, a decrease of 27.4 FTEs from the current fiscal year of 172.8 FTEs.

**Local Funds:** The Mayor’s proposed local funds budget is \$10,368,875, an 8.75 percent decrease from the approved budget for the current fiscal year of \$11,363,355. The proposed budget would support 100.0 FTEs, a decrease of 6.0 FTEs from the current fiscal year’s 106.0 approved FTEs.

**Intra-District Funds:** The Mayor’s proposed intra-district funds budget is \$7,346,834, a decrease of 5.6 percent from the current fiscal year’s approved budget of \$7,782,429. (The FY 2020 revised budget is \$8,858,399.) The proposed budget would support 39.6 FTEs, a decrease of 22.4 FTEs from the current fiscal year. These FTEs are primarily represented by the shift of approximately two dozen interns from DCHR’s budget to DOES’s budget.<sup>5</sup>

**Special Purpose Revenue (SPR):** The Mayor’s proposed SPR budget is \$593,214, an increase of 32.3 percent over the current fiscal year’s approved budget of \$448,232. The proposed budget would support 5.8 FTEs, an increase of 1.0 FTEs over the current fiscal year.

## **Committee Analysis and Recommendations**

### **a. Budget Recommendations**

The committee recommends approval of the Mayor’s proposed FY 2021 budget for DCHR.

### **b. Policy Recommendations**

#### **DCHR Policy recommendations for 2020**

##### ***1. Provide timely and clear guidance to employees and agencies, particularly in emergencies***

The public health crisis caused by COVID-19 presented and continues to present critical policy and human capital challenges at all District agencies. At the same time, the coronavirus crisis was a time of immense stress for employees. Many employees felt at risk of contracting the illness. Others were required to make changes they were not comfortable with, such as working from home or taking on different duties, but for many, this was not possible due to loss of child care and other supports. Not knowing whether or for how long their paycheck would continue added to employees’ stress.

DCHR is responsible for issuing essential guidance and implementing the District’s employee benefits and leave policies, which includes implementing new federal paid sick time and family and medical leave laws. The Committee makes the following recommendations based on observations during the coronavirus emergency

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<sup>5</sup> The internship program, Learn Earn Advance and Prosper, was later cancelled by DOES and is eliminated in the FY 2021 proposed DOES budget.



**a. Provide guidance as quickly as possible.**

The Committee received numerous questions about the availability of paid leave, particularly once the federal government passed the federal Families First Coronavirus Response Act was enacted on March 18, 2020, providing paid sick time and paid family and medical leave; Other questions concerned whether employees would be paid hazard pay; the right to refuse work under what employees believed were unsafe conditions, and more.

DCHR published a policy issuance, effective March 11, 2020, which covered many topics, but did not always provide definitive answers on every topic<sup>6</sup>. On the federal sick leave the requirement was active beginning April 1, 2020, and DCHR released guidance on May 4, 2020, dated April 2, 2020.<sup>7</sup>

The Committee commends DCHR for releasing the initial issuance quickly, but employees would have been helped by having information earlier on the sick leave. The Committee recommends that future guidance be issued quickly and updated regularly as circumstances change (such as new federal laws). DCHR should also develop lay-language fact sheets available on the DCHR website and cross-posted to individual agencies' intranets. to ensure that employees are informed of both their rights and the processes to access new benefits.

**b. Provide uniform guidance to employees and agencies whenever possible**

Many policy decisions were left up to individual agencies to determine—a typical situation in District government human resources policy that is sometimes unavoidable, but which generates questions year-round. For example, the March 11 issuance “encouraged” agencies and reminded agencies of “authority” and “flexibility”, but by and large did not set clear, bright-line rules. If an issue must be determined on a case-by-case basis, the Committee recommends that DCHR set up a hotline for employees to email or call in order to get answers applicable to their specific case.

Furthermore, DCHR should strive to issue guidance that offers unitary policy across agencies whenever possible. During the coronavirus emergency, many employees had questions about whether they had to use their personal, accrued sick time; if they could use the special federal leave; or if they could be placed on administrative leave. (Administrative leave is paid for by the employer and does not reduce an employee’s own accrued leave.) The answer was difficult to discern. Information on the DCHR website said that “Administrative Leave *will be granted* to cover an absence for employees who are quarantined or who have a legitimate basis to self-quarantine as a result of the COVID-19,

<sup>6</sup> DCHR, “Human Resource Flexibilities and the Coronavirus Disease (COVID-19),” Issuance number 2020-04, effective March 11, 2020.

<sup>7</sup> DCHR, “COVID-19 Sick Leave,” Issuance Number 2020-11, April 2, 2020, available at <https://edpm.dc.gov/issuances/covid-19-sick-leave/>.

and who can otherwise not telework, with medical support” (emphasis added).<sup>8</sup> However, an issuance released March 29, 2020, said that agencies “*may authorize*” administrative leave (emphasis added) —meaning it is discretionary and different agencies might have different policies.<sup>9</sup> Several unions contacted the committee to ask questions about administrative leave. They reported that at least some employees were not provided administrative leave and were instead directed to use their accrued personal leave.

## ***2. Work to increase the portion of District government employees who live in the District***

A priority of the Committee is to increase the number of District government employees who live in the District. When employees live in the District, they are part of the community they are serving, and they also contribute to the tax base. In FY2019, 43% of all District employees were residents, and just over half of new hires (51%) were DC residents.<sup>10</sup> These numbers are essentially the same as the previous year, FY2018. The director testified at the performance oversight hearing that everything DCHR does regarding recruitment is designed around District residents. However, many people who start out living in the District eventually move to Maryland or Virginia; therefore, it is hard to increase the overall percentage of employees who live in the District.

The District must do more to attract more District residents into government employment and make it more attractive and possible for employees to maintain District residency in the long term. Additionally, DCHR should consistently audit employees’ residency to make sure that employees who are required to maintain District residency do so. The Committee recommends the following actions to achieve these goals:

### **a. Increase target for percent of new hires who are District residents.**

Setting strong goals is important to inspire effort and make progress toward the goal. Two years ago, DCHR lowered its goal for the percent of new hires who are District residents from 60 percent to 55 percent. That remains the goal for FY2020.<sup>11</sup> As noted, that is just 4 percentage points above the current rate. DCHR should increase this goal at least to where it was before, 60 percent.

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<sup>8</sup> DCHR, “COVID -19 Coronavirus Workforce Guidance,” March 11, 2020, available at <https://dchr.dc.gov/release/covid-19-coronavirus-workforce-guidance>.

<sup>9</sup> DCHR, “Human Resources Guidance for the COVID-19 Emergency (March 26 Update),” Issuance 2020-05, March 29, 2020, available at <https://edpm.dc.gov/issuances/human-resources-guidance-covid-19-emergency/#header5>.

<sup>10</sup> DCHR, “Responses to Fiscal Year 2019-2020 Performance Oversight Questions,” Feb. 21, 2020, Response to Question 4, in Attachment 3, available at page 6 of <https://dccouncil.us/wp-content/uploads/2020/01/DCHR-POH-2020-Attachments-Combined-without-MOUs-MOAs.pdf>.

<sup>11</sup> PO responses performance plan, Attachment 5.

## **b. Analyze agency-level hiring rates**

The Committee observed in performance oversight data that some agencies hire a significantly higher percentage of District residents than others. Furthermore, some agencies have a higher portion of applications from District residents than the portion of those actually hired.<sup>12</sup> DCHR should analyze agency-level data to determine which agencies should be targeted for improvements in this area, and assist in crafting agency-specific recruitment strategies to meet the District’s hiring goal. DCHR should also identify agencies that have greater portions of new hires who are District residents to learn what they are doing well and potentially apply those lessons to other agencies.

## **c. Continue implementing the Pathways to District Government Careers Act**

In 2019, the Council passed and funded the Pathways to District Government Careers Amendment Act (“Pathways Act,” Law 22-211). The Act’s provisions aim to increase the hiring of District residents into District government employment. It has three main parts: first, to require that graduates of DC high schools receive priority consideration for entry-level jobs; second, the creation of apprenticeships in 5 occupations within 2 years; and third, the creation of partnerships between DCHR and DC high schools to prepare students for future District employment. DCHR is responsible for implementing most provisions of this law. DCHR has begun implementation, which includes hiring new staff. Some outstanding items remain, and the Committee encourages and expects full and timely implementation of all aspects of the Act.

First, DCHR must upgrade the personnel IT system, People Soft, to capture data on the location of high school graduation to identify and confirm whether an applicant graduated from a District high school and is thus entitled to priority consideration for entry level-jobs under the Pathways Act. The director reported at the performance oversight hearing that the IT upgrade had been accomplished, but the agency is looking into ways to verify the information. They have begun development of an “issuance” (sub-regulatory guidance) to agencies with instructions on the first-priority requirements. DCHR also held a meeting with human resources officers across agencies to receive feedback on the process. DCHR should complete and publish the issuance as well as begin requiring that the priority consideration process should be followed.

Additional requirements include

- A report. Each subordinate agency head shall submit to the Mayor an annual report detailing, for each new employee hired into an entry-level job during the reporting period, whether the employee is a resident District graduate. The Committee anticipates this information will be included into the more general annual report regarding District residency of employees, which is due each year on December 1 (as per D.C. Official Code § 1–515.06).

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<sup>12</sup> Data maybe found in PO responses attachments 46 and 47.

- Performance plan content. The Mayor shall integrate into each subordinate agency's annual performance objectives the target percentage of new hires into entry-level jobs who are resident District graduates. The Committee expects this will be done for FY2021, as the People Soft upgrades and guidance will be completed.
- Annual audits. The Mayor shall conduct annual audits of each subordinate agency's personnel records to ensure that all persons receiving resident District graduate consideration priority submitted requisite proof of entitlement.

The second area of the Pathway's Act that DCHR is responsible for implementing is the creation of partnerships between DCHR and District high schools. These schools may include public schools, charter schools, or adult education schools. The director testified at the performance oversight hearing that DCHR has reached out to several schools, including Phelps, Roosevelt, Roosevelt STAY, and others. DCHR is also working with DC Public Schools. DCHR also plans to reach out to DOES' summer youth program. The Committee looks forward to learning more about the components and results of these partnerships.

The final area of the Pathways Act is the creation of public sector apprenticeships within District government. This will occur in partnership with DOES. The law requires five apprenticeships (i.e., apprenticeship programs in five occupations), including one in information technology and one in healthcare. The DCHR director mentioned at the performance hearing several occupations under consideration for the first apprenticeships, including police cadets at MPD, bus attendants at OSSE, and safety technicians at DDOT. DCHR is receiving feedback from agencies about other possibilities, notability in the healthcare and IT spaces.

The Pathways Act requires that DCHR and DOES submit to the Council a plan for creating and administering apprenticeship programs in the apprenticeable occupations . This plan was due by March 31, 2020. As of early June 2020, this report was not submitted to the Committee. Additionally, the agencies must submit an annual report beginning December 1, 2020, on the apprenticeship initiative. Details are laid out in D.C. Code § 1–610.85. Finally, By October 1, 2021, DCHR must provide to the Council a 3-year plan for the establishment of additional apprenticeship programs in apprenticeable occupations for which no apprenticeship program exists. The Committee encourages all of these reports to be submitted by their deadlines and with complete information.

**d. Fully transition from paper-based residency verification to electronically-based verification, as required by the District Employee Residency Amendment Act**

The District Employee Residency Amendment Act (law 22-315), became effective in May 2019. The law streamlined the residency requirements and application preference points provisions of the law, as well transitions from a paper-based to an automated verification system for new and continuing employees. The Mayor is required to conduct

annual audits of portions of District government. The new automated system will utilize records from DC's Department of Motor Vehicles and the state of tax withholdings as an initial screening for residency—this will be a great improvement over the previous requirement of 8 paper proofs to be submitted on an annual basis.

There will be two components to the verification of residency. First is the upon-hire check, when the hiree shows his or her District identification to HR. The second component is annual verification through DMV data sharing. As of the February performance oversight hearing, the DMV connection was not yet implemented, and some agencies were still requiring paper proofs, as reported to the Committee by employees. As of early June, the data sharing had not been set up, and DCHR was requesting that agencies provide identity information for DCHR to verify online. While the Committee would like to see the data sharing set up to increase efficiency, it is most important that DCHR conducts the verification, and without burdening employees with multiple paper proofs. DCHR should work expeditiously to implement the DMV data connection and should check with each agency—including independent agencies, as appropriate—to ensure they are no longer requiring paper proofs of residency.

**e. Develop recommendations for benefits or policies to incentivize District residency**

The District is prohibited by the Home Rule Act from mandating that all government employees be District residents. Certain categories of workers are required to maintain residency, but they represent only a small fraction of the workforce. DCHR should development administrative and legislative recommendations for policies or benefits that would be available only to District resident employees, in order to incentivize employees to establish and maintain residency in the District.

***3. Centrally track grievances and complaints across government, to identify patterns or problems***

The Committee has noticed an uptick in the number of complaints to the Committee from District government employees and is concerned about the level of discontent and even possible mistreatment of employees across government. The Committee also noticed that employees at certain agencies had filed significantly more complaints and grievances with DCHR than had employees at other agencies. In addition, many grievances and complaints are resolved through grievance processes mandated by negotiated Collective Bargaining agreements, and DCHR is generally not aware of them.

At the performance oversight hearing, the director reported that DCHR does not centrally track grievances filed at other agencies. The Committee encourages DCHR to begin to track all manner of complaints and grievances filed at subordinate agencies, in order to identify patterns that could indicate problems at certain agencies. With this information, DCHR could investigate further and help resolve any problems. Without the information, DCHR is in the dark and cannot help employees or agencies.

#### ***4. Develop a guide for employees to file complaints with the right entities***

There are multiple potential avenues for District government employees to file complaints. The correct avenue depends on which agency the employee works for, what the matter is, when it happened, whether the employee is in a union or not, and potentially other factors. This is very difficult for employees to navigate.

DCHR should develop a guide for employees to assist them in identifying the correct agencies with which to file a complaint. DCHR should also clarify on its website which kinds of specific complaints should be filed with DCHR, and who may file them.<sup>13</sup> Because of the wide range of matters that might be a subject of a complaint, DCHR should begin with some of the most common. The Committee has observed that complaints and grievances tend to focus on discipline, retirement benefits, leave-taking rights, discrimination, sexual harassment, and disagreements with supervisors.

### **3. FY 2021-2026 CAPITAL BUDGET**

DCHR has no capital budget for FY 2021-2026.

### **4. SUMMARY OF COMMITTEE RECOMMENDATIONS**

#### **a. Fiscal Year 2021 Operating Budget Recommendations**

The committee recommends approval of the mayor's proposed FY 2021 budget.

#### **b. Policy Recommendations**

1. Provide timely and clear guidance to employees and agencies, particularly in emergencies
  - a. Provide guidance as quickly as possible.
  - b. Provide uniform guidance to employees and agencies whenever possible
2. Work to increase the portion of District government employees who live in the District
  - a. Increase target for percent of new hires who are District residents.
  - b. Analyze agency-level hiring rates
  - c. Continue implementing the Pathways to District Government Careers Act
  - d. Fully transition from paper-based residency verification to electronically-based verification, as required by the District Employee Residency Amendment Act
  - e. Develop recommendations for benefits or policies to incentivize District residency
3. Centrally track grievances and complaints across government, to identify patterns or problems
4. Develop a guide for employees to file complaints with the right entities

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<sup>13</sup> The current grievance form is available at [https://dchr.dc.gov/sites/default/files/dc/sites/dchr/publication/attachments/dchr\\_grievance\\_form.pdf](https://dchr.dc.gov/sites/default/files/dc/sites/dchr/publication/attachments/dchr_grievance_form.pdf).

## **C. DEPARTMENT OF EMPLOYMENT SERVICES (CF0)**

### **1. AGENCY MISSION AND OVERVIEW**

The Department of Employment Services (“DOES”) has a mission to advance the welfare of job seekers and wage earners by improving their working conditions, by creating opportunities for employment, by helping employers find workers, and by tracking changes in employment and other national economic measurements impacting the District of Columbia.

DOES also provides tools for the District of Columbia workforce to become more competitive using tailored approaches to ensure that workers and employers are successfully paired.

The agency implements these objectives through seven divisions: 1) Agency Management, which provides administrative support and the required tools to achieve operational programmatic results; 2) Unemployment Insurance, which provides basic income replacement to workers who lose work through no fault of their own; 3) Labor Standards, which enforces wage and hour laws and oversees workers’ compensation for the District’s private sector workforce; 4) Workforce Development, which provides employment-related services for unemployed or underemployed residents so that they can achieve economic security and compete in the global economy; 5) State Initiatives, which includes two locally-funded signature programs that provide employment services such as training, subsidized work experiences, and supportive services to underserved adults who face multiple barriers to employment; 6) Office of Paid Family Leave, which will implement the Universal Paid Leave Act to provide wage replacement benefits to individuals in need of leave from work due to medical or caregiving needs of one’s family or self; and 7) Agency Financial Operations, which provides accounting and budget services to, and on behalf of, District agencies.

### **2. FISCAL YEAR 2021 OPERATING BUDGET**

DEPARTMENT OF EMPLOYMENT SERVICES					
Operating Budget Summary					
Fund Type	FY 2019 Actuals	FY 2020 Revised	Mayor's FY 2021 Proposed	Committee Variance	Committee's FY 2021 Recommendation
LOCAL FUND	\$69,650,011	\$60,609,507	\$54,416,172	\$260,420	\$54,676,592
FEDERAL GRANT FUND	\$28,178,698	\$38,861,057	\$42,083,598		\$42,083,598
PRIVATE GRANT FUND	\$1,424,908	\$2,146,908	\$260,005		\$260,005
SPECIAL PURPOSE REVENUE FUNDS ('O'TYPE)	\$39,561,459	\$49,779,787	\$57,848,273	\$1,249,424	\$59,097,697
ENTERPRISE AND OTHER FUNDS	\$0	\$69,300,000	\$0		\$0
OPERATING INTRA-DISTRICT FUNDS	\$3,168,761	\$2,725,920	\$1,573,947		\$1,573,947
<b>TOTAL GROSS FUNDS</b>	<b>\$141,983,839</b>	<b>\$223,423,179</b>	<b>\$156,181,995</b>	<b>\$1,509,844</b>	<b>\$157,691,839</b>
Agency Full-Time Equivalent Summary					
Fund Type	FY 2019 Actuals	FY 2020 Revised	Mayor's FY 2021 Proposed	Committee Variance	Committee's FY 2021 Recommendation
LOCAL FUND	320.00	211.00	229.00	-6.59	222.41
FEDERAL GRANT FUND	261.00	199.00	217.00		217.00
PRIVATE GRANT FUND	10.00	6.00	0.00		0.00
SPECIAL PURPOSE REVENUE FUNDS ('O'TYPE)	150.00	300.00	314.00	4.75	318.75
OPERATING INTRA-DISTRICT FUNDS	25.00	18.00	3.00		3.00
<b>TOTAL FTE</b>	<b>766.00</b>	<b>734.00</b>	<b>763.00</b>	<b>0.00</b>	<b>761.16</b>
Agency Operating Budget by Comptroller Source Group					
Comptroller Source Group	FY 2019 Actuals	FY 2020 Revised	Mayor's FY 2021 Proposed	Committee Variance	Committee's FY 2021 Recommendation
11-REGULAR PAY - CONT FULL TIME	\$37,585,733	\$42,809,096	\$52,558,918	(\$112,350)	\$52,446,568
12-REGULAR PAY - OTHER	\$15,727,428	\$15,900,540	\$13,707,432	\$160,940	\$13,868,372
14-FRINGE BENEFITS - CURR PERSONNEL	\$12,080,308	\$13,230,549	\$14,976,186	\$10,980	\$14,987,166
15-OVERTIME PAY	\$371,908	\$418,988	\$0		\$0
20-SUPPLIES AND MATERIALS	\$766,400	\$913,669	\$912,999	(\$22,595)	\$890,404
30-ENERGY, COMM. AND BLDG RENTALS	\$595,877	\$858,916	\$796,591		\$796,591
31-TELECOMMUNICATIONS	\$952,032	\$1,094,813	\$968,264		\$968,264
32-RENTALS - LAND AND STRUCTURES	\$206,704	\$249,833	\$3,830,147		\$3,830,147
34-SECURITY SERVICES	\$1,728,613	\$1,234,526	\$1,681,794		\$1,681,794
35-OCCUPANCY FIXED COSTS	\$2,419,863	\$1,058,123	\$1,235,341		\$1,235,341
40-OTHER SERVICES AND CHARGES	\$18,233,025	\$17,218,193	\$16,839,825	\$393,210	\$17,233,035
41-CONTRACTUAL SERVICES - OTHER	\$10,681,727	\$16,024,413	\$14,586,165	(\$271,765)	\$14,314,400
50-SUBSIDIES AND TRANSFERS	\$39,330,180	\$111,040,625	\$32,553,345	\$1,351,424	\$33,904,769
70-EQUIPMENT & EQUIPMENT RENTAL	\$1,304,040	\$1,370,894	\$1,534,986		\$1,534,986
<b>TOTAL GROSS FUNDS</b>	<b>\$141,983,839</b>	<b>\$223,423,179</b>	<b>\$156,181,995</b>	<b>\$1,509,844</b>	<b>\$157,691,839</b>
Agency Operating Budget by Program					
Program	FY 2019 Actuals	FY 2020 Revised	Mayor's FY 2021 Proposed	Committee Variance	Committee's FY 2021 Recommendation
0100 - AGENCY FINANCIAL OPERATIONS	\$3,340,880	\$3,697,724	\$3,839,258		\$3,839,258
1000 - AGENCY MANAGEMENT	\$10,464,723	\$10,158,012	\$11,304,689	(\$97,264)	\$11,207,425
2000 - UNEMPLOYMENT INSURANCE	\$26,359,401	\$32,439,382	\$27,386,249		\$27,386,249
3000 - LABOR STANDARDS	\$23,092,029	\$19,783,648	\$24,869,733	\$100,000	\$24,969,733
4000 - WORKFORCE DEVELOPMENT	\$57,999,345	\$61,075,747	\$57,029,452	\$872,413	\$57,901,865
5000 - STATE INITIATIVES	\$16,736,964	\$15,127,022	\$12,192,628	(\$115,305)	\$12,077,323
6000 - PAID FAMILY LEAVE	\$3,990,496	\$81,141,643	\$19,559,985	\$750,000	\$20,309,985
<b>TOTAL GROSS FUNDS</b>	<b>\$141,983,839</b>	<b>\$223,423,179</b>	<b>\$156,181,995</b>	<b>\$1,509,844</b>	<b>\$157,691,839</b>



## Summary of Proposed Operating Budget

The Mayor's FY2021 budget proposal for DOES is \$156,181,995 an increase of \$8,940,459, or 6.1 percent, from the current fiscal year's approved budget of \$147,241,536. The proposed budget would support staff of 810.03 FTEs, an increase of 37.6, or 4.9 percent, over the current fiscal year.

**Local Funds:** The Mayor's FY2021 local funds budget proposal for DOES is \$54,416,172 a decrease of \$5,985,268 or 9.9 percent, from the current fiscal year's approved budget of \$60,401,440. The proposed local budget would support 248.5 FTEs, an increase of 20.0 FTEs over the current fiscal year.

**Special-Purpose Revenue:** The Mayor's FY2021 special-purpose revenue funds budget proposal for DOES is \$57,848,273 an increase of \$8,068,486 or 16.2 percent, from the current fiscal year's approved budget of \$49,779,787. The proposed special-purpose revenue funds budget would support 325.5 FTEs, an increase of 16.4 FTEs over the current fiscal year.

**Federal Grant Funds:** The Mayor's FY2021 federal grant funds budget proposal for DOES is \$42,083,598, an increase of \$8,830,447, or 26.6 percent, from the current fiscal year's approved budget of \$33,253,151. The proposed federal grant funds budget would support 229.9 FTEs, an increase of 19.0 FTEs from the current fiscal year.

**Private Grant Funds:** The Mayor's FY2021 private grant funds budget proposal for DOES is \$260,005, a decrease of \$430,467, or 62.3 percent, from the current fiscal year's approved budget of \$690,472. The proposed private grant funds budget would support 0 FTEs, a decrease of 6 FTEs from the current fiscal year.

**Intra-District Funds:** The Mayor's FY2021 intra-district funds budget proposal for DOES is \$1,573,947 a decrease of \$1,542,739 or 49.5 percent, over the current fiscal year's approved budget of \$3,116,686. The proposed intra-district funds budget would support 6.2 FTEs, a decrease of 11.8 FTEs over the current fiscal year.

## Committee Analysis and Recommendations

### a. Budget Recommendations

- 1. Maintain funding for workforce development programmatic needs as proposed.***

The novel coronavirus has upended the District's economy and our unemployment rate. At the time of this committee budget report, approximately one out of seven District workers has filed for unemployment assistance. Though no one has been spared the impact on daily life due to COVID-19, data has shown that the virus has had a disproportionate effect on Black and Latino residents in our city, both in terms of health and finances. As we move toward recovery, it is likely that those same communities on the whole will take

longer to recover from this health and fiscal crisis, as we saw after the Great Recession, and that priority needs to be placed on funding programs that are designed to help address this economic inequity.

Given this incredible situation, the Committee believes it is necessary to approach the budget in workforce development with an eye to recovery and making sure monies and programs are in place to help. While the Committee will continue to push for information and evidence-based approaches that lead to resident success attaining living wage jobs and careers that can support their families, the Committee also believes that resources need to be protected in workforce development because the reduction in revenue has made taxpayer dollars even more precious resources. Therefore, the Committee recommends maintaining the programmatic funds proposed by the Mayor for several workforce development programs or budget lines that have received extra focus from the Committee in the last year. Even with the recommendation of preserving the mayor's mark, the Committee will continue to ask for the information needed to assess and adjust programs to help residents connect to good jobs. In fact, coronavirus has upped the ante even more that our spending on workforce development leads to living wage career paths, particularly for our residents of color and those who have barriers to employment such as our returning citizens.

The efficacy of our workforce programs and spending still needs clarity. The Committee has been challenged in its oversight and budgeting functions by a lack of performance and outcomes data for several programs.<sup>14</sup> These included longstanding programs as well as pilot projects, large programs and small.

As a result, the Committee took steps through the budget last year to encourage DOES to provide performance outcomes information. Historically, each year, a program's funding has been assumed to continue, regardless of demonstrating program efficacy. In the FY2020 budget, the Committee recommended that \$5.8 million in recurring workforce development programmatic funding be funded for one-year, with a majority of what is known as out-years spending put in another budget line for safekeeping. These budget changes were meant to encourage DOES to demonstrate to the Mayor, and then the Council, that the recurring funding was worth restoring in the FY2021 budget. The Committee's FY2020 recommendation was not meant to be a punitive measure. Rather, these funds on a year-to-year approval basis was meant to spur the agency to track and report information that demonstrated the outcomes of the programs. The programs that saw one-time funds are analyzed in greater detail below: Local Adult Training, the DC Infrastructure Academy, Project Empowerment, and DC Career Connections.<sup>15</sup>

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<sup>14</sup> The data available was limited to DOES' FY2019 Performance Plan on the OCA's website, available at <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DOES19.pdf>. Unfortunately, DOES did not fulfill the required quarterly reporting on the performance of locally funded programs as described in the Job Training and Adult Education Programs Act of 2012, Effective September 20, 2012 (D.C. Law 19-168; D.C. Official Code § 32-1771).

<sup>15</sup> Council of the District of Columbia, Committee on Labor and Workforce Development, "Committee Report Fiscal Year 2020", May 1, 2019, available at:

There was some success in greater information sharing and collaboration between DOES and the Committee, and we hope to continue down this productive road. The Committee did see an improvement in the agency providing data about the programs' services, outcomes, and successes at the program level, and the Committee commends DOES for working with us to provide a great deal of information. The information came in two main submissions. First, the Committee submitted queries in advance of hearings held in Fall 2019. These included detailed data rubrics, organized by cohort, to very clearly establish a baseline of data. These are available online.<sup>16</sup> An update and expansion of the information provided came in the agency's responses to the Committee's annual performance oversight questions.<sup>17</sup>

To better understand and fully appreciate the performance of the workforce programs, the Committee held two public oversight roundtables in Fall 2019 to shine a spotlight on them. The first roundtable covered the DC Infrastructure Academy and Local Adult Training. The second covered the performance of Project Empowerment and Career Connections. The ultimate objective was to determine if District taxpayers are truly seeing a return on their investment in DOES programs. Witnesses included graduates of the programs, host site providers, employers, community organizations, and advocates. The reviews varied from praising the work to disappointment the training did not lead to unsubsidized employment.

In Project Empowerment, the Committee is encouraged to see performance improvement. Results continue to steadily increase and employment retention at six months post-hire was 69 percent for FY2018. The employment rate grew from FY2017 to FY2019, which is welcome, but it was still just over 50 percent.<sup>18</sup> This outcome raises concern for the Committee. The Committee would like to see greater employment and retention success for participants in the future. The Committee notes that the Mayor's proposed budget of \$8.8 million includes \$3.3 million in one-time funds for Project Empowerment.

Career Connections is unfortunately not seeing the same level of success. The employment rate in Career Connections has decreased, with a decrease of 10 percentage points per year. In FY2017, Career Connections saw 168 residents find employment or 61 percent of program completers. In FY2018, 138 residents or 51 percent secured

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[https://d3n8a8pro7vhmx.cloudfront.net/silverman/pages/466/attachments/original/1557953017/FY20\\_LW\\_D\\_Budget\\_report\\_submitted\\_version\\_with\\_techncial\\_correx\\_05-15-19.pdf?1557953017](https://d3n8a8pro7vhmx.cloudfront.net/silverman/pages/466/attachments/original/1557953017/FY20_LW_D_Budget_report_submitted_version_with_techncial_correx_05-15-19.pdf?1557953017)

<sup>16</sup> See original information at Elissa Silverman website, "Fall 2019 Workforce Roundtables," available at <http://www.elissasilverman.com/workforceroundtables> and DOES response to performance data request, DOES, "Workforce Development Program Information for DOES FY21 Budget," available at [https://d3n8a8pro7vhmx.cloudfront.net/silverman/pages/492/attachments/original/1571424613/Council\\_D\\_OES\\_Performance\\_Data\\_Request.pdf?1571424613](https://d3n8a8pro7vhmx.cloudfront.net/silverman/pages/492/attachments/original/1571424613/Council_D_OES_Performance_Data_Request.pdf?1571424613).

<sup>17</sup> Department of Employment Services, "Responses to Fiscal Year 2018-2019 Performance Oversight Questions", February 15, 2019, available at: <https://dccouncil.us/labor-and-workforce-development-3/>.

<sup>18</sup> Department of Employment Services, "Responses to Fiscal Year 2019-2020 Performance Oversight Questions," February 7, 2020, attachment to Q87, pg. 979-987. [https://dccouncil.us/wp-content/uploads/2020/02/DOES-POH-2020-Combined-Attachments-only\\_Part2.pdf](https://dccouncil.us/wp-content/uploads/2020/02/DOES-POH-2020-Combined-Attachments-only_Part2.pdf).

employment, and in FY2019 the number fell to 103 or 41 percent.<sup>19</sup> Moreover, enrollment in Career Connections has steadily decreased each consecutive year from FY2017 to FY2019, so appears to have a limited impact on the results of the program. This leads the Committee to conclude that program design may be the obstacle. Career Connections leadership must act to improve results and develop a clear strategic plan for administering the program. (see also Policy Recommendations below for more detail). The Committee notes that the Mayor's proposed budget of \$3.3 million includes \$1 million one-time fund for Career Connections.

The Infrastructure Academy is an illustration of great potential that has not been fully realized. The Infrastructure Academy resembles a traditional workforce model of training individuals for jobs that are in demand and requested by employers. The engagement of Pepco and Washington Gas supports best practices in the field with customized employment training. The Committee applauds DOES' engagement with business. However, the employment results are not as desired and indicate the need for greater employer engagement. The performance oversight responses show employment rates at or below 50 percent for Infrastructure Academy programming.<sup>20</sup> To facilitate a stronger relationship and guidance from the business community, the Committee recommends a subtitle to include in the Budget Support Act, which will create an employer-led committee for each sector represented at the Infrastructure Academy. The employer committees will help to shape the occupations, skills, curriculum, and credentials desired by industry. This builds upon the best practice of business-led workforce training. (For further explanation on the BSA subtitle see Chapter IV.B.2.) Due to the Committee's belief in the Infrastructure Academy, we support the proposed funding level in FY2021. In fact, the Committee would like to see greater resources at DCIA; DOES provided a training plan to the Committee that identifies some programs not slated to happen, or with low numbers of participants for next year.<sup>21</sup> The Committee notes that the Mayor's proposed budget of \$2.7 million includes \$800,000 in one-time funds for DCIA.<sup>22</sup>

The Local Adult Training budget, activity code 4250, was significantly reduced in the Mayor's budget, from \$4.9 million in FY2020 to \$1.8 million in FY2021. This budget line supports a variety of programs, some of which will still be supported. However, the success of Local Adult Programs remains inconclusive. Historically, the funding has supported initiatives through Back to Work 50+, the FEMS Cadet Academy, the MPD

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<sup>20</sup> In FY2018, results range from 49% to 54% of completers entered employment; in FY2019, it ranged from 2% to 50% of completers obtained employment. See Department of Employment Services, "Responses to Fiscal Year 2019-2020 Performance Oversight Questions," February 7, 2020, Attachment to Q 87, pg.983, available at: [https://dccouncil.us/wp-content/uploads/2020/02/DOES-POH-2020-Combined-Attachments-only\\_Part2.pdf](https://dccouncil.us/wp-content/uploads/2020/02/DOES-POH-2020-Combined-Attachments-only_Part2.pdf).

<sup>21</sup> Department of Employment Services, "DOES Workforce Programs, Budgets, and Participant Numbers for FY2019-FY2021," June 4, 2020, available at: [https://d3n8a8pro7vnm.cloudfront.net/silverman/pages/533/attachments/original/1591383513/DOES\\_Budget\\_Matrix\\_For\\_Discussion\\_Subject\\_to\\_Change\\_%2806-03-20%29.pdf?1591383513](https://d3n8a8pro7vnm.cloudfront.net/silverman/pages/533/attachments/original/1591383513/DOES_Budget_Matrix_For_Discussion_Subject_to_Change_%2806-03-20%29.pdf?1591383513)

<sup>22</sup> However, the agency has reported to the Committee that this may have been loaded as one-time funding in error. The Committee did not receive a correction as of June 22, 2020.

Cadet Academy, On the Job Training, Pre-apprenticeship, and various grants.<sup>23</sup> The Committee compliments DOES on planning to use federal funding for the FEMS Cadet Academy in FY2021 and optimizing the federal Senior Services programs which will absorb Back to Work 50+. These practices are a step in the right direction, not only for funding but for alignment with the WIOA state plan. Several other local programs have program design that could also use federal funding under WIOA, and the Committee encourages DOES to continue leveraging federal funds. Back to Work 50+ enrolled 64 individuals in FY2019, down from 116 in FY2018, and will not be locally funded in FY2021 but will be absorbed by the federally funded senior program SCSEP or activity code 4100.<sup>24</sup> FEMS Cadet Academy is projected to serve 5 individuals. MPD Cadet Academy and OJT programs list a “To be determined” number of residents to be served and 18 residents projected to be served in the Pre-Apprenticeship program.<sup>25</sup>

Mayor Bowser’s FY2021 proposed budget reduces each of the four workforce program budgets, likely due to the loss of revenue due to the COVID-19 pandemic rather than policy decisions. Therefore, the Committee recommends maintaining the programmatic funds proposed by the Mayor for Project Empowerment, Career Connections, the DC Infrastructure Academy, and Local Adult Training. In the future, funding for these programs should not be assumed; improvements are necessary. The Committee strongly urges DOES to examine the program models, curricula utilized, and level of employer input during program design, and to conduct serious program evaluation. The Committee also recommends increased utilization of Federal funds and technical assistance from the Department of Labor Employment and Training Administration to support and tweak the programs for use of federal money and optimum success.

## ***2. Fund and implement the DC Infrastructure Academy and establishment of industry advisory committees (Budget Support Act subtitle)***

The Committee proposes a subtitle in the FY2021 Budget Support Act to deepen the partnership between business and DOES at the DC Infrastructure Academy. The Committee strongly believes this legislation will facilitate improved results at DCIA. The Committee often hears from employers that the prospective applicants do not have the training necessary for the demands of their businesses and/or that applicants may have credentials but lack on-the-job skills needed for success. Having employers advise the Academy on curriculum and training is a way to solve this problem.

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<sup>23</sup> For further detail, see Elissa Silverman website, “Fall 2019 Workforce Roundtables,” available at <http://www.elissasilverman.com/workforceroundtables> and specifically post-hearing questions, Attachment to Question 2(a), Part 1 available at [https://d3n8a8pro7vhm.cloudfront.net/silverman/pages/492/attachments/original/1579049824/Question\\_2%28a%29\\_-\\_Local\\_Adult\\_%28Part\\_1%29.pdf?1579049824](https://d3n8a8pro7vhm.cloudfront.net/silverman/pages/492/attachments/original/1579049824/Question_2%28a%29_-_Local_Adult_%28Part_1%29.pdf?1579049824) and Attachment to Question 2(a), Part 2 [https://d3n8a8pro7vhm.cloudfront.net/silverman/pages/492/attachments/original/1579049823/Question\\_2%28a%29\\_-\\_Local\\_Adult\\_%28Part\\_2%29.pdf?1579049823](https://d3n8a8pro7vhm.cloudfront.net/silverman/pages/492/attachments/original/1579049823/Question_2%28a%29_-_Local_Adult_%28Part_2%29.pdf?1579049823).

<sup>24</sup> Department of Employment Services, “Responses to Fiscal Year 2019-2020 Performance Oversight Questions,” February 7, 2020, attachment to Q80, pg. 983; and Department of Employment Services, “DOES Workforce Programs, Budgets, and Participant Numbers for FY2019-FY2021,” June 4, 2020.

<sup>25</sup> Department of Employment Services, “Responses to Fiscal Year 2019-2020 Performance Oversight Questions,” February 7, 2020, attachment to Q80, pg. 982.

The DC Infrastructure Academy Employer Engagement Act of 2021<sup>1</sup> establishes industry advisory committees composed of employers to make recommendations to DOES on the training offered at the DC Infrastructure Academy. This subtitle would build on the success of employer engagement in workforce development and shape the relationship between DCIA and employers. It expands business services beyond screening and referral for an interview and puts the employers in a position to help DCIA craft training for skills needed by industry. The BSA builds on the strong foundation DCIA already has and elevates the role of business. (See Chapter IV.B.2 for more information.)

The legislation is not costly and simply outlines a method for program development and enhancement. The Fiscal Impact Statement outlining the associated costs for DOES follows:

<b>Fiscal Impact of DC Infrastructure Academy Employer Engagement Amendment Act Of 2020</b>					
	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Four-Year Total</b>
Industry Committee Coordinator (1 FTE, Grade 12), DOES <sup>1</sup>	\$129,462	\$129,823	\$130,191	\$130,564	\$520,039

<sup>1</sup>Though cost-of-living increases are frozen we assume fringe benefits grow by 1.5% annually.

The committee recommends funding the DC Infrastructure Academy Employer Engagement Act and has identified \$129,462 in recurring funds to DOES for FY2021 to hire an Industry Committee Coordinator at Grade 12.

The committee recommends that DOES take all action possible in FY2020 to begin implementation and have the committees appointed and operational on or very soon after October 1, 2021.

**3. Fund and implement the School Year Internship Pilot Program Amendment Act of 2020 (Budget Support Act Subtitle)**

The Committee has heard from hundreds of District youth that they want year-round opportunities to work. Not only does youth employment provide income for vulnerable residents, but career exposure and real-world work experience helps develop interpersonal communication skills, develops positive adult role models, and offers connections for future career opportunities. Marcia Huff, Director of Youth Poverty Programs at The Young Women's Project testified at the performance oversight hearing that, "I saw very clearly the devastating repercussion of our lack of investments in early workforce readiness programming. Many of these youth had no experience outside of SYEP. Unemployed youth are more likely to become part of street economies and more likely to experience chronic unemployment."<sup>26</sup> A pilot program that engages high school students with real-world work experience is a huge opportunity to stop the cycle of poverty and channel youth on a career pathway.

The School Year Internship Pilot Program Amendment Act of 2020 will establish a paid internship program in Spring 2021. (See Chapter IV.B.4 for more information.) Students from District high schools, including public schools, public charter schools, and private schools who are not otherwise participating in an internship or in-school youth employment or work readiness program would be matched with an internship host. The Committee expects DOES to fund and fully implement the pilot program on the timetable outlined in the legislation, to support the District's Youth with career exposure and skill development. The Committee recommends funding the Act and has identified \$915,669 (\$28,226 in recurring PS funds; \$366,198 in one-time PS funds; and \$521,245 in one-time NPS funds), to be placed in Activity 4810.

<b>Fiscal Impact of School Year Internship Pilot Program Amendment Act of 2020</b>					
	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Four-Year Total</b>
Program Analyst (1 FTE, Grade 12), DOES <sup>1</sup>	\$112,905	\$28,304	\$28,384	\$28,464	\$198,057
Recruitment and Case Management Staff (4 FTEs, Grade 9), DOES <sup>2</sup>	\$253,293	\$0	\$0	\$0	\$253,293
Student Wages <sup>3</sup>	\$355,245	\$0	\$0	\$0	\$355,245
Student Laptops with WiFi	\$166,000	\$0	\$0	\$0	\$166,000
<b>TOTAL</b>	<b>\$887,443</b>	<b>\$28,304</b>	<b>\$28,384</b>	<b>\$28,464</b>	<b>\$972,595</b>

<sup>26</sup> Testimony of Marcia Huff, Director of Youth Poverty Programs, The Young Women's Project before the Committee on Labor and Workforce Development, Council of the District of Columbia Public Oversight Hearing Regarding the Department of Employment Services March 4, 2020

<sup>1</sup>This position reduces to a 0.25 FTE position in FY 2022 since many of the staff member's duties end with the internship pilot program in FY 2021. Though cost-of-living increases are frozen we assume fringe benefits grow by 1.5% annually.

<sup>2</sup>Positions are pro-rated for 10 months of the year, October 2020 through July 2021, since the internship program ends in June.

<sup>3</sup>Assumes the 250 interns work an average of 6 hours a week for 22 weeks. The \$10 per hour wage includes a 7.65% FICA tax.

#### ***4. Fund and implement public education campaign of the Tipped Wage Worker Fairness Amendment Act of 2018 (Law Passed Subject to Appropriations)***

Local Law 22-196 contains provisions to better inform tipped workers of their rights and to ensure those who employ these workers meet their obligations under existing laws including minimum wage, overtime, and paid sick and safe leave. It was amended in the FY2020 Budget Support Act, and additional amendments are proposed in the FY2021 Budget Support Act (see Chapter IV.B.7.) The Committee was able to identify funds for one portion of the law, which it would like to see implemented in FY2021.

Section 3 of the law requires that the Mayor create a website with information on the laws referenced in a new, universal poster regarding workers' rights under a number of laws. The funding would pay to ensure that the website is accessible on mobile devices, a change that was included in the FY2020 Budget Support Act. This would make it easy for workers who lack access to a computer to view the information on their smartphones.

Section 4 of the Law requires the Mayor to launch a public awareness campaign regarding tipped workers' rights. The funding will go toward this the implementation of this campaign, including the purchase of materials for the public. The campaign will raise awareness and educate the public about the rights of tipped workers, and will emphasize getting the word out to groups most at risk for wage and labor violations. The campaign will be required to distribute materials to the affected communities. As mandated in the FY2020 Budget Support Act, all materials created under this subsection must provide a telephone number and internet website address for the Department of Employment Services and the Office of the Attorney General where an employee can obtain find information about workplace rights or file a complaint. The Committee has identified \$100,000 for the public education campaign, to be provided to the Office of Wage Hour (Activity 3200) in CSG 40.

Section 4 of the Law also requires the Mayor to create a reporting system, or "tip line," that permits the public to report violations of worker rights including the minimum wage, overtime, sick and safe leave, and living wage laws. The tip line will enable workers to easily flag troubling practices within their own workplace for investigation by the Department of Employment Services.

Section 7 describes employers' obligations to complete periodic training on the requirements of Local Law 22-196 and certify that the employer and its employees have completed the training. Funding will pay for the creation of the online reporting portal and



a compliance officer position at the agency whose responsibilities will include assisting third-party payroll providers and hotel employers to file quarterly reports. The position will also process this data so that it can be reported to those conducting investigations and to the Mayor.

***5. Ensure that monies in the District of Columbia Jobs Trust Fund are spent in the manner required by law.***

DOES plans to use \$150,000 in from the DC Jobs Trust Fund in FY2021. DOES must use the funds in a manner consistent with the intended purposes of the Fund, as described in the First Source Employment Agreement Act (D.C. Code § 2-219.04c). Fines collected under the District's First Source law are to be deposited into the DC Jobs Trust Fund and “used solely for the purpose of establishing and operating the workforce intermediary pilot program...or any succeeding program.” An “intermediary is an organization that brings together employers and workforce training providers from the same industry to plan, develop, and implement strategies to link training to jobs. An intermediary pilot program can be interpreted as employer customized training in occupations that meet industry hiring needs. The Committee has been monitoring DOES’ use of the Jobs Trust Fund and disagrees with the previous grant solicitations issued using these funds. For example, DOES issued the “2020 Intermediary Initiative Request for Applications (RFA)” on February 14, 2020. The solicitation identifies that “For the purpose of this RFA, DOES will only consider proposals that address Microsoft Office or Entrepreneurship credential attainment.”<sup>27</sup> While credential attainment is a desired outcome of an intermediary program, it is not the entire breadth of work. True intermediary initiatives include employers from the same sector, a facilitator to convene employers and training providers and a screening and referral process at the end of the program for participants seeking employment. The DOES Workforce Intermediary Initiatives 2020 RFA does not require employers be engaged and there is no requirement for convening or meeting with the business community. The RFA as published would not meet the mandate’s requirement. Although training in Microsoft Office and Entrepreneurship can be beneficial for a participant’s knowledge and future goals, without business at the table to advise and guide the skills training, the RFA as written is simply a traditional training program and not an Intermediary pilot program. In the FY2020 proposed Budget Support Act, Mayor Bowser swept \$61,280, meaning the funds were not used by DOES or the WIC for worker training, but were moved to the general funds. To ensure that monies from the DC Jobs Trust fund are spent as mandated, the Committee recommends the \$150,000 be used for the intended purpose of the law, including engagement with the business community.

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<sup>27</sup> Department of Employment Services, "2020 Intermediary Initiative Request for Applications (RFA)" February 14, 2020, pg. 4, available at: <https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/2020%20Intermediary%20Initiative.pdf>

**6. Enhance budgets for job training that leads to occupational credentials in high-demand fields**

The Committee makes the following additional recommendations for enhancements:

Workforce Development (Program 4000)

- \$296,000 to the DC Infrastructure Academy (Activity 4260) CSG 50 in one-time NPS funds, to provide training for Commercial Drivers Licenses. The Committee notes that this budget will support the provision of work readiness and CDL training for 29 individuals if wage subsidies are provided or 48 people if all funds are used for training. The Committee believes that individuals will complete their training without a subsidy and all funds should be directed to training.
- \$300,000 to the DC Infrastructure Academy (Activity 4260) CSG 50 in one-time NPS funds, to provide training in Information Technology. The Committee notes that this budget will support the provision of work readiness and IT training for 27 individuals if wage subsidies are provided or 36 people if all funds are used for training. The Committee believes that individuals will complete their training without a subsidy and all funds should be directed to training.

**7. Right size the budgets of overhead and non-programmatic budget lines that have been overbudgeted and/or underspent**

There are several areas of DOES's budget that the Committee believes have been overbudgeted in the FY2021 local budget. The Committee reviewed the budgets in comparison with FY2019 spending and the proposed spending contained in the agency's submissions to the Council's Office of the Budget Director.<sup>28</sup> The Committee also requested detailed spending plans of the agency, which the Committee has received in previous years. The agency declined to provide them, stating that the spending plan would be developed based on the approved budget.<sup>29</sup> Many budget lines indicated FY2019 spending levels lower than proposed for FY2021; the planned FY2021 budget exceeded the specific plans outlined in submissions for that budget line; or the planned spending submissions did not indicate a specific purpose and more information was not provided upon request. Therefore, the Committee recommends the following reductions. The Committee identified close to \$1 million in additional potential spending reductions, but these were not certified by the Office of the Chief Financial Officer prior to the Committee's budget report mark-up.

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<sup>28</sup> DOES, Common Budget Questions, Attachment I Contracts, worksheets "CSG41" and "CSG 40," submitted to the Committee May 21, 2020.

<sup>29</sup> Email from senior agency staff to committee staff, May 19, 2020, stating: "Since spend plans for a proposed budget are premature, we are unable to provide any spend plans until the final budget has been passed and enacted."

Agency Management (Program 1000)

- \$12,650 CSG 20 (Supplies and Materials) from Information Technology (Activity 1040)
- \$9,190 CSG 40 (Other Service and Charges) from Property Management (Activity 1030)

Workforce Development (Program 4000)

- \$3,013 CSG 20 (Supplies and Materials) from Program Performance Monitoring (Activity 4200)
- \$1,318 CSG 20 (Supplies and Materials) from Office of Apprenticeship Information and Training (Activity 4300)
- \$1,814 CSG 20 (Supplies and Materials) from First Source (Activity 4510)
- \$52,095 CSG 40 (Other Service and Charges) from State-Wide Activities (Activity 4900)
- \$10,000 CSG 41 (Contractual Services- Other) from Program Performance Monitoring (Activity 4200)
- \$60,012 CSG 41 (Contractual Services- Other) from Local Adult Training (Activity 4250)
- \$21,131 CSG 41 (Contractual Services- Other) from Employer Services (Activity 4500)
- \$180,622 CSG 41 (Contractual Services- Other) from Year-Round Youth Program (Activity 4810)

State Initiatives (Program 5000)

- \$3,800 CSG 20 (Supplies and Materials) from DC Career Connections (Activity 5200)
- \$111,505 CSG 40 (Other Service and Charges) from DC Career Connections (Activity 5200)

**8. *Sweep funds from available SPR balances***

- \$499,424 from Fund 612, UI Interest and Penalties, which may be utilized for the School Year Internship Pilot Program
- \$230,000 from Fund 619, DC Jobs Trust Fund, which may be utilized for DCIA CDL training in FY2021.

**9. *Reduce vacant positions***

The Committee has identified the following vacant positions to reduce. The Committee notes that in Year Round Youth, the Mayor's proposed FY2021 budget included 6 new FTEs (from 30.0 to 36.0). The Committee proposes to reduce that by 5.

Agency Management

- \$75,424 in PS from CSG 11 and 14 and 1 FTE, Public Affairs Specialist, position 75065 from Communications (Activity 1080).

Workforce Development

- \$137,962 in PS from CSG 11 and 14 and 1 FTE, Program Manager, position 22198 from Year-Round Youth (Activity 4810)
- \$168,888 in PS from CSG 12 and 14 and 4 FTEs Workforce Development Specialists, positions 24623, 36322, 36350, 39001 from Year Round Youth (Activity 4810)
- \$81,580 in PS from CSG 11 and 14 and 1 FTE Workforce Development Specialist position 36304 from Summery Youth Employment Program (Activity 4820)

## **b. Policy Recommendations**

### **A. UNEMPLOYMENT INSURANCE**

#### ***1. Modernize the unemployment insurance call center and provide continual training***

The global coronavirus pandemic brought extraordinary challenges for DC government and DOES in particular by exposing the District's outdated and archaic unemployment insurance system. A modern update to the system has been on the books shortly following the last economic downturn, the Great Recession, yet the urgency to complete the task waned. The Committee and its Chair have tried to focus the Agency on modernization and get answers why specific benchmarks were not completed but explanations were inconsistent and sometimes contradictory. The out-of-date processes weren't just limited to IT platforms; it also included a chaotic call center system which was unable to scale quickly to demand. (See further discussion on the UI modernization project in Chapter II.C.3.2.)

The coronavirus public health emergency and successive economic crisis put a bright spotlight on the UI intake approach. The agency faced an unprecedented volume of calls from District workers suddenly laid off from work, highlighting the many barriers that callers experience when seeking assistance from the workforce agency. Council offices, and this Committee in particular, have heard from hundreds of residents about dropped calls, busy signals, extremely long wait times on the UI call center hotline, and general frustration with the inability to get questions answered. DOES must modernize its call center to meet the expectations and needs of our residents by implementing modern customer service features and improve staff training and support in order to ensure efficient service delivery.

The committee recommends six changes that will help modernize and streamline call center operations: (1) Immediately direct callers to representatives with subject matter expertise; (2) Train and deploy a team of supervisors to whom complex issues can be escalated; (3) Create a distinct phone number for callers who speak a language other than English; (4) Create clear, uniform processes for call center workers to follow; (5) Professionalize call center training, including refresher professional development on up-to-date practices; and (6) Invest in modern call center infrastructure including hardware and software that will create efficient intake, logging, tracking, and expediting of complex calls and both transparency and auditing to see if calls were resolved and handled properly.

The DOES call center telephone system should be designed to place callers into different queues depending on what they indicate is the primary purpose of their call (for example, "Press 1 if you are calling about the status of your claim.") Such a system would direct callers to DOES call takers with specialized knowledge who could respond to calls about their knowledge area. Limiting the types of calls received by particular call takers would make the process more efficient, with the secondary benefit of helping call takers develop particularized knowledge about the UI system. When unusual or difficult cases

arise, callers should be routed to a team of highly-knowledgeable, customer-oriented supervisors. This ensures that front-line callers can focus on briefer services while the more qualified staff address the more challenging calls. The system should also permit callers whose primary language is not English to call the agency directly, indicate the language needed in the spoken language, and be connected with a speaker of that language.

The agency should expand overall availability of customer service by extending call center hours, providing a call back option, and making email communication a permanent feature of the system. When call volume is expected to be high, DOES should extend call center operating hours to nights and weekends. This will spread out the calls over more time and reduce average call wait times. It will also help those individuals with caregiving or other personal responsibilities that interfere with their ability to call during traditional business hours. DOES should also consider offering the option for callers to receive a call back when operators are not immediately available, a service offered by retail and service providers when call volume is especially high.<sup>30</sup> This would help low-income callers whose mobile phone services limit how long they are able to stay on the phone.<sup>31</sup> Finally, for those who prefer to receive a written response, the agency should create a permanent email address where those with questions can receive answers and log all responses so they can be used whenever those questions are repeated.

Finally, the agency must invest the time and funds in training its call takers on how to navigate and complete the UI application form and process, as well as offer in-service trainings when the law changes. The Agency also needs to look at the best-practices of both state UI call centers around the country as well as District agencies that have had success in automating and making their call intake more efficient. The Chair of this Committee spent many hours in the UI call center. The chaotic nature of the call center was not due to employee unwillingness to address calls; indeed, the observation of this Chair is that dedicated workers in this division were handicapped by a lack of investment in technology, training, and workforce development. This cannot continue.

This Committee pointed out in last year's budget report that DOES needed to invest in better training for claims examiners due to the high rate of determinations reversed on appeal, and we believe the events of the past few months have demonstrated just how crucial this is. There is no better way for DOES to demonstrate to its employees that they are valued than investing in their ability to gain more skills and potentially move up the ladder within the agency. We encourage DOES to develop a training plan to refresh call taker and claims examiner employee skills in FY2021.

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<sup>30</sup> For example, this feature is offered by Amazon customer service when there is a problem with an order.

<sup>31</sup> For examples of mobile services with limited air time, see:

<https://www.nerdwallet.com/blog/utilities/basic-cell-phone-plans/>

## 2. Crack down on misclassification of low-wage workers

The economic crisis this year demonstrated how critical it is to ensure that every employer pays their fair share toward the UI safety net and that every worker who should qualify for unemployment insurance can receive it. DOES should implement a rigorous review of instances of potential misclassification (also known as “payroll fraud”), but particularly in instances where workers are earning at or below the minimum wage, where the work being performed is not in a specialized creative or professional field, and in industries where research shows that misclassification is common.

Misclassification is the shorthand term for an employer treating an employee as an independent contractor.<sup>32</sup> Employers of bona fide independent contractors don’t have to pay unemployment insurance tax contributions to the District and the worker does not qualify for any legal protections that apply to employees (such as minimum wage or paid sick time). This is because a true independent contractor controls all of the conditions around how they perform their work, like which clients to accept, how much to charge, where and when to work, and how to perform their jobs. Under current law, independent contractors are not eligible for UI,<sup>33</sup> and the businesses that engage independent contractors are not required to contribute to the UI Trust Fund on behalf of them the way they must contribute for employees. But that means that employees who are *misclassified* as independent contractors are cheated out of their right to collect unemployment. Yet, when government uncovers misclassification, it can hold the responsible employers accountable for not paying its taxes toward the UI trust fund for the duration of the worker’s employment.<sup>34</sup> Once misclassification is identified, workers can also bring minimum wage, paid sick time, and other legal claims for violations that occurred when the workers were misclassified.

Misclassification is a growing problem commonly found in the construction,<sup>35</sup> security, personal services (for ex., nail salons), and food delivery industries.<sup>36</sup> Many worker advocates consider gig workers such as supermarket shoppers and delivery drivers

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<sup>32</sup> U.S. Department of Labor, “Fact Sheet 13: Employment Relationship Under the Fair Labor Standards Act (FLSA),” July 2008, available at: <https://www.dol.gov/whd/regs/compliance/whdfs13.htm>

<sup>33</sup> In a recent exception, Congress created a special benefits program for independent contractors who are typically excluded from the unemployment system, permitting them to receive benefits through July 31, 2020. See National Employment Law Project, *Fact Sheet: Unemployment Insurance Provisions in the Coronavirus Aid, Relief, and Economic Security (CARES) Act*, March 27, 2020, available at: <https://www.nelp.org/publication/unemployment-insurance-provisions-coronavirus-aid-relief-economic-security-cares-act/>

<sup>34</sup> Some state-level studies compiled by the National Employment Law Project (NELP) have estimated the costs due to misclassification. For example, in 2008, Maryland estimated the annual loss to its UI trust fund to be between \$15-25 million. NELP, *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, July 2015, page 4-5. Available online at: <https://www.nelp.org/wp-content/uploads/Independent-Contractor-Costs.pdf>.

<sup>35</sup> Office of the Attorney General of the District of Columbia, “Illegal Worker Misclassification: Payroll Fraud in the District’s Constitution Industry,” September 2019, available at: <https://oag.dc.gov/sites/default/files/2019-09/OAG-Illegal-Worker-Misclassification-Report.pdf>.

<sup>36</sup> D.C. Code §32-1331.01 *et seq* protects against misclassification in the construction industry and provides for investigation and prosecution of violators.

to meet the legal definition of “employees” because unlike the work performed by bona fide contractors— such as graphic designers, attorneys, and headhunters— gig workers’ tasks do not require specialized training or wide latitude for independent judgment.<sup>37</sup> Because misclassification can be so costly to both the government’s bottom line and to workers, DOES must implement more stringent review of UI claims in order to help misclassified workers qualify for benefits to which they should be entitled and to identify employers that are not paying their fair share.

In the responses to this Committee’s 2019 performance oversight questions, the agency provided a copy of the “checklist” it uses to assess independent contractor status.<sup>38</sup> The agency should always subject UI applications from the lowest-paid workers and those in commonly misclassified industries to a second level of review for potential misclassification because this is where the potential harms are greatest. In the second level of review, an experienced claims examiner must assess the worker’s position anew to determine whether the worker’s employer is potentially circumventing the law by classifying this individual as an independent contractor.

All of the employees who undergo an assessment for potential misclassification are entitled to and should be given copies of the agency’s assessment of their status so they can challenge any incorrect conclusions made by the agency on appeal.<sup>39</sup> DOES should also revise the UI claims determination form with a clear statement about what misclassification is and information about the Claimant Advocacy Program (CAP) where they can go to appeal a denied claim. And, any time a worker is identified as misclassified and deemed eligible for UI benefits, the agency should initiate a full investigation of the employer and a referral to the DOES Office of Wage-Hour and to the Office of the Attorney General for enforcement of the law. Finally, the modernization of the UI system should include easy-to-read website guidance for workers about what constitutes misclassification and their rights if they believe they are misclassified. (Please see Chapter II.C.3.2 of this report for more information on the Unemployment Insurance modernization capital project.)

### ***3. Understand the scope of misclassification in the District***

This year, the federal government authorized the District to pay thousands of unemployment insurance (UI) claims for individuals classified as independent contractors, providing a unique opportunity to undercover misclassification. The Committee will ask the Auditor to assess all of the Pandemic Unemployment Assistance (PUA) claims the

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<sup>37</sup> These are two out of several factors used to determine whether an employee is misclassified, used here for illustrative purposes. For one useful analysis of employee status, see *In the Matter of the Claim of Luis A. Vega, Respondent. Postmates Inc., Appellant. Commissioner of Labor, Respondent.*, 162 A.D.3d 1337, available online at: <https://www.nycourts.gov/ctapps/Decisions/2020/Mar20/13opn20-Decision.pdf>

<sup>38</sup> Department of Employment Services, “Responses to Fiscal Year 2018-2019 Performance Oversight Questions,” February 15, 2019, Attachment to Q142, p. 1223-1225, available at: [https://dccouncil.us/wp-content/uploads/2019/02/doesatt\\_Part3.pdf](https://dccouncil.us/wp-content/uploads/2019/02/doesatt_Part3.pdf)

<sup>39</sup> D.C. Code §51-113 (f) requires disclosure of these documents to the claimant, providing (in part): “Any claimant (or his legal representative) shall be supplied with information from the records of the division, to the extent necessary for the proper presentation of his claim...”



District received and report on the state of independent contractor work in the District. We expect that the report will detail applicants' personal and professional demographics, typical weekly earnings, industry or profession, and other details that can illuminate the extent of properly and improperly classified contract work occurring in the District. The Auditor's assessment will be helpful for DOES as it strives to better identify misclassified employees, as well as serve as a tool to potentially identify unpaid unemployment insurance contributions that should be paid into the UI Trust Fund.<sup>40</sup>

#### ***4. Make our unemployment system accessible to non-English speakers***

The District's unemployment insurance system must become more accessible for potential claimants whose primary language is other than English. DOES must provide written translation of the unemployment insurance claim forms and guidance materials and hire bilingual speakers for the UI call center to ensure that non-native English speakers can communicate effectively with DOES and in the same manner as English speakers.<sup>41</sup>

In the weeks after the District implemented federal laws temporarily expanding eligibility for UI benefits, worker advocates told the Committee that Amharic speakers in our community were unable to complete an online application for benefits.<sup>42</sup> The only other option for these individuals was to call DOES; however, there are not Amharic-speaking call takers at the agency. Therefore, a caller would have to ask someone they know who speaks English to contact DOES with them, or on their behalf, and explain to the agency that an Amharic speaking DOES agent was needed. Only then could DOES know that it needed to ask an interpreter to join the call. However, the phone-accessible interpreter is an imperfect solution. It is very difficult to speak through a translator, particularly on a complicated issue like an unemployment insurance claim governed by dozens of rules and particularities. It's more likely that these potential claimants will go without important cash support during the pandemic than engage in such a cumbersome process. Having the form available in writing in applicants' native language is critical.

The current process to modernize the UI system is an opportunity to ensure that going forward, all District workers can access the UI system, and not just those workers who have advanced English language reading and writing skills.<sup>43</sup> (See Chapter II.C.3.2 more information about the UI modernization capital project.) The agency must ensure that its website, determination letters and other correspondence, guidebooks, call center, and employer reporting portal are accessible for speakers of the most commonly spoken

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<sup>40</sup> NELP, "Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries," July 2015, available at: <https://www.nelp.org/wp-content/uploads/Independent-Contractor-Costs.pdf>

<sup>41</sup> The Committee encourages DOES to interpret the language access requirements of D.C. Code § 2-1933(a) broadly. Even residents who make up a small portion of the population are potential DOES customers.

<sup>42</sup> Department of Employment Services, "Unemployment Insurance Service Center for Claimants," available at: <https://does.dcnetworks.org/claimantservices/Logon.aspx>.

<sup>43</sup> United States Government Accountability Office Report to the Ranking Member Committee on Finance, U.S. Senate, *Unemployment Insurance: States' Customer Service Challenges and DOL's Related Assistance*, May 2016, available at: <https://www.gao.gov/assets/680/677082.pdf>

languages in Washington, DC, to help avoid violations or complaints about violating the District's Language Access Act. This will ensure that when our community experiences hard times in the future, we are not leaving our neighbors behind.

### ***5. Implement fair overpayment collection practices.***

DOES has a process to recover benefits improperly paid to unemployment insurance claimants (called "overpayments"), which the agency recovers by filing a lawsuit in D.C. Superior Court, among other methods. Claimant advocates have testified that the agency sometimes does not sue until many years after the claimant was paid and often the amount alleged to be owed is not supported by records. Claimants should be accountable for repaying improperly received benefits; however, DOES must ensure the process is implemented fairly. Before suing claimants in Superior Court, the agency must ensure the accuracy of alleged overpayments and exercise its discretion to dispose of any cases for which there is inadequate proof of the amount owed.

Overpayments can result from innocent, accidental, or fraudulent reasons. According to the US Department of Labor, the main reason for overpayments in the District between 2016 and 2019 was "benefit year earning," which means that the claimant received wages or other income while they were receiving unemployment benefits. The amount of non-UI income is limited for claimants who qualify for UI, and some of these individuals become ineligible for UI once their earnings reach the established maximum.<sup>44</sup>

This year, the number of overpayment cases increased significantly over last year: from approximately 6,522 notices in FY2018 to 9,780 notices of overpayment in FY2019.<sup>45</sup> The Legal Aid Society of the District of Columbia and the Claimant Advocacy Program (CAP) of the Metro Washington Council AFL-CIO have noted a recent uptick in Superior Court cases filed to recover overpayments from very old benefit years.<sup>46</sup> For example, a representative from CAP testified about a January 2020 case where DOES had not issued a Notice of Overpayment to a particular claimant until almost ten years after he received the UI payments at issue. Since the claimant's employer had gone out of business in the intervening years, the claimant was unable to obtain employment records he would have needed to determine for himself whether he was overpaid and to defend against the agency's claim. This illustrates the great disadvantage to claimants when the agency does not quickly pursue the overpayment.

Legal Aid and CAP advocates have also pointed out that some DOES lawsuits state a different amount owed on the legal notice sent to the claimant versus what is filed in

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<sup>44</sup> U.S. Department of Labor, "Unemployment Insurance Payment Accuracy by State for the District of Columbia," available at: <https://www.dol.gov/general/maps/2019/dc>.

<sup>45</sup> Drake Hagner, Senior Staff Attorney, Legal Aid Society of the District of Columbia, and Tonya Love, Program Director and Attorney, Claimant Advocacy Program, Washington Metropolitan Council AFL-CIO, "Joint Testimony before the Committee on Labor and Workforce Development, Council of the District of Columbia Public Oversight Hearing Regarding the Department of Employment Services," March 4, 2020, Attachment C..

<sup>46</sup> Id.

court, without explanation of how the differing amounts came about. The agency records do not show, for example, the dates of disbursements to the worker and the agency's calculation of interest charges that it might be adding into the amount owed. These should be provided because they would help the worker gather necessary records to determine on their own whether the debt is legitimate. DOES must also provide the underlying documentation of how it says the overpayment came about (for example, because the claimant's employer reported wages to the agency) so that the parties and the court can determine how reliable this information is and how much the claimant was erroneously paid.

Regardless of what is legal, the process must be ethical. Even though there is no statute of limitations barring the agency from collecting on overpayments many years later, the agency can impose reasonable restrictions on which cases it pursues. One of the key functions of a statute of limitations is to ensure that legal disputes are resolved when evidence is still fresh and the people involved are still able to remember the events that transpired. Here, the lack of a statute of limitations means that there is a higher risk of inaccurate, unreliable, and missing information underlying the alleged debts. The Committee has learned that some of the alleged debts being filed in Superior Court in the name of the District of Columbia are not supported with even the most basic documents that the agency should be expected to maintain. Many of the people who are being sued by DOES are intimidated by the demand that they appear in court and answer to a judge, and therefore settle these cases without DOES demonstrating that they have evidence to support their case. This can result in a person agreeing to repay a debt that was not actually owed, or to repaying more than the agency could prove the claimant ever received.

The government should not be allowed to use intimidation to this unfair advantage. Instead, DOES must immediately begin providing the UI claimants being sued with supporting documentation of UI overpayments to show that any amount alleged to be owed is accurate and must provide the claimant with an opportunity to rebut the allegations. DOES should provide claimants with copies of the following: the signed application for benefits, the date(s) and amount(s) of each weekly disbursement, interest and penalties charged to the claimant, proof of the method of payment (for ex., deposit to debit account), as well as documentation supporting the reason why the payment was improper (such as proof of wages earned by the claimant). Our local government should be held to the same standard as any other debt collector by having to verify the basis for claiming money is owed.<sup>47</sup> DOES should also identify any cases that lack basic evidence verifying the legitimacy of the debt and withdraw them from Superior Court immediately.

## ***6. Improve communications related to the Office of Administrative Hearings***

Last year, the Committee urged DOES (1) to provide access to final orders in unemployment insurance or wage-hour adjudications on its website, (2) to process OAH claims within three business days, and (3) to transmit documents between DOES and OAH

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<sup>47</sup> Federal Trade Commission, "Debt Collection FAQs," March 2018, available at: <https://www.consumer.ftc.gov/articles/debt-collection-faqs>

electronically. The pandemic has required many workplaces to rely more heavily on electronic transmittal of documents and information. The Committee is pleased to learn that DOES and OAH are transmitting unemployment appeal documents electronically and hope DOES will expand the use of email and other online methods of transmitting records even after District government offices fully reopen.

### ***7. Prioritize staff training***

Last year, the Committee urged DOES to prioritize staff training in order to avoid errors that harm workers. At that time, DOES reported that in FY 2018, approximately 50 percent of OAH appeals by workers denied benefits by an agency determination resulted in a reversal directing the agency to disburse unemployment funds to the worker.<sup>48</sup> And, in FY2019, again approximately half (49 percent) of employee appeals reversed DOES's determination.<sup>49</sup> During the FY2020 budget process, the Committee was encouraged to learn that DOES had developed a training plan and revised internal procedures to help examiners evaluate claims more accurately and consistently.<sup>50</sup> Unfortunately, the Office of Unemployment Compensation's performance during the recent pandemic did not demonstrate substantial improvement over past years. The Committee's new recommendations about staff training emphasizes the importance of the office's staff knowledge and abilities. (Please see Chapter II.C.2.b.A and Chapter II.C.3.2 of this report for more information on the Unemployment Insurance recommendations,)

## **B. WORKFORCE DEVELOPMENT**

### ***1. Improve program delivery in Project Empowerment and Career Connections:***

#### **a. Develop a programmatic strategic plan incorporating career pathways and alignment with the WIOA State Plan and the DOES Vision Forward Plan**

Project Empowerment and Career Connections are long-standing and popular programs at DOES. They serve primarily returning citizens to help them find their way back into the workforce by allowing them to get their foot in the door through subsidized employment. The program also offers occupational and educational services for those in need. They serve hundreds of people a year, and many participants seek out the program because they have heard about it from friends or relatives. The Committee would like

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<sup>48</sup> Department of Employment Services, "Responses to Fiscal Year 2018-2019 Performance Oversight Questions," February 15, 2019, p. 58-59, available at <http://dccouncil.us/wp-content/uploads/2019/02/DOES-2019-PO-responses-02-18-19.pdf>.

<sup>49</sup> DC Department of Employment Services, "Responses to Fiscal Year 2019-2020 Performance Oversight Questions," page 69. There were 2,055 total appeals in FY2019, 536 of which were filed by employers, leaving 1,519 filed by employees. The number of appeals resulting in a payment status reversal was 746, which is 49% of 1,519. The Committee notes that the 1,519 figure could include cases that were filed but didn't proceed, which would make the reversal percentage even higher.

<sup>50</sup> Department of Employment Services, "Responses to Fiscal Year 2018-2019 Performance Oversight Questions, Attachment Q137," February 15, 2019, Part 3, available at: [http://dccouncil.us/wp-content/uploads/2019/02/doesatt\\_Part3.pdf](http://dccouncil.us/wp-content/uploads/2019/02/doesatt_Part3.pdf).

Project Empowerment and Career Connections to be a success, and there is no doubt that some have been helped. DOES should develop a strategic programmatic plan specific to Project Empowerment and Career Connections that would assist DOES with greater alignment of strategies. This would focus energy and resources and ensure all partners are working toward the DOES' mission of "connecting District residents, job seekers, and employers to opportunities and resources that empower fair, safe, and effective working communities."<sup>51</sup> The plan should outline specific activities, methods, or approaches that will facilitate the highest level of achieving the program goals. It should also analyze where improvements to current program design should be made. However, without a clear plan to move forward, Project Empowerment and Career Connections will struggle to reach their full potential of assisting District residents on a pathway to the middle class.

**b. Select and utilize a validated career assessment tool to best match participants with appropriate host sites.**

To better understand and evaluate Project Empowerment and Career Connections the Committee held a roundtable on November 11, 2019. There were witnesses representing participants, graduates, employer host sites, and training providers. Based on witness testimony, the most successful outcomes came when the placement was in occupational sectors of personal interest and high demand. However, the method used by DOES to achieve a successful placement was unclear. Director Unique Morris-Hughes testified the assessment is completed through discussion, objective assessment, and "Good Old Human Interaction."<sup>52</sup> While human interaction can be a valuable assessment tool, alone it is not enough. The right assessment can help inventory interests, skills, work-related values, and personality characteristics. It can help focus on occupational exploration and identify career decision making and developmental needs. The right tool can also aide in measuring program effectiveness and best practice models. Regardless of the tool selected, "In-depth investigation of the effectiveness of specific assessments in various work settings and with members of various populations is essential."<sup>53</sup>

**c. Partner with the WIC to develop a unified business services plan with sector-specific business liaisons.**

A unified business services plan would help employers fully understand the options for and how to engage with DOES. The WIC has been working to unify DC government business services, as many different agencies have their own business services arms. The

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<sup>51</sup> Unique Morris-Hughes, oral testimony at the Committee on Labor and Workforce Development, Public Oversight Roundtable, "A Review of The Department of Employment Services' Workforce Development Programs: Project Empowerment and DC Career Connections," Nov. 21, 2019, beginning at 4:49:32 video available at: <http://dccouncil.us/video-archive/> by searching "Labor Committee November 21, 2019."

<sup>52</sup> Unique Morris-Hughes, oral testimony at the Committee on Labor and Workforce Development, Public Oversight Roundtable, "A Review of The Department of Employment Services' Workforce Development Programs: Project Empowerment and DC Career Connections," Nov. 21, 2019, beginning at 4:49:32 video available at: <http://dccouncil.us/video-archive/> by searching "Labor Committee November 21, 2019."

<sup>53</sup> JoAnn Harris-Bowlsbey, "Exploring Why Career Practitioners Use Assessments, As Well As How They Can Select The Appropriate Tools And Effectively Interpret Client Results," IAG Online, July 10, 2019, available at <https://iagonline.org/tag/assessment/>

WIC published the first Business Services Environmental Scan Report 2020. DOES should partner with the WIC to unify business services and develop sector-specific business liaisons

As the WIC wrote, “This scanning effort was identified as critical to gain a more thorough understanding of the business engagement and services landscape and to identify, leverage, and expand areas of coordination. Through connecting and aligning the range of strengths and services agency partners offer businesses, greater efficiencies and effectiveness can be achieved on behalf of the District employer community. The results of this scan will feed into the creation of a District vision for business engagement and service delivery, including where coordination already exists and where there may be opportunities for further collaboration among agency partners on behalf of business customers. Advancing the vision for a more coordinated approach to business service planning and delivery is also a key focus of the District’s WIOA State Plan and its Adult Career Pathways Strategic Plan, and this environmental scan is intended to be supportive of those efforts. Specifically, expanding industry sector partnerships, enhancing partners’ alignment from a systems perspective, and building partner capacity system-wide were key considerations in the environmental scan effort.”<sup>54</sup> The report outlines how business services are currently structured, designed, and delivered across workforce system partners in the District. The scan is the first step towards developing a unified business plan across all government agencies.

Additionally, pairing a unified business plan with sector specific counselors also fosters relationship development between the DOES team and the business community. A counselor supporting one sector is better equipped to match employers’ needs and understand sector culture than a counselor who is straddling multiple sectors. The November 2019 roundtable on Project Empowerment and Career Connections revealed some challenges to the programs. One of the greatest challenges for participants was the lack of employment from the host site at the end of the subsidized employment portion and difficulty securing full-time unsubsidized employment. DOES can improve these results by committing to a strategic plan aligned with the WIOA state plan, utilize a validated career assessment tool, and developing a unified business services plan with sector specific counselors connected to industry employers. The Committee was encouraged to read that the Career Pathways Task Force also recommended a unified business services plan with employer engagement and job development staff and sector specific counselors to help screen candidates for each industry and serve as a single point of contact for employers in that industry.<sup>55</sup> Both recommendations can improve employment placement results and better meet the needs of the business community.

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<sup>54</sup> Workforce Investment Council, “Business Services Scan 2020 Report,” May 21, 2020, available at: <https://dcworks.dc.gov/page/dc-works-resources>

<sup>55</sup> DC Workforce Investment Council, “Adult Career Pathways Strategic Plan,” January 15, 2020, available at: <https://dcworks.dc.gov/sites/default/files/dc/sites/dcworks/publication/attachments/DC-Career-Pathways-Strategic-Plan-Final.pdf>.

**2. Implement recommendations from the Career Pathways and Adult Literacy Task Force Strategic Plan**

The DC Adult Career Pathways Task Force was established by the Adult Literacy Task Force Act of 2014, a subtitle of the 2014 Budget Support Act. Its purpose is to develop and implement a city-wide strategic plan to connect District-based adult basic skills programs with career pathways. The WIC has managed the DC Adult Career Pathways Task Force and convened partners every quarter to guide the development of career pathways and other sector-based strategies. A strategic plan was published in 2015 as a tool to move the District workforce development system, adult basic skills programs, and human services programs into a more unified system. The strategic plan was updated in 2019 to reflect the achievements and direction of the adult career pathways work in the District.

**a. Utilize the integrated education and training model.**

Most District job seekers do not qualify for many of the city's job training programs, which require minimum educational functioning levels for participation, often at the 8<sup>th</sup> or 9<sup>th</sup>-grade levels. As the table below shows, most jobseekers score below these levels, which disqualify them.

Percentage of Individuals Testing by Level and Location, FY2018

	American Job Centers	Project Empowerment	Career Connections	Infra-structure Academy
Testing below 8th grade math	72%	70%	90%	58% <sup>56</sup>
Testing below 6th grade math	33%	41%	65%	35%
Testing below 8th grade reading	25%	44%	49%	15%
Testing below 6th grade reading	7%	17%	13%	5%

In most circumstances, when an individual score is too low to qualify for a training program, they are sent out for remediation. However, when basic education is combined with, and delivered in the context of, occupational skills training, adults learn more quickly and gain more skills. This “integrated education and training” (IET) model is considered a best practice and used across the nation.<sup>57</sup> With this model, individuals receive education in literacy and numeracy simultaneously with, and in the context of, occupational skills training. In the OSSE/WIC program Career Pathways Innovation Fund program that utilizes the IET model, ninety percent of participants in the program are individuals with

<sup>57</sup> Beth Hawkins, “Adult Education Comes of Age,” *Education Next*, Vol. 19, No. 2, Spring 2019, available at <https://www.educationnext.org/adult-education-comes-of-age-new-approach-blends-basic-academics-job-training/>.

low educational functioning levels who would otherwise not qualify for most traditional job training programs. Further, this population represents the majority of individuals seeking services at American Job Centers or other DOES programs and who also took assessment tests (the CASAS test). DOES should offer IET programs that simultaneously provide basic education and occupational skills training. It will help their customers achieve greater success in the long term.

**b. Utilize the career maps developed by the WIC and individualize career maps to help advise and guide residents to living-wage careers**

The Adult Career Pathways Task Force developed career pathway maps for the information technology and business administration, infrastructure and transportation, and security and law enforcement industries. The maps are industry-informed and display the path for growth in each of the identified sectors. The maps are useful for both new and incumbent workers to enhance their understanding of education, skills, knowledge, and occupational credential needed to advance in a chosen career. Moreover, a career map customized to an individual's situation and desired goals defines a blueprint for both the resident and DOES. Such tools can assist the department with program design, implementation, and quality of customer service. DOES should utilize the career maps and individualize career maps for each adult accessing workforce development and adult education services.

**c. Maximize referrals via the Data Vault by ensuring the necessary fields in the DOES Virtual One-stop System are mandatory**

During the March 4, 2020, Committee performance oversight hearing, Alexander Moore from DC Central Kitchen noted the lack of referrals to DC Central Kitchen Culinary Arts Program. One reason for this may be the underutilization of the DC Data Vault. The Data Vault permits DOES, DHS, and OSSE AFE to seamlessly refer residents in need of literacy and numeracy remediation to providers offering integrated education and training models. The Data Vault is available to assist with improved coordination of services and referrals to partner organizations. However, the Data Vault has not fully been realized, with reports of few referrals by the adult education and training providers. One reason identified is the lack of data field completion in the DOES' Virtual One Stop (VOS) system. Without the appropriate fields completed, service needs cannot be matched, and referrals do not happen. The Committee recommends DOES make the fields needed for the Data Vault “required” fields in VOS, resulting in more referrals and coordination of IE&T models for job seekers.

**3. *Improve monitoring and enforcement of First Source law***

The Committee recommends the Office of First Source Compliance work to improve monitoring and enforcement of the District's First Source law. The First Source law was enacted in 1984 to give District residents priority and opportunity for employment on projects funded by District government. The First Source law requires that recipients of District funding or tax subsidies hire District residents for most new jobs created on



certain projects, ensure that substantial portions of the hours worked by skilled trades on construction projects are filled by District residents, and establish apprenticeship programs to benefit district residents. It is a critically important law that should play a central role in the District’s workforce development strategy. But it must be enforced to ensure that District workers gain access to employment.

The Committee has detailed in multiple hearings and correspondence with DOES its concerns about deficiencies in DOES’ monitoring of First Source projects and enforcement of the law. For example, data provided in response to Committee oversight inquiries is frequently incomplete or incorrect, calling into question whether the agency is effective in its monitoring and enforcement of the First Source law. The DC Auditor has also written extensively about shortcomings and the need for improvements in monitoring and enforcement of First Source.<sup>58</sup> In its current form, the First Source program has been neglected and deprioritized for many years. Earlier in 2020, the Committee reported out legislation that served to retain the office at DOES.<sup>59</sup> The Committee wanted to avoid an unnecessary disruption of First Source administration which would likely result from moving it into a different office. However, the Committee remains extremely concerned about ongoing shortcomings in enforcement and recommends that DOES redouble its efforts to ensure monitoring and enforcement of the law.

***4. Complete a Youth Programs strategic plan incorporating Career Pathways and aligned with the WIOA State Plan by the end of FY2021***

DC’s Marion Barry Summer Youth Employment Program (MBSYEP) has been the first job for generations of Washingtonians. It remains a seminal experience for DC youth and has the potential to be one of the first and most influential experiences for young people to lead them on a path to a successful career. Apart from MBSYEP, DOES is funded to invest in youth during the rest of the year through the Year-Round Youth Programs. DOES spent over \$25 million on youth programming in FY2019 and yet the department has not completed a strategic plan as recommended by this Committee and independent evaluations for three years. This has been the top recommendation of the last three independent evaluations and in January 2018, the previous director stated that one was underway but has never been produced. Given the significant investment the District makes in youth programming, a comprehensive clear plan for program design and deployment of youth programs at DOES is necessary.

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<sup>58</sup> DC Auditor, “Less Than One-Fifth of First Source Provisions Have Been Effectively Implemented and the District Has Not Demonstrated Success in Hiring and Retaining District Employees,” April 19, 2018, available at <http://dcauditor.org/report/less-than-one-fifth-of-first-source-provisions-have-been-effectively-implemented-and-the-district-has-not-demonstrated-success-in-hiring-and-retaining-district-employees/> and DC Auditor, “DOES Lacks Policies and Procedures to Effectively Monitor D.C.’s First Source Program,” April 19, 2018, available at <http://dcauditor.org/report/does-lacks-policies-and-procedures-to-effectively-monitor-d-c-s-first-source-program/>.

<sup>59</sup> Committee on Labor and Workforce Development, “Report on B23-471, ‘Independent Compliance Office Establishment Act of 2019,’” January 29, 2020.

**5. Enhance transparency of DOES policies, data, and timely submission of reports**

**a. Develop and publish widely an agency policy manual.**

The Committee on Labor and Workforce Development and the public find it difficult to understand the full breadth of services available and methods for administering services at DOES. The lack of a policy manual for DOES services makes oversight and accountability arduous. District residents rely on DOES' published materials for pertinent information, such as what constitutes acceptable service from a government agency and course of action to air grievances. DOES should publish such a policy manual.

A comprehensible policy manual available to the public would provide consistent and clear guidelines for executing services. A strong example is the Department of Human Services' Economic Security Administration (ESA) Policy Manual which provides official instructions and the guiding principles for the implementation of ESA (formerly IMA) programs. The Manual provides front-line operations staff with clear, consistent policy standards for providing services. The Manual is available on the DHS website,<sup>60</sup> and is searchable. DOES should mirror the model of their sister agency with a well-developed and widely disseminated policy manual. The manual should include an overview of federal and local programs, basic rights and responsibilities of DOES staff and consumers, application processing, eligibility requirements, and program requirements. Furthermore, the manual should include appendices including acronyms, a glossary of terms, commonly used forms, case record organization, fact sheets, important links, policy manual changes, and grievance procedures. This will assist both prospective applicants and partner agencies to screen and refer individuals to the most suitable services. The recommended policy manual would also improve accountability and oversight of DOES program implementation.

**b. Submit required reports on time and complete per legislation.**

Delinquent reporting from DOES has been a challenge for years. The Committee does not always acquire mandated reports by the due date. As an important example, the Job Training and Adult Education Programs Act of 2012 (D.C. Code § 32-1771) states "the Department of Employment Services ("Department") shall transmit to the Council on a quarterly basis, and make available on the Department's website, a report on the outcomes associated with all local funding administered by the Department for job training or adult education purposes." This is a key report that could form the basis of the public's understanding of the services offered and outcomes of its investments in local taxpayer dollars. However, DOES submitted the required report between September 5, 2018 and April 21, 2020, six quarters behind the mandated timeline. The 2020 report, "Local Jobs Training Report: Fiscal Year 2019 (Quarter1-3)" included both FY2018 and FY2019

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<sup>60</sup> See Department of Human Services, "ESA Policy Manual," available at <https://dhs.dc.gov/publication/esa-policy-manual>.

information. The report did not fulfill the outcome measures mandated under the legislation and was incomplete.

Additionally, the Chair of this committee introduced the Workforce Development System Transparency Act of 2017. This legislation requires the WIC to develop an annual expenditure guide on all workforce development and adult education programs, across agencies, showing the program and vendor-level outcomes. The WIC must rely on sister agencies to provide the correct data in a timely fashion. Now law, the first guide (due in February 2019 but submitted in September 2019) lacked a great deal of outcomes data on DOES programs. The committee and public rely on data to review program performance and failure to submit information in a timely and exhaustive manner prevents accountability by the public and inhibits full evaluation of DOES performance. The Committee strongly encourages DOES to work collaboratively with the WIC in the future to ensure that the report is complete and timely.

## **C. PAID LEAVE**

### ***1. Agency Overreach Harms Vulnerable Communities.***

A paid leave program is usually one of the ways that a community helps to support families experiencing life-altering events like the arrival of a child or a serious health issue. Unexpectedly, the COVID-19 public health emergency began only a few months before July 1, 2020, the date when Universal Paid Leave benefits will become available to qualified District workers. More than 115,000 District workers are currently unemployed due to business slowdowns and closures resulting from the pandemic, not because the employee was at fault or because the employer will not have work for the employee in the future.<sup>61</sup> Nevertheless, those workers, including a number who might return to their jobs once the pandemic subsides, will be unable to draw paid leave benefits because they are not “currently employed” according to DOES.<sup>62</sup>

The Universal Paid Leave regulations state that an applicant must be “employed by a covered employer at the time of application” in order to be eligible to receive benefits.<sup>63</sup> However, the statute’s plain language permits an employee to claim benefits even if the employee has been separated from his or her most recent job at the time of the application.

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<sup>61</sup> Total claims as of June 17, 2020 according to Office of the Mayor, “Unemployment Data: Number of Claims”, available at: <https://coronavirus.dc.gov/page/unemployment-data>

<sup>62</sup> Laura Brown, “Testimony of Laura Brown Budget Oversight Hearing (Public Testimony) Department of Employment Services Committee on Labor & Workforce Development,” May 28, 2020, Attachment C of this report.

<sup>63</sup> D.C. Municipal Regulations Section 3500.1(c)(1)(A); DOES also addresses this in a fact sheet entitled “COVID-19 Frequently Asked PFL Questions,” available at: [https://does.dc.gov/sites/default/files/dc/sites/does/page\\_content/attachments/DOES\\_PFL\\_FAQs\\_Coronavirus.pdf](https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/DOES_PFL_FAQs_Coronavirus.pdf). (“Q. If an individual is unemployed due to COVID-19 and has not regained employment by July 1, 2020, would the individual be eligible to file a claim for PFL benefits on July 1? A. If the individual is unemployed before July 1, 2020, then they would not be eligible to file a claim for PFL benefits. An individual must be currently employed by a covered employer to be eligible to file a claim for PFL benefits.”)

The law specifies that employment need only have occurred during the last year, and not that the employee was employed *the day before* the application is submitted.

Universal Paid Leave was designed to be portable, meaning the employee retains the ability to use the leave upon switching to a new employer. Under other leave laws, benefits are tied to the individual's employer and if the individual leaves the job, the benefit expires. For example, D.C. Family and Medical Leave, which is unpaid, is only available to employees who have worked for their particular employer during the prior year. Before and since passing the Universal Paid Leave Act, the Council heard from witnesses who explained that workers who are in between jobs at the time a medical crisis occurs should not lose out on the benefit due to the unfortunate luck of bad timing. Others pointed out that employees' medical conditions may cause them to leave a job where they have no expectation of being reinstated.<sup>64</sup>

Accordingly, the Universal Paid Leave Act specifies that someone who worked for any small portion of the preceding calendar year would be able to take advantage of the benefit.<sup>65</sup> With high unemployment and the risk of serious illness due to COVID-19, the paid family leave system would normally be a welcome addition to the social safety net. However, the Committee expects that those receiving paid leave benefits will continue to be the workers who are already most well-equipped to weather financial hardships while people of color, especially Black and Latinx Washingtonians, will be further left behind.<sup>66</sup>

## ***2. Continue positive progress in onboarding and training Paid Leave staff.***

On July 1, 2020, the Department of Employment Services will begin to receive and review applications for Universal Paid Leave benefits. In the last two years, this Committee and the public have provided mostly positive feedback to DOES regarding the knowledge and commitment of Office of Paid Family Leave (OPFL) staff members. The agency's approach to recruiting, onboarding, and training paid leave staff has thus far yielded good results. The Committee urges DOES to double down on its positive record as it works to fill the remaining 27 vacancies in the OPFL and ensure that these workers meet the standard that has been set by the Director and the implementing team.

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<sup>64</sup> D.C. Code § 32-505 provides employees who work for an employer with 20 or more employees with a right to be reinstated following a period of FMLA leave but employees of smaller businesses do not have that right.

<sup>65</sup> An "eligible individual" is someone who has been "a covered employee during some or all of the 52 calendar weeks immediately preceding the qualifying event for which paid leave is being taken." D.C. Code § 32-541.01(6)(A); also, Because the benefit is based on the average weekly wages earned during the four-quarter period preceding the leave, applicants with limited work history and earnings would receive a minimal amount, disincentivizing claims for benefits by workers with little to no paid work history.

<sup>66</sup> Dozier, Kimberly, "As Washington, D.C. Weighs Reopening, African Americans in the Nation's Capital Brace for the Worst." *Time*, May 26, 2020, available at: <https://time.com/5842744/reopening-washington-dc-african-americans-coronavirus/>

### ***3. Create a flyer to help Universal Paid Leave claimants understand their rights.***

The agency's outreach to businesses in 2019 regarding employers' obligations under the Universal Paid Leave Act was excellent, encompassing town halls, business walks, a new public website, and branded print materials. According to the FY2019 DC Paid Family Leave Report for the third quarter, the agency's webinars reached more than 2,000 employers. The Committee hopes the program will build on this success with further outreach and education to communities expected to be most interested in using paid family leave when it becomes available on July 1, 2020.

Expectant parents and others who will use paid family leave in our city must navigate a maze of laws as they plan their leave period. In the District, this not only includes the Universal Paid Leave Law, but also the D.C. Family and Medical Leave Act, the Protecting Pregnant Workers Fairness Act, and the federal Family and Medical Leave Act.<sup>67</sup> DOES should develop materials that help workers become acquainted with the rights and protections that they have under these different laws. The agency should partner with the Office of Human Rights (which enforces the D.C. Family and Medical Leave Act and the Protecting Pregnant Workers Fairness Act) to create a high-quality flyer that details to whom each law applies, the limitations and rights under each law, and where to go for further information. A good template for this would be the "COVID-19 Scenarios and Benefits Available" document the agency created in March 2020 because it lays out common situations and which laws apply in what scenarios.<sup>68</sup> Under the Committee-proposed BSA subtitle "Universal Paid Leave Fund Amendment Act of 2020," (see Chapter IV.B.8 of this report) the agency has nearly \$2 million available which could be used for this purpose. By developing these interactive tools, the agency will help workers grow familiar with the DOES website, understand their rights, and ensure that workers receive consistent, accurate information.

### ***4. Build on existing relationships to inform the public about the program.***

Since the Universal Paid Leave Act was passed in 2016, the public, nonprofit policy organizations, employers and business alliances, the healthcare community, and legal advocacy groups have all come forward to provide input about how the District can launch one of the best paid leave programs in the country. When the program launches in July, DOES will be unable to conduct much of the in-person outreach that has been so important for letting the public know about the Paid Leave program. The Committee hopes that DOES will rely on these important stakeholders for help in getting the word out about the Paid Leave program.

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<sup>67</sup> D.C. Code §32-501 et seq. (Family and Medical Leave), D.C. Code §32-541.01 et seq. (Universal Paid Leave), D.C. Code §32-1231.01 et seq. (Reasonable Accommodations for Pregnant and Nursing Workers), and 29 USC §2601 et seq. (Family and Medical Leave).

<sup>68</sup> DC Department of Employment Services, "COVID-19 Scenarios & Benefits Available", available at: [https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/publication/attachments/COVID19\\_DOES\\_Scenarios.pdf](https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/publication/attachments/COVID19_DOES_Scenarios.pdf)

The agency's experience during the COVID-19 public health emergency this year has shown that there are many opportunities for improvement in its public-facing materials and customer relations processes. The Committee hopes that DOES will draw on the lessons it learned through responding to the health emergency in order to also improve the Paid Leave program. For example, the public clamored when it realized that unemployment insurance (UI) benefits applications could not be submitted using smart phones. And with the usual free public internet access unavailable (libraries, AJCs), advocates asked DOES to accept UI applications over the phone. The Committee anticipates that DOES will provide these alternate options to Paid Leave applicants in order to minimize the disruption caused by the public health emergency and stay-at-home orders. (Please see Chapter II.C.2.b.A and Chapter IV.B.5 of this report for more information on the Unemployment Insurance recommendations.)

#### **D. LABOR STANDARDS: Office of Wage-Hour (OWH)**

As our city contends with the economic effects of the COVID-19 pandemic, it is essential that we identify opportunities to streamline the administration of laws enforced by our executive agencies. The Committee has identified several OWH practices that can be modified in FY2021 to ensure that workers' claims are assessed and resolved more efficiently, allowing OWH to accomplish more with existing resources.

##### ***1. Eliminate delays in issuing notices of complaints to employers.***

At the March 6, 2020, performance oversight hearing, the DOES Director stated that once a wage-hour complaint is filed with OWH, the agency may take up to 45 days before requesting a response from the employer. Unfortunately, a languishing complaint can mean the escalation of tensions in the workplace, the accumulation of violations against an individual or a group of workers, or an employee abandoning a valid claim, not to mention the erosion of workers' faith in government system that is supposed to help them.

At the performance oversight hearing, the Director explained that the agency spends these 45 days collecting information from the complainant. If true, this is an extraordinary delay in the administrative process.<sup>69</sup> The law lists five things that an employee must provide to the agency in order to initiate their complaint.<sup>70</sup> Four of these are fairly brief (contact information, a signature, the allegation, and the date it occurred); the complainant also has to provide information sufficient for the agency to identify the employer.<sup>71</sup> There may be instances where the complainant needs the assistance of OWH

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<sup>69</sup> Contrast this with unemployment insurance compensation determinations, which the relevant DOES division is generally able to make in 15 or fewer days.

<sup>70</sup> D.C. Code §32-1308.

<sup>71</sup> Employer contact information can be obtained in a variety of ways, including a review of employer quarterly reports to the unemployment system or the Universal Paid Leave system, both housed within DOES; business registration records maintained by the Department of Consumer and Regulatory Affairs or by utilizing a commercially available investigative database such as Thomson Reuters' CLEAR; DOES also typically receives a five-page complaint form detailing the circumstances of the violation from complaint filers, although this Committee has previously recommended against such using such a cumbersome complaint form.

to articulate the violation they experienced, since workers often fail to grasp the breadth of their rights under the law.<sup>72</sup> But even a follow-up telephone call to gather more facts from the complainant can be placed and returned in a few days. The agency should notify the employer within three or four business days of receiving the complaint, and need not wait for the complainant to send all of his or her evidence to the agency before doing so. During the 20-day period when DOES is awaiting the employer response to the complaint, the agency can collect additional information from the employee about what happened to him or her that led to the complaint.

## ***2. Demand evidentiary documents from employers.***

The agency must also resolve complaints more efficiently. One way to do this is by actively requesting the time and pay records employers are already required to maintain under District law because these can support or refute the worker's claims. Right now, an employer may or may not include evidence supporting their position even though the law says that employer have to keep certain records for this exact purpose. The Committee recommends that if the employer doesn't provide these records during a DOES investigation, DOES find that the employee has sufficiently proven that the violation happened as the employee alleged (i.e., met their "burden of proof").<sup>73</sup>

## ***3. Conserve agency time and finances by reducing non-wage-hour complaint filings.***

The Committee is concerned that 250 complaints -- nearly 40 percent -- of 641 complaints filed with OWH in FY2019 did not move past the complaint filing stage.<sup>74</sup> At the performance oversight hearing on March 6, the agency Director was unable to provide an analysis of why so many complaints are closed without an investigation. The Director suggested that some complaint issues resolve before the agency moves the complaint forward and that, in other cases, claims filed at DOES are actually enforced by a sister agency (such as the Office of Human Rights), or by the federal government. In order to improve overall efficiency of the division, OWH should begin recording the reasons why cases are closed in order to better determine the reason for so many dropped complaints. This could easily be done for a preliminary period of three months in order to begin to identify patterns. Then, the agency could proactively prevent improper filings by updating website information or taking other measures, enabling OWH staff to focus their efforts on investigating and resolving only cases involving wage-hour matters.

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<sup>72</sup> D.C. Code §32-1308.01(b)(3) requires the agency to request additional information from the complainant to "amend, clarify, or amplify" allegations.

<sup>73</sup> D.C. Code §32-1308.01(e)(4) provides, in part, that the burden of proof "... shall rest upon the complainant, but shall shift to the respondent when" the respondent's records "are imprecise, inadequate, missing, fraudulently prepared or presented, or are substantially incomplete."

<sup>74</sup> Department of Employment Services, "Responses to Fiscal Year 2019-2020 Performance Oversight Questions," February 7, 2020, Response to Question 48; available at: [https://dccouncil.us/wp-content/uploads/2020/02/DOES-PO-Questions-2020\\_Final-Response.pdf](https://dccouncil.us/wp-content/uploads/2020/02/DOES-PO-Questions-2020_Final-Response.pdf)

***4. Require employers to provide the Notice of Hire form to their employees, to prove they have provided it, and to pay penalties when they do not.***

DC law requires employers to provide a Notice of Hire form to all workers when they start a new job and whenever any of the information on the form changes, such as when there is a minimum wage increase.<sup>75</sup> As our local economy emerges from the economic effects of the COVID-19 pandemic, it is important that workers returning to the labor force after long periods of unemployment are provided with this written record of the basic terms of their work.

The Notice of Hire form serves to set common expectations for the terms of employment: the employer's name, address(es), telephone number, as well as how much the employee will be paid hourly, what commission or other non-hourly payment rates apply, the regular payday set by the employer, whether the employee is classified as exempt from certain laws (such as overtime), and the tip-sharing policy for tipped workers. According to worker advocates who speak with hundreds of local DC workers each year, as well as workers with whom the Committee has spoken, many—if not most — employers in our city do not provide this form to their workers. This unfortunately makes it easy for the employer to unilaterally change pay rates, tip pooling terms, or improperly classify their employees at any time without reproach. It also hinders the agency's ability to investigate whether an employer has set lawful employment terms because there is no record to rely on to see what those employment terms were.

Each and every time a worker brings a wage and hour case to the agency, DOES should demand that the employer provide the agency with proof that Notice of Hire forms were given to the employee. The agency can review the form to see what the employer and employee agreed to at the time of hire, and use it to resolve the dispute. If an employer cannot produce this document and proof the completed form was provided to the worker, the agency should accept an employee's allegations as true. DOES should also always ask workers who bring a claim if their employer has provided the form to them because the form may be helpful evidence for their case. The agency must also impose a \$500 penalty on an employer for each employee who has not been provided with the Notice of Hire form.<sup>76</sup> This will underscore the importance of this document and incentivize the employer to use it in the future.

***5. Address retaliation complaints the week they are filed.***

DOES must begin to act immediately when a worker brings the agency a complaint alleging retaliation, rather than treating such charges with the methodical, but slow, pace it uses for all other complaints. Retaliation such as demotion, suspension, or termination causes serious financial hardship to an individual, but it can also instill fear in other workers

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<sup>75</sup> D.C. Code §32-1008(c) details what the Notice must include and when it must be provided.

<sup>76</sup> D.C. Code §32-1011(d)(1)(e) provides that an employer is liable to pay \$500 for each failure to provide each employee the written notice as required by § 32-1008(b)(c).



who observe it happening and don't see their local wage-hour enforcement office doing anything about it.<sup>77</sup>

The Committee heard at the March 4, 2020, performance oversight hearing about a worker who had experienced retaliation because he had inquired with his employer about his right to paid sick leave. This likely violated District law.<sup>78</sup> At that same hearing, worker organizations DC Jobs with Justice and the Restaurant Opportunities Center-DC (ROC-DC) urged the agency to act more quickly when a worker believes they have been retaliated against for exercising their rights under the law.<sup>79</sup> We agree that it is imperative that the agency step up its efforts when it comes to instances of retaliation in the workplace by acting more quickly on retaliation allegations and funneling these issues to the most experienced case handlers.

According to experts in strategic enforcement, the best chance someone has of returning to their job after being retaliated against by their employer is when the enforcement agency intervenes close in time to the retaliation.<sup>80</sup> According to Director Unique Morris-Hughes, the agency strives to address retaliation charges within 20 days of a complaint's receipt. This is too long when the stakes involve a worker's loss of a paycheck or a job. DOES must escalate for immediate review (within 24 or 48 hours) any case in which a worker claims their employer has suspended or fired them due to assertion of their rights under DC law.

Complaints alleging retaliation can be prioritized for quick, effective resolution without additional cost to the agency by enlisting the most qualified OWH staff. In FY2019, DOES only received 20 complaints alleging retaliation and the majority of these went unresolved. With so few retaliation complaints, the agency can adopt this recommended change in order to address retaliation more quickly without a need for additional personnel or funding, while helping improve outcomes for the most egregiously harmed workers. Ensuring that the most knowledgeable staff in the agency quickly review the workers' claims will give the worker confidence in the agency and put the employer on notice that any further action against the employee will risk charges from DOES. The agency should use its authority to get the business owner on the phone, get the employer's side, and negotiate the employee's return to work when it appears the employer was in the wrong. Even where such intervention is unsuccessful or the allegation unfounded, the employee's colleagues in the workplace will have observed that retaliation in their workplace does not go unnoticed by DOES.

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<sup>77</sup> Round, Jen. Tool 1: Complaints, Intake, and Triage, August 2018, available at:

[https://www.clasp.org/sites/default/files/publications/2018/09/2018\\_complaintsintakeandtriage.pdf](https://www.clasp.org/sites/default/files/publications/2018/09/2018_complaintsintakeandtriage.pdf)

<sup>78</sup> D.C. Code §32-531.08 provides that “[a]n employer shall not discharge or discriminate in any manner against an employee because the employee” complains to the employer, files a complaint alleging a violation, or informs anyone about their rights under the sick and safe leave law.

<sup>79</sup> See Archived Video, March 4, 2020, “FY2020 DOES Performance Oversight Hearing” beginning at 1:08:52.

<sup>80</sup> David Weil, “Improving Workplace Conditions Through Strategic Enforcement,” May 1, 2010, available at <https://ssrn.com/abstract=1623390>.

**6. Do not constrain employees from discussing settlement terms and expand the scope of settlement agreements.**

The Committee recognizes that settlement can often be the best way to resolve a dispute because it spares the parties and DOES the time and resources they would otherwise dedicate to the formal review process. Efficient resolution of complaints can help keep agency costs low, but can sometimes mean that not every problem comes to light during an investigation. Therefore, going forward, OWH should strengthen its compliance efforts in two ways. First, DOES must never permit a settlement agreement to stop an employee from being able to speak freely about their experience in the workplace. Second, DOES should look to settlement agreements entered into by the Office of Attorney General as useful guides for how DOES's settlements can provide forward-looking relief to groups of workers who have experienced violations.<sup>81</sup>

DOES works to help parties find a satisfactory resolution of a worker's wage-and-hour claim. If the worker and employer agree to settle without the agency reaching a formal determination, DOES drafts a settlement agreement stating that the employer agrees to pay the worker and, in exchange, the worker agrees not to move forward with their complaint. It is the Committee's understanding that DOES drafts the agreement on agency letterhead but that DOES intends for the agreement to reflect the obligations that the two parties have to each other. The agreement is signed by the two parties.

It has come to the Committee's attention that some agreements contain the following provision: "It is further agreed by the parties that no party shall divulge the terms of this agreement to any person other than to a spouse, tax professional or as otherwise required by law." This term interferes with employees' rights and impedes the agency's ability to find violations of the laws it enforces. The Director told the Committee at the oversight hearing that this term is only included when the parties agree to it. This overlooks the power and information differential between an employer and an employee which makes it harder for the employee to speak up for what they want in the settlement. For example, the employer will likely have had more experience negotiating and signing contracts and their terms, and may even be represented by an attorney. The employer also retains the ability to control all of the terms of the employee's work and, ultimately, their ability to earn a living.

As the agency charged with overseeing employees' workplaces, wages, and working hours, DOES should be eager for workers to share their experiences with one another in order to get the word out about workers' rights. Silencing an employee in a settlement sanctioned by DOES impedes the agency from finding out about ongoing violations by an employer that was already investigated or with previously undiscovered violations. It should also be a red flag to the agency when an employer wants to muzzle a wronged worker from being able to speak about their experience, and in such a case, the agency should take extra care to craft compliance terms that will ensure that the employer

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<sup>81</sup> See, for example, *District of Columbia vs. Power Design, Inc. and JVA Services, LLC* settlement available at <https://oag.dc.gov/release/ag-racine-announces-national-electrical-contractor>

fully complies with the law going forward. Finally, the agency must *never* permit a settlement that includes the provision that an employee cannot divulge agreement terms to be reduced to an administrative order. Reducing it to an administrative order as allowed by section § 32–1308.01(d)(1) of the D.C. Code, would make the problematic settlement term a direct order from the government. Such an order would amount to the government inhibiting private speech in conflict with the First Amendment to the United States Constitution.<sup>82</sup>

It is imperative that settlement terms explicitly state what the employer’s obligations are, and that DOES use the settlement document to secure the employer’s agreement to fulfill those obligations. Shockingly, when DOES determines that an individual employee’s rights were violated, the agency does not require employers to agree to bring their entire workplace into compliance with the law. It should. The agency should look to settlements entered into by the Office of the Attorney General as a model for its own agreements. In the *District of Columbia v. Power Design, Inc. and JVA Services, LLC* settlement, for example, the District required the employer to bring their workplace policies and practices into compliance with the law upon execution of the settlement. The settlement reads: “PDI shall institute or continue to implement policies and procedures sufficient to ensure compliance with [all applicable District worker protection laws].” A term like this places the burden on the employer believed to or found to have violated wage-and-hour laws to correct outstanding violations without the need for further investigative or enforcement efforts by the agency. Even if a settlement is based on an individual, rather than workplace-wide, violation, this term will make it more likely that the employer corrects other violations throughout the workplace. In the event an employer has not learned its lesson, the District can sue the employer both for the underlying violation and for breach of contract.

### ***7. Improve wage-hour complaint form***

Last year, the Committee urged DOES (1) to remove the notarization language from its complaint forms and (2) revise these forms according to recommendations from The Lab DC and suggestions from the advocacy community. The online complaint form has not yet been revised to exclude the problematic notary language.<sup>83</sup> The complaint form was criticized for not being easily accessible via mobile devices, difficult to read because it includes both English and Spanish instructions in red and black ink, and for its length. The agency should revisit the recommendations.

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<sup>82</sup> D.C. Code section 32-1308.01(d)(1) states that the agency may reduce the terms of a conciliation agreement to an administrative order enforceable by the Mayor or the complainant.

<sup>83</sup> Response to question 47 reads: “The Office of Wage-Hour has removed all language referencing assignment from all claim forms... The online form, however, is in the process of being updated to reflect this change.” DC Department of Employment Services, “Responses to Fiscal Year 2019-2020 Performance Oversight Questions.”

### 3. FY 2021-2026 CAPITAL BUDGET

Project No	Project Title	Fund Detail	Fund	Allotment Scenario	Unspent Allotment as of 5-16-20	Allotment as of 5-16-20	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	6-yr Total		
<b>DEPARTMENT OF EMPLOYMENT SERVICES (CFO)</b>															
PFL08C	PAID FAMILY LEAVE IT APPLICATION	304	Short-term Bonds	Available Balances	43,552,096	43,536,700	0	0	0	0	0	0	0		
				Committee's FY21 Recommendation											
		314	Restricted Paygo	Available Balances	10,164,709	5,281,917	0	0	0	0	0	0	0	0	
				Committee's FY21 Recommendation											
<b>PFL08C Total</b>					<b>53,716,805</b>	<b>48,818,617</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		
SNTRCC	DC INFRASTRUCTURE ACADEMY	300	GO/IT Bonds	Mayor's Proposed FY21 CIP Change	0	0	0	26,473,850	14,255,150	0	0	0	40,729,000		
				Available Balances	7,476,858	7,476,858	0	0	0	0	0	0	0	0	
				Committee's FY21 Recommendation											
		301	Paygo	Approved FY20 CIP for FY21-25	0	0	2,300,000	4,300,000	4,300,000	0	0	0	0	10,900,000	
				Mayor's Proposed FY21 CIP Change	0	0	(2,300,000)	(4,300,000)	(4,300,000)	0	0	0	0	(10,900,000)	
		306	Private Donations	Available Balances	3,635,000	3,635,000	0	0	0	0	0	0	0	0	
				Committee's FY21 Recommendation											
				<b>SNTRCC Total</b>			<b>11,111,858</b>	<b>11,111,858</b>	<b>0</b>	<b>26,473,850</b>	<b>14,255,150</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>40,729,000</b>
UIM02C	UI MODERNIZATION PROJECT-FEDERAL	300	GO/IT Bonds	Available Balances	(100,900)	(749,166)	0	0	0	0	0	0	0		
				Committee's FY21 Recommendation											
				Approved FY20 CIP for FY21-25	0	0	7,450,000	0	0	0	0	0	7,450,000		
		304	Short-term Bonds	Mayor's Proposed FY21 CIP Change	0	0	(5,450,000)	5,450,000	0	0	0	0	0	0	
				Available Balances	21,647,605	12,279,552	0	0	0	0	0	0	0		
				Committee's FY21 Recommendation											
		350	Federal HTF	Available Balances	6,639,899	6,639,899	0	0	0	0	0	0	0	0	
				Committee's FY21 Recommendation											
				<b>UIM02C Total</b>			<b>28,186,605</b>	<b>18,170,286</b>	<b>2,000,000</b>	<b>5,450,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>7,450,000</b>
				<b>CFO Total</b>			<b>93,015,268</b>	<b>78,100,761</b>	<b>2,000,000</b>	<b>31,923,850</b>	<b>14,255,150</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>48,179,000</b>

The Mayor's proposed budget for DOES includes \$2,000,000 in capital funds for FY2021 with a six-year total for FY2021-FY2026 of \$48,179,000. The capital improvement plan includes \$93,015,268 in unspent allotments which the Mayor proposes to reduce by \$16,500,000 through the Supplemental Budget, leaving a total of \$78,100,761 in available funding.

#### Committee Analysis and Comments

##### 1. *Analyze whether DC Infrastructure Academy is best housed at 2500 Benning Road NE or can be located east of the River*

The Mayor has proposed relocating the DC Infrastructure Academy from the existing location on Pomeroy Street, SE (Ward 8) to 2500 Benning Rd, NE (Ward 5) in the old Spingarn High School. While the proposal will provide a larger operating facility for the infrastructure industry, the location is west of the Anacostia River and public transportation is limited to WMATA bus or DC Streetcar. The Committee is supportive of the DC Infrastructure Academy finding a new home but strongly recommends DOES continue searching for a location East of the River. The Committee asked the Executive multiple times what their process was to select Spingarn, including the City Administrator and the director of DOES. No clear answer was provided.

Ideally, DCIA will be located in Ward 8 where unemployment, which has the highest unemployment rates historically. Access to public transportation and affordability of transportation is a barrier for families East of the River. The Committee is committed to reducing barriers. Therefore the Committee is not reducing the capital funds associated with the Academy's new home, but the Committee strongly recommends DOES review all options east of the River to locate a facility in Ward 8 they can properly renovate, and at a pace that allows the District enough time to create a better plan for how to operate the Academy over the coming years. The Committee recommends amending the project description in the Capital Improvement Plan to read as follows:

[current project description] This project will support build-out of the DC Infrastructure Academy, a program that will focus on occupational skills training and work-based learning initiatives related to the infrastructure industry, including the utility, energy efficiency, transportation and logistics sectors. At the Academy, industry partners, training providers such as, labor unions and trade associations, will offer a diverse skills training allowing District residents the tools to begin and sustain careers in the infrastructure industry.

[new text to add] Prior to expending any funding on design for the 2500 Benning Road NE location, the CF0 and AM0 must thoroughly review any and all options for locations east of the Anacostia River. A preference should be given to those located in Ward 8 with close access to both Metrorail and Metrobus stations.

## ***2. Implement the UI Modernization Capital Project Expeditiously***

The Committee commends DOES for its efforts to respond to the public health emergency that began in March 2020. The agency mobilized quickly to increase its staffing, update its online system, introduce and implement changes to the law, and provide guidance to the public all while also adapting to life during a pandemic. The DOES employees and volunteers who contributed to this effort deserve sincere thanks from gratitude of anyone who lives and works in our city.

### **Unemployment Insurance System Modernization**

The past months have shown in a way never anticipated the urgency and importance of having a modern unemployment insurance (UI) delivery system. One year ago this Committee expressed its concern that “shifting timelines, changing budgets, a lack of a detailed spending plan, contradictory information, and little progress to date” on the capital project modernizing the UI system would not be completed on time.<sup>84</sup> The District was not unique amongst its peer states; in fact, most state unemployment systems are in desperate need of updating. Unfortunately, DOES lost its opportunity to proactively equip itself for a crisis by updating its online UI application system and instead could only reactively work to address the new challenges that the pandemic brought with it.

The UI modernization project entails development of new employer-facing and employee-facing portals that will serve the needs of these different audiences as well as allow for the agency to access this information. The project was first funded in 2012 and

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<sup>84</sup> See committee on Labor and Workforce Development, “Report and Recommendations of the Committee on Labor and Workforce Development on the Fiscal Year 2020 Budget for Agencies Under Its Purview,” May 1, 2019, p. 82-84, available at [https://d3n8a8pro7vhm.cloudfront.net/silverman/pages/466/attachments/original/1557953017/FY20\\_LW\\_D\\_Budget\\_report\\_submitted\\_version\\_with\\_techncial\\_correx\\_05-15-19.pdf?1557953017](https://d3n8a8pro7vhm.cloudfront.net/silverman/pages/466/attachments/original/1557953017/FY20_LW_D_Budget_report_submitted_version_with_techncial_correx_05-15-19.pdf?1557953017).

is expected to cost \$45 million as of the FY2021-2026 Capital Improvement Plan.<sup>85</sup> There are two main components of the project: one is improving the benefits front-end (claimant portal) and benefits back-end systems (used by the agency); and the second is redoing the tax system back-end (used by the agency).<sup>86</sup> As costly as the modernization project is, the contracts to maintain the outdated UI systems at DOES are much more costly. One of the key justifications for the modernization project was the agency's desire to reduce its dependency on external contractors but, thus far, the project has only served to prolong those relationships and attendant costs.<sup>87</sup>

## Web Portal

A significant part of the modernization project is the complete overhaul of the benefits system, which is the online portal where applicants for UI input their personal and work history information in order to qualify for benefits. At the June 4 budget oversight hearing, the DOES Director indicated that launching an updated benefits system is one of the agency's top priorities. DOES must ensure that the public's concerns are addressed by the new system through including the following functions: (1) Operate on all web platforms and mobile devices; (2) Be accessible to people with disabilities; (3) Secure employer and employee data; (4) Function with minimal errors; and (5) Be suitable for efficient updates according to legal requirements. (The Committee has recommended a Budget Support Act subtitle to require many of these elements; see Chapter IV.B.5.)

According to the agency's 2018 report to the U.S. Department of Labor, one half of the modernization project – updating the public-facing online website where applicants file for benefits (the “claimant portal”) – was to be completed by the first quarter of 2019.<sup>88</sup> In last year's oversight responses, the agency stated that its UI claimant portal would be completed by July 2019, but that target was also missed.<sup>89</sup> Unfortunately, the COVID-19 pandemic and resulting UI claims slammed the agency beginning in March 2020, exposing many of the system's shortcomings and emphasizing again the dire need for modernization.<sup>90</sup>

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<sup>85</sup> Government of the District of Columbia, “FY 2021 Proposed Budget and Financial Plan, Volume 5, FY 2021 to FY 2026 Capital Improvements Plan,” page 50-CF0, available at: <https://app.box.com/s/19dd9zxaok2193b6p985dolsi9p8c366>

<sup>86</sup> The tax front-end was revised with operating funds under a contract signed in 2014, although according to reports to the committee, the original timetable transitioned from 1 year to several years after errors in the first launch took years to resolve. This is the existing Employer Self-Service Portal (ESSP).

<sup>87</sup> Government of the District of Columbia, “FY 2021 Proposed Budget and Financial Plan, Volume 5, FY2021 to FY2026 Capital Improvements Plan,” page 50-CF0

<sup>88</sup> Department of Employment Services, “Responses to Fiscal Year 2018-2019 Performance Oversight Questions,” February 15, 2019, Attachment to Q137, page 3, available at <http://dccouncil.us/wp-content/uploads/2019/02/DOES-2019-PO-responses-02-18-19.pdf>.

<sup>89</sup> DC Department of Employment Services, “Responses to Fiscal Year 2018-2019 Performance Oversight Questions,” February 15, 2019, p. 60-63.

<sup>90</sup> Fenit Nirappil, “Delays in overhauling D.C. unemployment site add to turmoil of coronavirus layoffs,” *Washington Post*, April 2, 2020, available at: [https://www.washingtonpost.com/local/dc-politics/delays-in-overhauling-dc-unemployment-site-fueled-turmoil-in-covid-19-crisis/2020/04/02/ebe7d81e-73ad-11ea-87da-77a8136c1a6d\\_story.html](https://www.washingtonpost.com/local/dc-politics/delays-in-overhauling-dc-unemployment-site-fueled-turmoil-in-covid-19-crisis/2020/04/02/ebe7d81e-73ad-11ea-87da-77a8136c1a6d_story.html); Mitch Ryals, “A Delayed Makeover of D.C.’s Unemployment Website

The website has to be made accessible for all web browsers and devices. The current UI system is only optimized for Internet Microsoft Explorer even though that internet browser was last updated in 2013.<sup>91</sup> Present-day users with Safari, Mozilla Firefox, Chrome, or Microsoft Edge are unable to view the landing webpage as intended. Instead, a Safari user, for example, has to manually scroll to the right to view the right half of the text on the page. DOES frequently told claimants to use Internet Explorer and not another browser. These difficulties are exacerbated for residents who can only use smartphones or tablets to complete their application, especially since no public computers were available.<sup>92</sup> A fully modernized system will allow for access via Android and Apple smartphones as well as most tablets (such as an iPad).

The Committee encourages DOES to ensure that applicants who have disabilities can use the online application system as required by the Americans with Disabilities Act.<sup>93</sup> As participation in the traditional workforce increases for the disability community, more of these workers will also turn to the UI system for support when they have experienced a job loss.<sup>94</sup> Therefore, the new website must be made accessible to people with vision, hearing, and other disabilities through compatibility with screen readers, magnifiers, and keyboard commands.<sup>95</sup> The site must also be capable of routine updating so that when software is improved, these vital accessibility tools can still be deployed on the website. DOES should actively engage with the local disability rights community to engage these workers in user testing of the benefits portal to ensure true accessibility.<sup>96</sup>

The UI system must ensure that employer and worker data be protected in transmission (“in the cloud”) and when it’s being accessed inside the agency. Employers required to report employee and wage data to the agency must be assured that their submissions are not vulnerable to hacking or data corruption. Similarly, employees must be assured that personally identifiable information, including Social Security numbers and bank account information, cannot be accessed during or after they have applied for UI benefits. The process requires applicants to email copies of sensitive documents (such as a driver’s license and Social Security card), making those applicants susceptible to identity

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Impacts Tens of Thousands of Residents,” *Washington City Paper*, April 2, 20202, available at: <https://www.washingtoncitypaper.com/news/loose-lips/article/21125964/a-delayed-makeover-of-dcs-unemployment-website-impacts-tens-of-thousands-of-residents>

<sup>91</sup> [https://en.wikipedia.org/wiki/Internet\\_Explorer\\_11](https://en.wikipedia.org/wiki/Internet_Explorer_11)

<sup>92</sup> Aaron Smith, “U.S. Smartphone Use in 2015,” April 1, 2015, available at: <https://www.pewresearch.org/internet/2015/04/01/us-smartphone-use-in-2015/>

<sup>93</sup> U.S. Department of Justice Civil Rights Division, “ADA Best Practices Tool Kit for State and Local Governments” available at: <https://www.ada.gov/pcatoolkit/chap5toolkit.htm>.

<sup>94</sup> U.S. Bureau of Labor Statistics, “Employed persons by disability status, occupation, and sex, 2019 annual average,” available at: <https://www.bls.gov/news.release/disabl.t03.htm>

<sup>95</sup> Allen Smith, “Can People with Disabilities Use Your Careers Website?” October 22, 2018, available at: <https://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/Can-People-with-Disabilities-Use-Your-Careers-Website.aspx>

<sup>96</sup> Two potential resources for this are the American Council of the Blind and the Washington Lawyers’ Committee.

theft.<sup>97</sup> DOES must implement stronger security around the submission of documents as well as ensure that personally identifiable information is only accessible by those employees who must review it related to their job functions.

According to callers to the Council during the COVID-19 pandemic, users experience several errors when attempting to apply for or certify benefits. For example, some users have had their application freeze before they are finished filling in their information, which means they have to reboot their browser and start their application all over again. Others have lost their passwords and, instead of being able to reset them via email, must wait for the agency to reset them. Finally, an overwhelming number of people who spoke to the Council were frustrated that they could not simply find out the status of a claim. In many cases workers just wanted information about whether their claim was accepted and how long it would be before they received a response or payment. The new system should save applicants' information as they progress through the system, send a confirmation email that the claim was received, provide status updates as the claim moves through the process, and state how long it will be until they get a decision.<sup>98</sup> If Domino's Pizza can provide this service to its customers, so can the District.<sup>99</sup>

Finally, the pandemic illustrated how important it is to have a UI system that can be customized in order to comply with changing federal and District laws. A proprietary UI system like the one DOES currently operates constrains the universe of potentially qualified bidders. But it is in our interest to cast a wider net when hiring a contractor to develop this vital system. Depending on the complexity of any problem or future circumstances that may arise, relying on vendors with specific experience with the District's proprietary system can result in delay if the original contractor is not immediately available or lacks capacity at the time a need arises. In contrast, modern systems based on modern coding languages are much more easily modified to meet changing needs. Therefore, such a system would better suit a system like UI which will always have to conform with the changing requirements prescribed the federal government.

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<sup>97</sup> Eric Flack, "DC eyes unemployment changes after WUSA9 investigation highlights privacy gaps," April 14, 2020, available at: <https://www.wusa9.com/article/news/health/coronavirus/identity-theft-dc-unemployment-privacy-concerns/65-d7c54857-6e43-4384-8450-c2935c5289ff>

<sup>98</sup> This addition to the web portal would also help reduce the number of callers using the phone line to find out the status of their claims.

<sup>99</sup> See for example [https://www.huffpost.com/entry/dominos-pizza-tracker\\_b\\_5947734](https://www.huffpost.com/entry/dominos-pizza-tracker_b_5947734)



#### **4. SUMMARY OF COMMITTEE RECOMMENDATIONS**

##### **a. Fiscal Year 2021 Operating Budget Recommendations**

Please see Attachment A for all details.

1. Maintain funding for workforce development programmatic needs as proposed
2. Fund and implement the DC Infrastructure Academy Employer Engagement Amendment Act (BSA Subtitle)
  - Increase: Add Industry Committee Coordinator (1 FTE), Grade 12 in Program 4000 (Workforce Development), Activity 4260 (DC Infrastructure Academy): \$129,462 in recurring PS funds
3. Fund and implement the School Year Internship Pilot Program Amendment Act of 2020 (Budget Support Act subtitle).
  - Increase: Program 4000 (Workforce Development), Activity 4810 (Year Round Youth): \$915,669 (\$28,226 in recurring PS funds; \$366,198 in one-time PS funds; and \$521,245 in one-time NPS funds), to be placed in Activity 4810.
4. Fund and implement public education campaign of the Tipped Wage Worker Fairness Amendment Act of 2018 (Law Passed Subject to Appropriations, B22-913)
  - Increase of \$100,000, in Office of Wage Hour (Activity 3200), CSG 40.
5. Ensure that monies in the District of Columbia Jobs Trust Fund are spent in the manner required by law.
6. Enhance budgets for job training that leads to occupational credentials in high-demand fields

Workforce Development (Program 4000)

- \$296,000 to the DC Infrastructure Academy (Activity 4260) CSG 50 in one-time NPS funds, to provide training for Commercial Drivers Licenses. The Committee notes that this budget will support the provision of work readiness and CDL training for 29 individuals if wage subsidies are provided or 48 people if all funds are used for training.
- \$300,000 to the DC Infrastructure Academy (Activity 4260) CSG 50 in recurring NPS funds, to provide training in Information Technology. The Committee notes that this budget will support the provision of work readiness and IT training for 27 individuals if wage subsidies are provided or 36 people if all funds are used for training.

7. Right size the budgets of overhead and non-programmatic budget lines that have been overbudgeted and/or underspent

- Decrease funding: Program 1000 (Agency Management), Activity 1040 (Information Technology): *decrease* CSG 20 (Supplies and Materials) by \$12,650 in recurring funds.
- Decrease funding: Program 1000 (Agency Management), Activity 1030 (Property Management) *decrease* CSG 40 (Other Service and Charges) by \$9,190 in recurring funds.
- Decrease funding: Program 4000 (Workforce Development), Activity 4200 (Program Performance Monitoring) *decrease* CSG 20 (Supplies and Materials) by \$3,013 in recurring funds.
- Decrease funding: Program 4000 (Workforce Development), Activity 4300 (Office of Apprenticeship Information) *decrease* CSG 20 (Supplies and Materials) by \$1,318 in recurring funds.
- Decrease funding: Program 4000 (Workforce Development), Activity 4510 (First Source) *decrease* CSG 20 (Supplies and Materials) by \$1,814 in recurring funds.
- Decrease funding: Program 4000 (Workforce Development Activity 4900 (State-wide Activities) *decrease* CSG 40 (Other Service and Charges) by \$52,095 in recurring funds.
- Decrease funding: Program 4000 (Workforce Development), Activity 4200 (Program Performance Monitoring) *decrease* CSG 41 (Contractual Services- Other) by \$10,000 in recurring funds.
- Decrease funding: Program 4000 (Workforce Development), Activity 4250 (Local Adult Training) *decrease* CSG 41 (Contractual Services- Other) by \$60,012 in recurring funds.
- Decrease funding: Program 4000 (Workforce Development), Activity 4500 (Employer Services) *decrease* CSG 41 (Contractual Services- Other) by \$21,131 in recurring funds.
- Decrease funding: Program 4000 (Workforce Development), Activity 4810 (Year-Round Youth) *decrease* CSG 41 (Contractual Services- Other) by \$180,622 in recurring funds.
- Decrease funding: Program 5000 (State Initiatives), Activity 5200 (DC Career Connections) *decrease* CSG 20 (Supplies and Materials) by \$3,800 in recurring funds.
- Decrease funding: Program 5200 (DC Career Connections), Activity 5200 (DC Career Connections) *decrease* CSG 40 (Other Service and Charges) by \$111,505 in recurring funds.

8. Sweep funds from available SPR balances

- \$499,424 from Fund 612, UI Interest and Penalties
- \$230,000 from Fund 619, DC Jobs Trust Fund

## 9. Reduce vacant positions

The Committee has identified the following vacant positions to reduce. The Committee notes that in Year Round Youth, the Mayor's proposed budget included an additional 6 FTEs. The Committee proposes to reduce that by 4.

### Agency Management

- \$75,424 in PS from CSG 11 and 14 and 1 FTE, Public Affairs Specialist, position 75065 from Communications (Activity 1080).

### Workforce Development

- \$137,962 in PS from CSG 11 and 14 and 1 FTE, Program Manager, position 22198 from Year-Round Youth (Activity 4810)
- \$168,888 in PS from CSG 11 and 14 and 4 FTEs Workforce Development Specialists, positions 24623, 36322, 36350, 39001 from Year Round Youth (Activity 4810)
- \$81,580 in PS from CSG 11 and 14 and 1 FTE Workforce Development Specialist position 36304 from Summery Youth Employment Program (Activity 4820)

## b. Fiscal Year 2021 Capital Budget Recommendations

1. Analyze whether DC Infrastructure Academy is best housed at 2500 Benning Road NE or can be located east of the River
2. Implement the UI modernization capital project expeditiously

## c. Policy Recommendations

### Unemployment Insurance

1. Modernize the unemployment insurance call center and provide continual training
2. Implement the full modernization of the IT system
3. Crack down on misclassification of low-wage workers
4. Understand the scope of misclassification in the District
5. Make our unemployment system accessible to non-English speakers
6. Implement fair overpayment collection practices
7. Improve communications related to the Office of Administrative Hearings
8. Prioritize staff training

## Workforce Development

1. Improve program delivery in Project Empowerment and Career Connections
  - a. Develop a programmatic strategic plan incorporating career pathways and alignment with WIOA State Plan and the DOES Vision Forward Plan
  - b. Select and utilize a validated career assessment tool to best match participants with appropriate host sites
  - c. Partner with the WIC to develop a unified business services plan with sector-specific business liaisons
2. Implement recommendations from the Career Pathways and Adult Literacy Task Force Strategic Plan
  - b. Utilize the integrated education and training model
  - c. Utilize the career maps developed by the WIC and individualize career maps to help advise and guide residents to living-wage careers
  - d. Maximize referrals via the Data Vault by ensuring the necessary fields in the DOES Virtual One-Stop System are mandatory
3. Improve monitoring and enforcement of First Source law
4. Complete the Youth Programs strategic plan incorporating Career Pathways and aligned with the WIOA State Plan by the end of FY2021
5. Enhance transparency of DOES policies, data and timely submission of reports
  - a. Develop and publish widely an agency policy manual
  - b. Submit required reports on time and complete per legislation

## Paid Leave

1. Agency Overreach Harms Vulnerable Communities
2. Continue positive progress in onboarding and training Paid Leave staff
3. Create a flyer to help Universal Paid Leave claimants understand their rights
4. Build on existing relationships to inform the public about the program

## Labor Standards

1. Eliminate delays in issuing notices of complaints to employers
2. Demand evidentiary documents from employers
3. Conserve agency time and finances by reducing non-wage-hour complaint filings
4. Require employers to provide Notice of Hire form to their employees, to prove they have provided it, and to pay penalties when they do not
5. Address retaliation complaints the week they are filed
6. Do not constrain employees from discussing settlement terms and expand the scope of settlement agreements
7. Improve wage-hour complaint form

## D. EMPLOYEES' COMPENSATION FUND (BG0)

### 1. AGENCY MISSION AND OVERVIEW

The mission of the Employees' Compensation Fund (ECF) is to administer the Public Sector Workers' Compensation program for District of Columbia government employees and to pay the required claims costs of eligible claimants, pursuant to applicable District laws.

### 2. FISCAL YEAR 2021 OPERATING BUDGET

EMPLOYEES' COMPENSATION FUND					
Operating Budget Summary					
Fund Type	FY 2019 Actuals	FY 2020 Revised	Mayor's FY 2021 Proposed	Committee Variance	Committee's FY 2021 Recommendation
LOCAL FUND	\$24,131,582	\$31,641,678	\$22,542,849	(\$396,280)	\$22,146,569
<b>TOTAL GROSS FUNDS</b>	<b>\$24,131,582</b>	<b>\$31,641,678</b>	<b>\$22,542,849</b>	<b>(\$396,280)</b>	<b>\$22,146,569</b>
Agency Full-Time Equivalent Summary					
Fund Type	FY 2019 Actuals	FY 2020 Revised	Mayor's FY 2021 Proposed	Committee Variance	Committee's FY 2021 Recommendation
LOCAL FUND	52.00	52.00	52.00	-3.00	49.00
<b>TOTAL FTE</b>	<b>52.00</b>	<b>52.00</b>	<b>52.00</b>	<b>0.00</b>	<b>49.00</b>
Agency Operating Budget by Comptroller Source Group					
Comptroller Source Group	FY 2019 Actuals	FY 2020 Revised	Mayor's FY 2021 Proposed	Committee Variance	Committee's FY 2021 Recommendation
11-REGULAR PAY - CONT FULL TIME	\$3,951,237	\$1,639,326	\$2,497,520	(\$328,863)	\$2,168,657
12-REGULAR PAY - OTHER	\$12,350,000	\$16,370,963	\$13,230,910		\$13,230,910
14-FRINGE BENEFITS - CURR PERSONNEL	\$3,231,540	\$3,340,797	\$2,349,748	(\$67,417)	\$2,282,331
20-SUPPLIES AND MATERIALS	\$1,510,002	\$1,941,477	\$1,024,421		\$1,024,421
31-TELECOMMUNICATIONS	\$1,700	\$0			\$0
40-OTHER SERVICES AND CHARGES	\$3,032,203	\$8,349,115	\$3,440,251		\$3,440,251
70-EQUIPMENT & EQUIPMENT RENTAL	\$54,900	\$0			\$0
<b>TOTAL GROSS FUNDS</b>	<b>\$24,131,582</b>	<b>\$31,641,678</b>	<b>\$22,542,849</b>	<b>(\$396,280)</b>	<b>\$22,146,569</b>
Agency Operating Budget by Program					
Program	FY 2019 Actuals	FY 2020 Revised	Mayor's FY 2021 Proposed	Committee Variance	Committee's FY 2021 Recommendation
0010 - DISABILITY COMPENSATION FUND	\$24,131,582	\$31,641,678	\$22,542,849	(\$396,280)	\$22,146,569
<b>TOTAL GROSS FUNDS</b>	<b>\$24,131,582</b>	<b>\$31,641,678</b>	<b>\$22,542,849</b>	<b>(\$396,280)</b>	<b>\$22,146,569</b>

### Summary of Proposed Operating Budget

The Mayor's FY 2021 budget proposal for ECF is \$22,542,849, a decrease of 11.8 percent, from the current fiscal year's budget of \$25,551,842. This budget would support 52 FTEs, an increase of 0 FTEs over the current fiscal year of 52 FTEs. One hundred percent of the ECF budget is in local funds.

## Committee Analysis and Recommendations

### a. Budget Recommendations

#### *1. Reduce 3 vacant positions.*

- Nurse Case Manager, Position 00090691
- Provider Relations Manager, Position 00094989
- Supervisory Workers' Compensation Claims Examiner, Position 00095162

The Committee has analyzed the agency's 52 FTEs. These positions may be reduced with limited impact on agency operations, and workload can be distributed to remaining personnel. Additionally, with a significant portion of the workforce working from home, there may be a reduction in claims for workers' compensation. The total reduction is \$396,000.

*2. The Committee also recommends reducing the agency's FY2020 budget by \$500,000 due to spending less than budgeted.*

### b. Policy Recommendations

The ECF is overseen by the director of the Office of Risk Management. Please see the Report and Recommendations of the Committee on Government Operations, chapter on Office of Risk Management, for any policy discussion regarding the public sector workers' compensation program.

### 3. **FY 2021-2026 CAPITAL BUDGET**

ECF has no proposed capital budget for FY 2021-2026.

### 4. **SUMMARY OF COMMITTEE RECOMMENDATIONS**

#### **a. Fiscal Year 2021 Operating Budget Recommendations**

1. Reduce 3 vacant positions in FY2021, for a total reduction of \$396,280.
2. Reduce the agency's FY2020 budget by \$500,000.

## E. OFFICE OF EMPLOYEE APPEALS (CH0)

### 1. AGENCY MISSION AND OVERVIEW

The Office of Employee Appeals (OEA) is an independent agency that resolves disputes between government agencies and employees through application of the DC Government Comprehensive Merit Personnel Act (CMPA). OEA hears appeals of employees challenging the following personnel actions: (1) a performance rating which results in the removal of the employee (2) an adverse action for cause that results in removal (3) a reduction in grade (4) a suspension for ten days or more (5) a reduction in force, and (6) a placement on enforced leave for ten days or more.

OEA also conducts mediations between agencies and employees, and administers cases heard by hearing examiners, with the right of appeal to the OEA Board. The Board is composed of five members with expertise in personnel management and labor relations.

### 2. FISCAL YEAR 2021 OPERATING BUDGET

<b>Fiscal Year 2021 Operating Budget, By Revenue Type</b>					
<i>Fund Type</i>	<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
Local	\$2,100,673	\$2,235,527	\$2,234,311	0	\$2,234,311
<b>Gross Funds</b>	<b>\$2,100,673</b>	<b>\$2,235,527</b>	<b>\$2,234,311</b>	<b>0</b>	<b>\$2,234,311</b>

<b>Fiscal Year 2021 Full-Time Equivalents, By Revenue Type</b>					
<i>Fund Type</i>	<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
Local	15.00	15.00	15.00	0	15.00
<b>Total</b>	<b>15.00</b>	<b>15.00</b>	<b>15.00</b>	<b>0</b>	<b>15.00</b>

<b>Fiscal Year 2021 Operating Budget, By Program (Gross Funds)</b>						
<i>Program</i>		<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
1000	Agency Management	\$1,147,139	\$1,212,378	\$1,264,531	0	\$1,264,531
2000	Adjudication	\$953,534	\$1,023,150	\$969,780	0	\$969,780
	<b>Total</b>	<b>\$2,100,673</b>	<b>\$2,235,527</b>	<b>\$2,234,311</b>	<b>0</b>	<b>\$2,234,311</b>

<b>Fiscal Year 2021 Operating Budget, By Comptroller Source Group (Gross Funds)</b>						
<b>Comp Source Group</b>		<b>FY 2019 Actual</b>	<b>FY 2020 Approved</b>	<b>FY 2021 Proposed</b>	<b>Sum of Committee Variance</b>	<b>Committee Approved</b>
11	Regular Pay - Continuing Full Time	\$1,569,574	\$1,620,971	\$1,580,511	0	\$1,580,511
12	Regular Pay - Other	\$128,864	\$133,547	\$176,002	0	\$176,002
13	Additional Gross Pay	\$174	\$0		0	
14	Fringe Benefits - Current Personnel	\$320,906	\$363,185	\$361,190	0	\$361,190
15	Overtime Pay	\$187	\$0		0	
20	Supplies and Materials	\$8,722	\$3,000	\$2,940	0	\$2,940
31	Telecommunications	\$0	\$0		0	
34	Security	\$6,927	\$0		0	
40	Other Services and Charges	\$25,628	\$83,824	\$82,688	0	\$82,688
41	Contractual Services - Other	\$33,137	\$30,000	\$30,000	0	\$30,000
70	Equipment and Equipment Rental	\$6,554	\$1,000	\$980	0	\$980
	<b>Total</b>	<b>\$2,100,673</b>	<b>\$2,235,527</b>	<b>\$2,234,311</b>	<b>0</b>	<b>\$2,234,311</b>

### **Summary of Proposed Operating Budget**

The Mayor's FY 2021 budget proposal for OEA is \$2,234,311, a decrease of \$1,216, or 0.05 percent, from the current fiscal year's budget of \$2,235,527. This budget would support 15 FTEs, an increase of 0 FTEs over the current fiscal year of 15 FTEs. One hundred percent of the OEA budget is in local funds.

### **Committee Analysis and Recommendations**

#### **a. Budget recommendations**

The committee recommends approval of the Mayor's proposed FY 2021 budget for OEA.



## **b. Policy Recommendations**

The committee provides the following recommendations in relation to agency performance over the last year.

- 1. Publish guidance for pro se litigants on agency website identifying and explaining any special rights or issues particular to those who represent themselves. Similarly, publish a document explaining what types of cases the agency has jurisdiction to hear and mediate on the agency website***

The Committee recommends that OEA formalize all guidance related to *pro se* litigants in a unitary document and publish the document on the Office's website. Self-representing parties seeking instructions and guidance on the website would then be able to better prepare for hearings. Due process often entails different considerations for *pro se* litigants than those represented by experienced counsel. In a FY2019 case appealed to D.C. Superior Court, Judge William M. Jackson of D.C. Superior Court's civil litigation division remanded a case back to the agency because the Administrative Law Judge (ALJ) did not adequately consider whether the *pro se* litigant, simply by virtue of being self-represented, was entitled to equitable tolling of a timing rule.<sup>100</sup> The Committee is confident that the agency's administrative law judges are adhering to the guidance of the executive director, board, and general counsel when adjudicating claims involving *pro se* litigants.

Similarly, the Committee recommends that the Office of Employee Appeals draft and publish a document on its website explaining its jurisdiction and informing prospective program participants of the criteria for each of the various type of appeals the agency has jurisdiction over. This District has several thousand employees who are often self-directed when seeking resources to resolve disputes, and are unfamiliar with the overlapping jurisdictions of the District's quasi-judicial agencies. The agency website currently provides information regarding how to file an appeal, the function of the agency's board, and the services and quasi-judicial decisions of the agency. However, the website does not describe the types of cases the agency has jurisdiction to hear, which are: (1) a performance rating which results in the removal of the employee (2) an adverse action for cause that results in removal (3) a reduction in grade (4) a suspension for ten days or more (5) a reduction in force, and (6) a placement on enforced leave for ten days or more.

- 2. Board members should conduct business whenever a quorum is attainable and conduct business thorough virtual means if unable to meet in person.***

The Board's ability to timely review initial decisions by ALJs and issue the board's own final decisions is critical to the mission and function of the agency. The Board is authorized, by agency rule, to conduct business whenever three members (a quorum) are

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<sup>100</sup> Office of Employee Appeals "Responses to Fiscal Year 2019-2020 Performance Oversight Questions," Submitted to Committee on Labor and Workforce Development, Feb. 6, 2020, Attachment 13-A, p. 2 available at <https://dccouncil.us/wp-content/uploads/2020/02/oea.pdf>

present. The Board should meet whenever permitted under the agency rules to fulfill its duties and obligations, even if some members are not available.

In FY19 the Board failed to meet a key performance indicator for the Board's issuance of the projected number of decisions and opinions targeted in its annual performance goals because "the Board could not meet at certain times because not all members were available."<sup>101</sup> It is understandable that the Board prefers to meet when all members are present and able to contribute. However, the committee recommends that the interest in the participation of all members of the board be balanced against the interest of the parties in a timely resolution of the contested matter. Swift consideration of a case is very important to the parties. The Board should consider that the adjudicative process may continue even after the Board's deliberation and issuance of its final opinion if either party files an appeal in D.C. Superior Court and the Court of Appeals, respectively. The Board should resolve any tension between the availability of the full board for in-person meetings and timeliness of adjudications in favor of timely adjudications. Additionally, if the Board cannot meet in person because of the public health emergency or any other reason, it should meet through virtual means.

### ***3. Publish agency rules in DC Register by September 30, 2020.***

Agency rules should be updated periodically to allow public input regarding processes and procedures. Periodic updates also standardize modernizations and improvements in the substantive methods or processes the agency utilizes to fulfill its mission. The Office of Employee Appeals should complete drafting and publish its first round of agency rules by September 30, 2020, and in so doing, complete a substantial step towards a goal that has been discussed in the agency's performance oversight response materials for the last two years.

The formal process of updating the rules, which includes publication in the Register and a period reserved for public comment and participation in developing the proposed changes to agency rules, fulfills both notice and due process functions in case of litigation challenging the actions of the agency. It also makes less likely that a judge or other judicial authority will negatively assess the agency's specific action, method, or processes made pursuant to the rule change as arbitrary or capricious.

The last update of the agency rules for OEA occurred in March 2012, eight years ago. Since then, the agency has identified multiple opportunities to modernize rules governing important aspects of the agency's mission. For instance, the agency currently does not have a formal rule governing the enforcement of its rulings when a party fails to comply with a valid order of the Board or an ALJ. There are also opportunities to mitigate security risks associated with the agency's storage and distribution of personally

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<sup>101</sup> Office of Employee Appeals "Responses to Fiscal Year 2019-2020 Performance Oversight Questions," Submitted to Committee on Labor and Workforce Development, Feb. 6, 2020, Attachment 1, available at <https://dccouncil.us/wp-content/uploads/2020/02/oea.pdf>.

identifiable data by establishing redaction rules and processes, and a need to clarify when and under which circumstances a party may file or withdraw a petition.

The public health emergency caused by the COVID-19 virus has and will continue to destabilize traditional work processes and workflows in public sector workspaces, especially those that require engagement with the public. Modernizing the agency rules this fiscal year to reflect current best practices and fill policy gaps will provide timely and necessary enhancements to the efficiency and uniformity of agency operations.

***4. Complete review of agency mediation program and report findings and recommendations to Committee.***

Current agency rules require some parties before ALJ's or the Board to undergo a mandatory mediation process prior to adjudication, even if the parties agree at the outset that the dispute cannot be resolved through mediation. In FY2019, 21 percent of attempts at mediation resulted in a successful settlement.<sup>102</sup> The agency identified analyzing the impact and success of the mediation program as a key priority in both FY2019 and FY2020, with the potential to seek future modification or elimination of the mandatory mediation requirement if its resources would be better allocated elsewhere.<sup>103</sup> Because of the low success rate of the mediation process, the committee urges OEA to continue to collect and analyze the historical data and report its findings back to the committee.

**3. FY 2021-2026 CAPITAL BUDGET**

OEA has no proposed capital budget for FY 2021-2026.

**4. COMMITTEE RECOMMENDATIONS**

**a. Fiscal Year 2021 Operating Budget Recommendations**

The committee recommends approval of the mayor's proposed FY 2021 budget.

**b. Policy Recommendations**

1. Publish guidance for pro se litigants on agency website identifying and explaining any special rights or issues particular to those who represent themselves. Similarly,

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<sup>102</sup> Office of Employee Appeals "Responses to Fiscal Year 2019-2020 Performance Oversight Questions," Submitted to Committee on Labor and Workforce Development, Feb. 6, 2020, Attachment 1, available at <https://dccouncil.us/wp-content/uploads/2020/02/oea.pdf>

<sup>103</sup> Office of Employee Appeals "Responses to Fiscal Year 2018-2019 Performance Oversight Questions," Submitted to Committee on Labor and Workforce Development, Feb. 6, 2020, Attachment 1, available at <https://dccouncil.us/wp-content/uploads/2019/02/OEA-2019-PO-reponses.pdf> ; Office of Employee Appeals "Responses to Fiscal Year 2019-2020 Performance Oversight Questions, Submitted to Committee on Labor and Workforce Development, Feb. 21, 2019, p. 2, available at <https://dccouncil.us/wp-content/uploads/2020/02/oea.pdf>;

- publish a document explaining what types of cases the agency has jurisdiction to hear and mediate on the agency website.
2. Board members should conduct business whenever a quorum is attainable and conduct business thorough virtual means if unable to meet in person.
  3. Publish agency rules in *DC Register* by September 30, 2020
  4. Complete review of agency mediation program and report findings and recommendations to Committee

## F. OFFICE OF LABOR RELATIONS AND COLLECTIVE BARGAINING (PART OF AEO, OFFICE OF CITY ADMINISTRATOR)

### 1. AGENCY MISSION AND OVERVIEW

The Office of Labor Relations and Collective Bargaining (OLRCB) is a component of the Office of the City Administrator (OCA), and serves as the Mayor’s principal management advocate in labor matters between the District and unionized employees. OLRCB is responsible for representing management before the Public Employee Relations Board (PERB); engaging in collective bargaining negotiations, including those involving compensation agreements and impacts and effects bargaining; advising the Mayor and District agencies in labor matters; developing and implementing the city’s labor initiatives, and; providing training to labor liaisons, managers, supervisors, and management officials regarding their rights and obligations as required by the Comprehensive Merit Personnel Act and other sources of the District’s labor laws and policies.

OLRCB is composed of three major program units:

1. Negotiations and Contract Administration;
2. Litigation Unit;
3. Administrative and Program Support Unit.

### 2. FISCAL YEAR 2021 OPERATING BUDGET

<b>Fiscal Year 2021 Operating Budget, By Revenue Type</b>					
<i>Fund Type</i>	<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
Local	\$1,939,588	\$2,243,467	\$2,402,694	0	\$2,402,694
Operating Intra-District Funds	\$99,557	\$0	\$0	0	\$0
<b>Gross Funds</b>	<b>\$2,039,145</b>	<b>\$2,243,467</b>	<b>\$2,402,694</b>	<b>0</b>	<b>\$2,402,694</b>

<b>Fiscal Year 2021 Full-Time Equivalents, By Revenue Type</b>					
<i>Fund Type</i>	<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
Local	15.66	17.00	17.00	0	17.00
Operating Intra-District Funds	1.71	0.00	0.00	0	0.00
<b>Total</b>	<b>17.37</b>	<b>17.00</b>	<b>17.00</b>	<b>0</b>	<b>17.00</b>

<b>Fiscal Year 2021 Operating Budget, By Program (Gross Funds)</b>						
<b>Program</b>		<b>FY 2019 Actual</b>	<b>FY 2020 Approved</b>	<b>FY 2021 Proposed</b>	<b>Sum of Committee Variance</b>	<b>Committee Approved</b>
3000	Labor Relations and Collective Bargaining	\$2,039,145	\$2,243,467	\$2,402,694	0	\$2,402,694
	<b>Total</b>	<b>\$2,039,145</b>	<b>\$2,243,467</b>	<b>\$2,402,694</b>	<b>0</b>	<b>\$2,402,694</b>

<b>Fiscal Year 2021 Operating Budget, By Comptroller Source Group (Gross Funds)</b>						
<b>Comp Source Group</b>		<b>FY 2019 Actual</b>	<b>FY 2020 Approved</b>	<b>FY 2021 Proposed</b>	<b>Sum of Committee Variance</b>	<b>Committee Approved</b>
11	Regular Pay - Continuing Full Time	\$1,595,658	\$1,843,931	\$1,844,364	0	\$1,844,364
12	Regular Pay - Other	\$3,714	\$0	\$78,882	0	\$78,882
13	Additional Gross Pay	\$920	\$0	\$0	0	\$0
14	Fringe Benefits - Current Personnel	\$305,506	\$359,336	\$342,773	0	\$342,773
15	Overtime Pay	\$1,203	\$0	\$0	0	\$0
20	Supplies and Materials	\$18,361	\$9,000	\$7,345	0	\$7,345
40	Other Services and Charges	\$81,712	\$31,200	\$129,331	0	\$129,331
41	Contractual Services - Other	\$16,661	\$0	\$0	0	\$0
70	Supplies	\$15,410	\$0	\$0	0	\$0
	<b>Total</b>	<b>\$2,039,145</b>	<b>\$2,243,467</b>	<b>\$2,402,694</b>	<b>0</b>	<b>\$2,402,694</b>

### Summary of Proposed Operating Budget

The Mayor's FY 2021 budget proposal for OLRCB is \$2,402,694, an increase of \$159,227, or 7.1 percent, over the current fiscal year's budget of \$2,243,467. This budget would support 17 FTEs, an increase of 0 FTEs over the current fiscal year of 17 FTEs. One hundred percent of the OLRCB budget is in local funds.

### Committee Analysis and Recommendations

#### a. Budget Recommendations

The committee recommends approval of the Mayor's proposed FY 2021 budget for OLRCB.

## **b. Policy Recommendations**

The committee provides the following recommendations in relation to agency performance over the last year.

### ***1. Analyze and incorporate into standard operating procedures the new agency rules adopted by the Public Employee Relations Board***

OLRCB frequently appears before the Public Employee Relations Board (“PERB”) in representation matters, unit determinations, unfair labor practices, negotiability appeals, arbitration appeals, and impasse proceedings. (“PERB”) has published a comprehensive update of its agency rules, affecting the filing and litigation procedures of cases and other processes. OLRCB should analyze new regulations published by PERB and prepare to represent management under the new rules. The rules were officially adopted into a new Chapter 5 (Rules of the Public Employee Relations Board) of Title 6, Subtitle B (government personnel) of the District of Columbia Municipal on May 1, 2020.

PERB’s comprehensive review of its agency rules included substantive changes to provisions relating to the dismissal of cases, unfair labor practices, decertification petitions, investigations by the board, and how much time litigants are permitted to file or amend certain documents. Knowledge of and effective implementation of the rules is essential to successful advocacy before the PERB, and competent representation in appeals from its orders in District Courts. OLRCB should implement any changes in its operating procedures, case management systems, and any other litigation processes.

### ***2. Meet the agency’s goal to avoid paying opposing counsel’s legal fees***

In FY2019, OLRCB was ordered to pay a cumulative total of \$209,759 in legal fees for opposing counsel in five cases. For FY19, the agency indicated in its *Responses to Fiscal Year 2019-2020 Performance Oversight Questions*, that its top priority was the continuous reduction of litigation costs.”<sup>104</sup> The Committee commends this goal and encourages OLRCB to obtain information on and implement best practices to more accurately predict when to mediate, settle, or litigate a case to avoid these substantial litigation costs.

The Committee understands, as indicated in the submitted FY2019-2020 Performance Accountability Report (PAR), that OLRCB may be unable to “sustain management’s actions” in some cases.<sup>105</sup> In other cases, the District is particularly

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<sup>104</sup> Office of Labor Relations and Collective Bargaining, “Responses to Fiscal Year 2019-2020 Performance Oversight Questions,” Submitted to Committee on Labor and Workforce Development, Feb. 21, 2019, p. 2, available at <https://dccouncil.us/wp-content/uploads/2020/01/FINAL-OLRCB-POH-Responses.pdf>.

<sup>105</sup> Office of Labor Relations and Collective Bargaining, “Responses to Fiscal Year 2019-2020 Performance Oversight Questions,” Submitted to Committee on Labor and Workforce Development, Feb. 21, 2019, p. 11, available at <https://dccouncil.us/wp-content/uploads/2020/01/FINAL-OLRCB-POH-Responses.pdf>.

vulnerable to court ordered awards of opposing counsel's legal fees because District agencies are subject to the Back Pay Act, a federal law only applicable to federal and District agencies, and which authorizes the payment of the attorney fees of the prevailing party by the defeated party.<sup>106</sup>

The Committee appreciates the seriousness with which the agency is considering the issue, as indicated by the agency's prioritization of the goal to avoid paying opposing counsel's legal fees. The OLRCB director should seek information and guidance pertinent to OLRCB developing a more accurate initial determination of when to mediate, settle, or litigate a case. OLRCB should decline to litigate cases initiated by unsustainable agency actions when it is likely that the outcome will be an award of legal fees for opposing counsel. Instead, OLRCB should seek to settle those cases at first opportunity. If additional internal training or costs to the agency are involved in developing this capability, OLRCB is encouraged to prioritize those trainings or costs and advise the Office of the City Administrator and the Committee. OLRCB should also provide additional training and guidance for the agencies involved in the lawsuits.

### ***3. Expand training at DCPS and MPD for labor liaisons and agency management***

The District of Columbia Public Schools ("DCPS") and Metropolitan Police Department ("MPD") are, and have been for years, the defending parties in the majority of disputes brought against the District in the Office of Employee Appeals ("OEA"). The Metropolitan Police Department is also a recurring party in disputes brought before PERB. This indicates a consistent lack of understanding by one or both of the parties concerning the District's labor laws and agreements, and how these laws and agreements form legally cognizable rights and obligations applicable to both labor and management.

OLRCB is empowered to train both labor liaisons and agency managers concerning their rights and obligations under the Comprehensive Merit Personnel Act ("CMPA") and applicable labor laws, policies, and procedures. OLRCB should target these agencies for additional training to reduce the number of labor disputes that are escalated for external review by the OEA. OLRCB should use the existing training curriculum<sup>107</sup> developed in FY2019 for management officials and labor law practitioners to conduct the training at these agencies as much as possible and appropriate. The use of this curriculum, which was developed by OLRCB through the execution of a case study based upon litigation case data, is recommended because it would require no additional costs and would isolate actions most likely to cause referrals to judicial authorities and additional financial costs to the District.

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<sup>106</sup> 5 U.S.C. § 5596

<sup>107</sup> Office of Labor Relations and Collective Bargaining, "Responses to Fiscal Year 2019-2020 Performance Oversight Questions," Submitted to Committee on Labor and Workforce Development, Feb. 21, 2019, p. 2, available at <https://dccouncil.us/wp-content/uploads/2020/01/FINAL-OLRCB-POH-Responses.pdf>.



4. ***Make available every active Collective Bargaining Agreement (“CBA”) between the District and bargaining units on the OLRCB website.***

OLRCB is the primary administrator of the District’s labor management program and is integral to the resolution of any issue regarding the terms of collective bargaining agreements. Because OLRCB is likely the only government agency with access to all collective bargaining agreements, OLRCB should publish on its website all active collective bargaining agreements to promote transparency and more efficiently allocate personnel resources.

Currently, OLRCB posts some collective bargaining agreements on its website, although they are accessible only through the search function, not on a specific webpage.<sup>108</sup> Furthermore, the available agreements are not in any particular order, many active agreements are missing, and it is impossible to determine any rationale related to which agreements are made available. However, OLRCB does timely provide requested collective bargaining agreements by accepting requests over the phone and by email and fulfilling them through administrative staff members.

OLRCB should publish all active agreements, accompanied by a master list detailing the date the agreement was entered into or other organizing metric. By doing so, the District’s goal of a transparent and open government will be advanced, and staff resources currently obligated to fulfill requests for collective bargaining agreements may be reallocated to areas of higher priority.

**3. FY 2021-2026 CAPITAL BUDGET**

OLRCB has no proposed capital budget for FY 2021-2026.

**4. SUMMARY OF COMMITTEE RECOMMENDATIONS**

**a. Fiscal Year 2021 Operating Budget Recommendations**

The committee recommends approval of the Mayor’s proposed FY 2021 budget for OLRCB.

**b. Policy Recommendations**

1. Analyze and incorporate into standard operating procedures the new agency rules adopted by the Public Employee Relations Board.
2. Meet the agency’s goal to avoid paying opposing counsel’s legal fees
3. Expand training at DCPS and MPD for labor liaisons and agency management
4. Make available every active Collective Bargaining Agreement (“CBA”) between the District and bargaining units on the OLRCB website.

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<sup>108</sup> <https://oca.dc.gov/page/office-labor-relations-and-collective-bargaining>

## G. PUBLIC EMPLOYEE RELATIONS BOARD (CG0)

### 1. AGENCY MISSION AND OVERVIEW

The Public Employee Relations Board (PERB) is an independent, quasi-judicial agency that decides disputes and facilitates negotiations between District agencies and public employee unions. The Board's responsibilities include resolving unfair labor complaints and standard of conduct complaints, certifying labor organizations for collective bargaining, facilitating impasse procedures for bargaining issues, and considering appeals of grievance arbitration awards.

### 2. FISCAL YEAR 2021 OPERATING BUDGET

<b>Fiscal Year 2021 Operating Budget, By Revenue Type</b>					
<i>Fund Type</i>	<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
Local	\$1,159,942	\$1,321,488	\$1,295,666	0	\$1,295,666
<b>Gross Funds</b>	<b>\$1,159,942</b>	<b>\$1,321,488</b>	<b>\$1,295,666</b>	<b>0</b>	<b>\$1,295,666</b>

<b>Fiscal Year 2021 Full-Time Equivalents, By Revenue Type</b>					
<i>Fund Type</i>	<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
Local	10.00	9.00	8.00	0	8
<b>Gross Funds</b>	<b>10.00</b>	<b>9.00</b>	<b>8.00</b>	<b>0</b>	<b>8</b>

<b>Fiscal Year 2021 Operating Budget, By Program (Gross Funds)</b>						
<i>Program</i>		<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
1000	Agency Management	\$225,942	\$271,628	\$243,270	0	\$243,270
2000	Adjudication	\$934,001	\$1,049,860	\$1,052,396	0	\$1,052,396
	<b>Total</b>	<b>\$1,159,942</b>	<b>\$1,321,488</b>	<b>\$1,295,666</b>	<b>0</b>	<b>\$1,295,666</b>

<b>Fiscal Year 2021 Operating Budget, By Comptroller Source Group (Gross Funds)</b>						
<b>Comp Source Group</b>		<b>FY 2019 Actual</b>	<b>FY 2020 Approved</b>	<b>FY 2021 Proposed</b>	<b>Sum of Committee Variance</b>	<b>Committee Approved</b>
11	Regular Pay - Continuing Full Time	\$749,057	\$839,967	\$823,799	\$0	\$823,799
12	Regular Pay - Other	\$12,100	\$0		\$0	
13	Additional Gross Pay	\$6,673	\$0		\$0	
14	Fringe Benefits - Current Personnel	\$139,795	\$168,834	\$163,879	\$0	\$163,879
20	Supplies and Materials	\$9,909	\$10,000	\$9,800	\$0	\$9,800
31	Telecommunications	\$27,383	\$30,146	\$30,297	\$0	\$30,297
40	Other Services and Charges	\$73,191	\$136,674	\$132,025	\$0	\$132,025
41	Contractual Services - Other	\$132,071	\$125,867	\$125,866	\$0	\$125,866
70	Equipment and Equipment Rental	\$9,763	\$10,000	\$10,000	\$0	\$10,000
	<b>Total</b>	<b>\$1,159,942</b>	<b>\$1,321,488</b>	<b>\$1,295,666</b>	<b>\$0</b>	<b>\$1,295,666</b>

### **Summary of Proposed Operating Budget**

The Mayor's FY 2021 budget proposal for PERB is \$1,295,666, a decrease of \$25,822, or 2.0 percent, from the current fiscal year's budget of \$1,321,488. This budget would support 8 FTEs, a decrease of 1 FTEs under the current fiscal year of 9 FTEs. One hundred percent of the PERB budget is in local funds.

### **Committee Analysis and Recommendations**

#### **a. Budget recommendations**

The committee recommends approval of the Mayor's proposed FY 2021 budget for PERB.

The Committee also recommends reducing the agency's FY2020 budget by \$54,100 due to spending less than budgeted.

## **b. Policy Recommendations**

The committee provides the following recommendations in relation to agency performance over the last year.

### ***1. Draft and publish on the agency website an accessible guide to the rule changes adopted in FY2020***

PERB drafted and published new rules that were officially adopted into a new Chapter 5 (Rules of the Public Employee Relations Board) of Title 6, Subtitle B (government personnel) of the District of Columbia Municipal on May 1, 2020. The agency rules included substantive changes to provisions relating to the dismissal of cases, unfair labor practices, decertification petitions, investigations by the board, and how much time litigants are permitted to file or amend certain documents.

PERB has already published a guide providing technical information about the rule changes on its website that includes answers to questions from the public about the rule changes and the full text of both the old and new rules. The guide assumes some knowledge and experience which may not be present in all prospective filers. PERB should draft a similar concise and easy-to-read guide for litigants, with specific consideration applied to readability for self-represented litigants.

### ***2. Create and implement a plan to conduct hearings in a public health emergency***

The timely administration of hearings and mediations are at the heart of PERB's mission. Timely adjudications and mediations save the financial resources of the agency and the parties, and support the provision of due process to litigants. Timely adjudications also reduce the possibility that a backlog of cases will be developed.

Because of the COVID-19 public health emergency and subsequent emergency declaration by the Mayor, all employees at PERB are working remotely, and all hearings and mediations are postponed indefinitely.<sup>109</sup> PERB is still accepting filings by electronic mail and postal service, which means that a backlog of cases is growing, and will continue to grow for the duration of the public health emergency.

PERB should immediately draft and implement plans to conduct contact-less hearings in case the public emergency is extended for months or recurs in the future. These plans should consider whether these hearings should be done completely through virtual means, or if in-person hearings can be held in a manner consistent with local and federal guidelines or as part of a gradual re-opening plan. The Committee recommends that PERB utilize the experience and materials compiled by other jurisdictions currently operating under both circumstances. For instance, New York courts implemented the use of virtual

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<sup>109</sup> As of June 9, 2020, "All hearings and mediations scheduled during the COVID-19 emergency response period are postponed and will be rescheduled." <https://perb.dc.gov/release/perb-updates-operating-status-%E2%80%93-june-9-2020>

courts running statewide for essential and emergency matters as of April 6<sup>th</sup>, and is currently considering expanding virtual courts to other matters. PERB is encouraged to discuss any issues with transitioning to a virtual model with the Committee.

### ***3. Create and implement a plan to conduct all planned trainings virtually***

PERB successfully held eight two-hour trainings for management and union participants as part of its *Second Tuesday* programming and five agency specific trainings in FY2019. Due to the COVID-19 public health emergency, these trainings have been indefinitely postponed.

PERB should create and implement a plan to resume these trainings through virtual means. The Committee encourages PERB to consider transitioning to a virtual training model in conjunction with plans to make one of PERB’s FY2020 key projects, the in-house training center, virtually accessible as well. The reasons to consider both simultaneously is that the in-house training center is intended to accomplish the same goals as the Second Tuesday and agency specific trainings, which is to “further promote better understanding of labor relations and responsibilities to DC government managers and union representatives.”<sup>110</sup> Considering both processes simultaneously will foster resource and process efficiency, as the technological and strategic components of the plans will be similar or identical.

### **3. FY 2021-2026 CAPITAL BUDGET**

PERB has no proposed capital budget for FY 2021-2026.

### **4. SUMMARY OF COMMITTEE RECOMMENDATIONS**

#### **a. Fiscal Year 2021 Operating Budget Recommendations**

1. Approve the Mayor’s proposed FY 2021 budget for PERB.
2. Reduce the agency’s FY2020 budget by \$54,100.

#### **b. Policy Recommendations**

1. Draft and publish on the agency website an accessible guide to the rule changes adopted in FY2020.
2. Create and implement a plan to conduct hearings in a public health emergency.
3. Create and implement a plan to conduct all planned trainings virtually

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<sup>110</sup> Public Employee Review Board “Responses to Fiscal Year 2019-2020 Performance Oversight Questions,” Submitted to Committee on Labor and Workforce Development, Feb. 21, 2019, p. 2, available at <https://dccouncil.us/wp-content/uploads/2020/02/2-PERB-Responses-to-FY2019-FY2020-Performance-Oversight-Questions.pdf>.

## H. UNEMPLOYMENT COMPENSATION FUND (BH0)

### 1. AGENCY MISSION AND OVERVIEW

The Unemployment Compensation Fund (UC Fund) is to provide unemployment compensation benefits to former District government employees who have been separated from employment through no fault of their own.

### 2. FISCAL YEAR 2021 OPERATING BUDGET

#### Fiscal Year 2021 Operating Budget, By Revenue Type

<i>Fund Type</i>	<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
Local	\$6,680,390	\$4,966,061	\$4,955,146	0	\$4,955,146
<b>Gross Funds</b>	<b>\$6,680,390</b>	<b>\$4,966,061</b>	<b>\$4,955,146</b>	<b>0</b>	<b>\$4,955,146</b>

#### Fiscal Year 2021 Full-Time Equivalents, By Revenue Type

<i>Fund Type</i>	<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
Local	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

#### Fiscal Year 2021 Operating Budget, By Program (Gross Funds)

<i>Program</i>		<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
1000	Unemployment Compensation Fund	\$6,680,390	\$4,966,061	\$4,955,146	0	\$4,955,146
	<b>Total</b>	<b>\$6,680,390</b>	<b>\$4,966,061</b>	<b>\$4,955,146</b>	<b>0</b>	<b>\$4,955,146</b>

#### Fiscal Year 2021 Operating Budget, By Comptroller Source Group (Gross Funds)

<i>Comp Source Group</i>		<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
50	Subsidies	\$6,680,390	\$4,966,061	\$4,955,146	0	\$4,955,146
	<b>Total</b>	<b>\$6,680,390</b>	<b>\$4,966,061</b>	<b>\$4,955,146</b>	<b>0</b>	<b>\$4,955,146</b>

### Summary of Proposed Operating Budget

The Mayor's FY 2021 budget proposal for the UC Fund is \$5,480,390, an increase of \$0, or 0 percent, over the current fiscal year's budget. This budget supports 0 FTEs. One hundred percent of the UC Fund budget is in local funds.

## **Committee Analysis and Recommendations**

### **a. Budget recommendations**

The committee recommends approving the UC Fund's FY 2021 budget as proposed.

### **3. FY 2021-2026 CAPITAL BUDGET**

The UC Fund has no capital budget for FY 2021-2026.

### **4. COMMITTEE RECOMMENDATIONS**

#### **a. Fiscal Year 2021 Operating Budget Recommendations**

1. The committee recommends approving the UC Fund's FY 2021 budget as proposed.

## I. UNEMPLOYMENT INSURANCE TRUST FUND (UI0)

The Unemployment Insurance Trust Fund, administered by the Department of Employment Services (DOES), represents the proceeds from unemployment taxes paid by private sector employers and reimbursements from the District and federal governments deposited in the Unemployment Trust Fund (the “Fund”). The Fund is used to pay benefits for private and non-District government<sup>111</sup> public sector employees during periods of unemployment. Payments include transfers to other governments to reimburse unemployment benefits paid to District residents.

### 2. FISCAL YEAR 2021 OPERATING BUDGET

Fiscal Year 2021 Operating Budget, By Revenue Type					
<i>Fund Type</i>	<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
Enterprise and Other	\$119,728,692	\$185,382,095	\$464,778,369	\$0	\$464,778,369
Federal Payments	\$0	\$0	\$215,292,455	\$0	\$215,292,455
<b>Gross Funds</b>	<b>\$119,728,692</b>	<b>\$185,382,095</b>	<b>\$680,070,824</b>	<b>\$0</b>	<b>\$680,070,824</b>

Fiscal Year 2021 Full-Time Equivalents, By Revenue Type					
<i>Fund Type</i>	<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
Enterprise and Other	0	0	0	0	0
Federal Payments	0	0	0	0	0
<b>Gross Funds</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Fiscal Year 2021 Operating Budget, By Program (Gross Funds)						
<i>Program</i>		<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
2200	Benefits Trust Fund	\$119,728,692	\$185,382,095	\$680,070,824	0	\$680,070,824
	<b>Total</b>	<b>\$119,728,692</b>	<b>\$185,382,095</b>	<b>\$680,070,824</b>	<b>0</b>	<b>\$680,070,824</b>

Fiscal Year 2021 Operating Budget, By Comptroller Source Group (Gross Funds)						
<i>Comp Source Group</i>		<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
50	Subsidies and Transfers	\$119,728,692	\$185,382,095	\$680,070,824	0	\$680,070,824
	<b>Total</b>	<b>\$119,728,692</b>	<b>\$185,382,095</b>	<b>\$680,070,824</b>	<b>0</b>	<b>\$680,070,824</b>

<sup>111</sup> District government employees unemployment compensation funds are housed in BH0 the Unemployment Compensation Fund; See Chapter II.H.



## Summary of Proposed Operating Budget

The Mayor's FY 2021 budget proposal for the Fund is \$680,070,824, an increase of \$494,688,729, or 266.8 percent, over the current fiscal year's budget of \$185,382,095. This budget would support 0 FTEs, an increase of 0 FTEs over the current fiscal year of 0 FTEs.

**Enterprise Funds:** The Mayor's proposed enterprise funds budget is \$464,778,369, an 150.7 percent increase from the approved budget for the current fiscal year of \$185,382,095. The proposed budget would support 0 FTEs, a decrease of 0 FTEs from the current fiscal year's 0 approved FTEs.

**Federal Payments.** The Mayor's proposed federal payments funds budget is \$215,292,455. No federal payments were budgeted in FY2020. The proposed budget includes federal payments made due to the COVID-019 coronavirus special programs authorized by Congress in 2020. They include Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), and Pandemic Unemployment Assistance (PUA).

## Budget Recommendations

The committee recommends approving the UI Trust Fund's FY 2021 budget as proposed.

### 3. FY 2021-2026 CAPITAL BUDGET

The Fund has no proposed capital budget for FY 2021-2026.

### 4. SUMMARY OF COMMITTEE RECOMMENDATIONS

#### a. Fiscal Year 2021 Operating Budget Recommendations

1. The committee recommends approving the UI Trust Fund's FY 2021 budget as proposed.

## J. UNIVERSAL PAID LEAVE FUND (ULO)

### 1. AGENCY MISSION AND OVERVIEW

The mission of the Universal Paid Leave agency (UPL) is to provide paid-leave benefits under the Universal Paid Leave Act (UPLA) to private employees in the District for up to eight weeks of parental leave, six weeks of family leave, and two weeks of medical leave for every fifty-two weeks worked, thereby contributing to and increasing the quality of life in the Washington, DC, metropolitan area. This is a new agency created in the FY2021 budget.

### 2. FISCAL YEAR 2021 OPERATING BUDGET

<b>Fiscal Year 2021 Operating Budget, By Revenue Type</b>					
<i>Fund Type</i>	<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
Enterprise and Other Funds	0	0	\$271,370,337	0	\$271,370,337
<b>Gross Funds</b>	<b>0</b>	<b>0</b>	<b>\$271,370,337</b>	<b>0</b>	<b>\$271,370,337</b>

<b>Fiscal Year 2021 Full-Time Equivalents, By Revenue Type</b>					
<i>Fund Type</i>	<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
Enterprise	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>Fiscal Year 2021 Operating Budget, By Program (Gross Funds)</b>						
<i>Program</i>		<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
1000	Universal Paid Leave	0	0	\$271,370,337	0	\$271,370,337
	<b>Total</b>	<b>0</b>	<b>0</b>	<b>\$271,370,337</b>	<b>0</b>	<b>\$271,370,337</b>

<b>Fiscal Year 2021 Operating Budget, By Comptroller Source Group (Gross Funds)</b>						
<i>Comp Source Group</i>		<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
50	Subsidies	0	0	\$271,370,337	0	\$271,370,337
	<b>Total</b>	<b>0</b>	<b>0</b>	<b>\$271,370,337</b>	<b>0</b>	<b>\$271,370,337</b>

## Summary of Proposed Operating Budget

The Mayor's FY 2021 budget proposal for the UPL Fund is \$271,370,337. The agency is newly created in FY2021. This budget supports 0 FTEs. One hundred percent of the Universal Paid Leave Fund's budget is in enterprise funds.

## Committee Analysis and Recommendations

### a. Budget Recommendations

*1. The committee recommends approving the Universal Paid Leave Fund's FY 2021 budget as proposed.*

*2. Provide funds from unbudgeted revenues to the Office of Human Rights for paid leave enforcement.*

The Committee recommends providing \$1,853,227 (\$1,148,227 in PS and \$705,000 in NPS) for FY2021 to stand up the Office's enforcement of the universal paid leave benefits program. The program will begin to accept applications for benefits on July 1, 2020. The law prohibits retaliation against any person seeking to exercise his or rights under UPLA. This provision will be enforced by OHR, as determined by the Executive and stated in the governing regulations.<sup>112</sup> Unfortunately, OHR's budget was not increased to account for these new responsibilities. Therefore, the Committee, along with the Committee on Government Operations, recommend providing funds to enable OHR to hire staff and enforce the law (see Chapter III).

This funding is available from the Universal Paid Leave Fund's revenues. Under a companion BSA subtitle, the Universal Paid Leave Fund Amendment Act of 2020 (see Chapter IV.B.8), there will be created a special Universal Paid Leave Enforcement fund, which will be funded with up to 1 percent of the revenues deposited into the main Universal Paid Leave Fund (into which employer contributions are deposited). The enforcement fund may be utilized by OHR for enforcement of § 32-541.10(a) and (b), which may include outreach and education related to individuals' rights under UPLA. Because this revenue is unbudgeted, it does not require a reduction to the proposed FY2021 budget of UL0.

### 3. FY 2021-2026 CAPITAL BUDGET

Universal Paid Leave Fund has no capital budget for FY 2021-2026.

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<sup>112</sup> Title 7 DCMR Section 3516.1.

#### **4. SUMMARY OF COMMITTEE RECOMMENDATIONS**

##### **a. Fiscal Year 2021 Operating Budget Recommendations**

1. The committee recommends approving the Universal Paid Leave Fund's FY 2021 budget as proposed.

2. In FY2021, provide funds from unbudgeted revenues in UL0 to the Office of Human Rights for paid leave enforcement in the amount of \$1,853,227 (\$1,148,227 in PS and \$705,000 in NPS). This will be a transfer to the Committee on Government Operations (see Chapter III).

## K. WORKFORCE INVESTMENTS (UP0)

### 1. AGENCY MISSION AND OVERVIEW

The mission of Workforce Investments is to fund compensation increases for nonunion and union District employees and any costs of reform initiatives.

### 2. FISCAL YEAR 2021 OPERATING BUDGET

<b>Fiscal Year 2021 Operating Budget, By Revenue Type</b>					
<i>Fund Type</i>	<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
Local	\$0	\$89,068,228	0	0	0
<b>Gross Funds</b>	<b>\$0</b>	<b>\$89,068,228</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>Fiscal Year 2021 Full-Time Equivalents, By Revenue Type</b>					
<i>Fund Type</i>	<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
Local	\$0	\$89,068,228	0	0	0
<b>Gross Funds</b>	<b>\$0</b>	<b>\$89,068,228</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>Fiscal Year 2021 Operating Budget, By Program (Gross Funds)</b>						
<i>Program</i>		<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
1000	Workforce Investments	\$0	\$89,068,228	0	0	0
	<b>Total</b>	<b>\$0</b>	<b>\$89,068,228</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>Fiscal Year 2021 Operating Budget, By Comptroller Source Group (Gross Funds)</b>						
<i>Comp Source Group</i>		<i>FY 2019 Actual</i>	<i>FY 2020 Approved</i>	<i>FY 2021 Proposed</i>	<i>Sum of Committee Variance</i>	<i>Committee Approved</i>
11	Regular Pay	\$0	\$89,068,228	0	0	0
	<b>Total</b>	<b>\$0</b>	<b>\$89,068,228</b>	<b>0</b>	<b>0</b>	<b>0</b>

### Summary of Proposed Operating Budget

The Mayor's FY 2021 budget proposal for the Workforce Investments Fund is \$0, a decrease of 100 percent, from the current fiscal year's budget. This budget supports 0 FTEs. One hundred percent of the Workforce Investments budget is in local funds.

## **Committee Analysis and Recommendations**

### **a. Budget Recommendations**

The committee recommends approval of the Workforce Investments Fund FY2021 budget as proposed by the Mayor.

The Committee also recommends changes to the Local Budget Act and recommends a Budget Support Act subtitle to require that excess revenues raised in the future above the April 2020 estimate, which forms the basis of the FY2021 formulated budget, be deposited into the Workforce Investments Fund. The Committee recommends up to \$50,000,000 be deposited. Under the proposed subtitle, the funds must first be used to satisfy the cost-of-living adjustments required under two executed collective bargaining agreements. After the CBAs' terms are met, excess funds may be used for salary adjustments for other employees if revenues permit, at the Mayors discretion. See Chapter IV.A.1 for more information about the subtitle.

### **3. FY 2021-2026 CAPITAL BUDGET**

Workforce Investments has no capital budget for FY 2021-2026.

### **4. SUMMARY OF COMMITTEE RECOMMENDATIONS**

#### **a. Fiscal Year 2021 Operating Budget Recommendations**

The committee recommends approval of the Workforce Investments Fund FY2021 budget as proposed by the Mayor.

## **L. WORKFORCE INVESTMENT COUNCIL (PART OF GW0, DEPUTY MAYOR FOR EDUCATION)**

### **1. AGENCY MISSION AND OVERVIEW**

The Workforce Investment Council (WIC) provides strategic guidance, coordination, and oversight of the District's workforce development system, including the federal Workforce Innovation and Opportunity Act (WIOA). The WIC's budget is housed within the budget of the Deputy Mayor for Education. The WIC is led by a Board, for which membership requirements are laid out in WIOA and District law. Board members are appointed by the Mayor. The Board serves as both the State Workforce Development Board and Local Workforce Development Board, as defined by WIOA, which involve oversight, accountability, and operational responsibilities, such as development of strategies and policies, dissemination of information, review and evaluation of programs, operational input, technical assistance, and recommendations on the District's workforce development system.<sup>113</sup>

### **2. FISCAL YEAR 2021 OPERATING BUDGET**

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<sup>113</sup> Workforce Innovation and Opportunity Act, Title 32 USC Section 3111 defines state boards, Title 32 USC 3122 defines local boards. The WIC is established and assigned responsibility to carry out functions of both state and local boards under WIOA in D.C. Office Code § 32-1603(a).

WORKFORCE INVESTMENT COUNCIL					
Operating Budget Summary					
Fund Type	FY 2019 Actuals	FY 2020 Revised	Mayor's FY 2021 Proposed	Committee Variance	Committee's FY 2021 Recommendation
LOCAL FUND	\$0	\$4,459,710	\$2,894,923	\$789,625	\$3,684,548
OPERATING INTRA-DISTRICT FUNDS	\$0	\$2,177,080	\$1,401,831		\$1,401,831
<b>TOTAL GROSS FUNDS</b>	<b>\$0</b>	<b>\$6,636,790</b>	<b>\$4,296,754</b>	<b>\$789,625</b>	<b>\$5,086,379</b>
Agency Full-Time Equivalent Summary					
Fund Type	FY 2019 Actuals	FY 2020 Revised	Mayor's FY 2021 Proposed	Committee Variance	Committee's FY 2021 Recommendation
LOCAL FUND	0.00	5.00	9.00	1.00	10.00
OPERATING INTRA-DISTRICT FUNDS	0.00	3.00	3.00		3.00
<b>TOTAL FTE</b>	<b>0.00</b>	<b>8.00</b>	<b>12.00</b>	<b>0.00</b>	<b>13.00</b>
Agency Operating Budget by Comptroller Source Group					
Comptroller Source Group	FY 2019 Actuals	FY 2020 Revised	Mayor's FY 2021 Proposed	Committee Variance	Committee's FY 2021 Recommendation
11-REGULAR PAY - CONT FULL TIME	\$0	\$951,773	\$1,259,924	\$108,170	\$1,368,094
12-REGULAR PAY - OTHER	\$0	\$57,113	\$0		\$0
14-FRINGE BENEFITS - CURR PERSONNEL	\$0	\$246,694	\$254,505	\$21,830	\$276,335
20-SUPPLIES AND MATERIALS	\$0	\$14,625	\$14,625		\$14,625
40-OTHER SERVICES AND CHARGES	\$0	\$961,175	\$65,206	\$100,000	\$165,206
41-CONTRACTUAL SERVICES - OTHER	\$0	\$1,186,285	\$1,048,370		\$1,048,370
50-SUBSIDIES AND TRANSFERS	\$0	\$3,205,000	\$1,650,000	\$559,625	\$2,209,625
70-EQUIPMENT & EQUIPMENT RENTAL	\$0	\$14,125	\$4,125		\$4,125
<b>TOTAL GROSS FUNDS</b>	<b>\$0</b>	<b>\$6,636,790</b>	<b>\$4,296,754</b>	<b>\$789,625</b>	<b>\$5,086,379</b>
Agency Operating Budget by Program					
Program	FY 2019 Actuals	FY 2020 Revised	Mayor's FY 2021 Proposed	Committee Variance	Committee's FY 2021 Recommendation
3000 - WORKFORCE INVESTMENT	\$0	\$6,636,790	\$4,296,754	\$789,625	\$5,086,379
<b>TOTAL GROSS FUNDS</b>	<b>\$0</b>	<b>\$6,636,790</b>	<b>\$4,296,754</b>	<b>\$789,625</b>	<b>\$5,086,379</b>

## Summary of Proposed Operating Budget

The Mayor's FY 2021 budget proposal for the WIC is \$4,296,754, a decrease of 13 percent from the FY 2020 approved budget of \$4,946,217. (The FY 2020 revised budget is \$6,636,790 as of mid-March.) The proposed budget would support a staff of 13 FTEs, an increase 3 FTEs from the current fiscal year's 10.0 FTEs.

**Local Funds:** The Mayor's FY 2021 local funds budget proposal for the WIC is \$2,894,923, a decrease 35.1 percent from the FY 2020 approved budget of \$4,459,710. The proposed budget would support 9.61 FTEs, an increase of 3.3 FTEs from the current fiscal year of 6.31 FTEs.

**Intra-District Funds:** The Mayor's FY 2021 intra-district funds budget proposal is \$1,401,831, an increase of 188 percent, from the current fiscal year's approved budget of \$486,507. (The FY2020 revised budget is \$2,177,080 as of mid-March.) The proposed



intra-district funds budget would support 3.39 FTEs, a decrease of 0.3 FTEs from the current fiscal year’s 3.69 FTEs.

**Committee Analysis and Recommendations**

**a. Budget Analysis and Recommendations**

***1. Fund the “Healthcare Workforce Partnership Establishment Act,” a Budget Support Act Subtitle***

The Workforce Investment Council (WIC) should fund a healthcare industry sector partnership. Industry sector partnerships are a key component of the federal Workforce Innovation and Opportunity Act (WIOA) and improve the talent supply chain. As the District plans to fund the construction of two new hospitals, the District should take advantage to provide training and opportunity for residents to find employment in the healthcare sector.

The Committee recommends legislation to establish and operate a partnership. The partnership would provide guidance to the District, particularly to the WIC, on the best occupations for which to invest in training, and other ways to increase the number of District residents employed in the healthcare sector, with a focus on the new hospitals, and to meet the staffing needs of healthcare employers. The subtitle has three components: first, the WIC would hire an organization with connections in the healthcare field to serve as an “intermediary” between employers and training providers. Second, the intermediary would facilitate a partnership made up of employers, trainers, and other relevant parties, including the WIC. Finally, the WIC would fund healthcare occupational training, in alignment with recommendations made by the Partnership. See Chapter IV.B.1 for further information on this subtitle.

This subtitle has a fiscal impact of \$530,000 in FY2020 and \$689,625 in FY2022 and future years. The Committee has identified full funding for the subtitle beginning in FY2021, which provides the WIC with an excess of \$159,000 in FY2021.

	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
Project Manager Position (incl. fringe)	130,000	130,000	130,000	130,000
Grant to Intermediary	250,000	254,375	258,827	263,356
2 Grants for Training Programs (starts July 2021)	150,000	305,250	310,592	316,027
<b>TOTAL</b>	<b>530,000</b>	<b>689,625</b>	<b>699,418</b>	<b>709,383</b>

## 2. *Enhance funds for Career Pathways Innovation Fund*

The Career Pathways Innovation Fund (CPIF) was established by law in 2015 and has been in effect since 2016. In FY2021, the WIC's budget contains adequate funding for this program, a welcome change after two years in which the Mayor's proposed budget did not include funding for this program. Despite this, the committee was able to secure funding in FY2019 and FY2020 for the program. Given how successful and important this program has been to adult learners and jobseekers, the Committee is pleased to see funding provided by the Mayor, and has enhanced funding by \$100,000.

The CPIF has operated in combination with the WIOA Title II Adult Education program, which is administered by the Office of the State Superintendent of Education (OSSE). OSSE has braided funding from its federal sources with the \$1.1 million of CPIF funds provided by the WIC. This funding represents 25 percent of OSSE's adult and family education grants budget. OSSE has issued grants to ten organizations to provide services using an "integrated education and training" (IET) model, which is considered a best practice and used across the nation.<sup>114</sup> With this model, individuals receive education in literacy and numeracy simultaneously with, and in the context of, occupational skills training. Ninety percent of participants in the program are individuals with low educational functioning levels who would otherwise not qualify for most traditional job training programs. Further, this population represents the majority of individuals seeking services at American Job Centers or other DOES programs and who also took assessment tests (the CASAS test).<sup>115</sup>

Results from the first two program years (PY17 and PY18) are very promising, with a marked increase in the "measurable skills gain" metric for WIOA Title II and hundreds of students earning certifications. In FY18, 43 percent of students made a measurable skills gain (i.e., educational gains via pre-and post-test), and in FY2019, 50 percent of students had a skills gain, exceeding its 43 percent target.<sup>116</sup>

In FY 2020, the committee identified \$1,650,000 in recurring funds, including \$500,000 transferred in from the Committee on Facilities and Procurement, for the WIC's budget for the Career Pathways Innovation Fund. This funding level has been continued in the FY2021 proposed budget. The committee recommends that the vast amount of the funds be included in the MOU between the WIC and OSSE to be used for grants to providers. The Committee additionally provides a \$100,000 enhancement. While the Committee hopes that this funding will be used to increase the number of participants who

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<sup>114</sup> For example, see Beth Hawkins, "Adult Education Comes of Age," *Education Next*, Vol. 19, No. 2, Spring 2019, available at <https://www.educationnext.org/adult-education-comes-of-age-new-approach-blends-basic-academics-job-training/>.

<sup>115</sup> See discussion Chapter II.C.2.

<sup>116</sup> Workforce Investment Council, "Responses to Fiscal Year 2018-2019 Performance Oversight Questions," Feb. 19, 2019, response to Question 62, p. 34, available at [http://dccouncil.us/wp-content/uploads/2019/02/2019-PO\\_WIC\\_responses-02-19-19.pdf](http://dccouncil.us/wp-content/uploads/2019/02/2019-PO_WIC_responses-02-19-19.pdf); and Office of the State Superintendent of Education, "Responses to Fiscal Year 2019 Performance Oversight Questions," February 14, 2020, p. 171-72, available at <https://dccouncil.us/wp-content/uploads/2020/02/osse.pdf>.

are able to take advantage of this program, given the increased utilization of virtual training, there may be a need to provide computers or wifi access to participants.

**3. The proposed WIOA funding provided to the WIC is insufficient**

The mayor’s FY 2021 proposed budget for the WIC should contain less local funding and more Intra-District funds (which are WIOA funds transferred from DOES and thus appear in the budget as Intra-District funds). In order to be a fully functional workforce board, especially one that must fulfill both state and local board functions under WIOA, the WIC should have more staff and funds overall. Also important is that the District should be utilizing significantly more of the federal funding available under WIOA to support the WIC’s activities.

Each year, the WIC enters into a Memorandum of Understanding with DOES, the fiscal agent for federal WIOA Title I funds, to provide a portion of the WIOA funds to the WIC for its work in support of WIOA activities and workforce development more broadly.

The committee is concerned that the WIC is not receiving an adequate portion of WIOA funds provided to the District; it expressed this concern in its FY 2019 and FY2020 budget reports, as well. The following table outlines the WIOA Title I funds in total and in the state-level funding stream (for at least several years the WIC has received portions only of state funding, not also of the local funding stream which is considerably more money). Unfortunately, the Committee has incomplete information, as different data was provided in the 2019 performance oversight responses and the 2020 oversight responses. Notably, the information does not include the state-level funds for 2020.

**WIC Portions of WIOA Funds, FY16-FY20**

	<i><b>FY16 (PY15)</b></i>	<i><b>FY17 (PY16)</b></i>	<i><b>FY18 (PY17)</b></i>	<i><b>FY19 (PY18)</b></i>	<i><b>FY20 (PY19)</b></i>
<b>Total WIOA Title I funds</b>			\$10,716,085	\$12,849,334	\$16,683,515
<b>Total state-level WIOA Title I funds</b>	\$1,462,853	\$2,727,962	\$2,964,468	\$3,267,492	
<b>WIC's amount of state WIOA funds</b>	\$543,545	\$797,822	\$1,057,457	\$1,057,457	\$1,447,079
<b>WIC's portion of state funds</b>	37%	29% <sup>117</sup>	36%	32%	9% (of total funds)

<sup>117</sup> Note that the FY2017 MOU between DOES and the WIC stated that DOES agreed to transfer \$797,000, which “equates to 60 percent of the State set-aside for federal program year 2016,” however, as the table shows, the amount actually equated to 29 percent.

Sources: Workforce Investment Council, “Responses to Fiscal Year 2018-2019 Performance Oversight Questions,” Feb. 19, 2019, Q. 57 Attachment, “WIOA Funding, FY16-19,” at p. 334, available at <http://dccouncil.us/wp-content/uploads/2019/02/wicatt.pdf>; Workforce Investment Council, “Responses to FY2019-2020 Performance Oversight Questions,” Jan.31, 2020, Q. 46 Attachment “WIOA Allocations,” at p. 647, available at <https://dccouncil.us/wp-content/uploads/2020/01/FY19-2020-Performance-Oversight-Attachments-Combined-with-Headers-1.pdf>.

The significant implication here is that there is far more money available than is provided to the WIC. Furthermore, according to Department of Labor fund tracking materials, the District is underspending its state-level funds and set-aside funds (in addition to other funding streams).<sup>118</sup> The Committee believes that the WIC should receive at least 60 percent of the state-level Title I funds. This would have nearly doubled the funding available to the WIC in recent years. Unfortunately, WIOA funds are provided to the Executive, and the Council cannot require their utilization. However, the Committee will continue to monitor and study this issue, and will share its results with the Executive to encourage improvement in the utilization of federal resources.

## **b. Policy Recommendations**

### ***1. Act as the convener of partners in the workforce system to coordinate among agencies and providers: Organize workforce plans around upcoming economic development projects***

The WIC should work with District agencies to coordinate workforce development programming. It could do this in part by organizing around upcoming economic development and other large projects that will be launched in the next 24 months. The WIC should strive to form a true workforce *system*, in which services and programs are aligned to complement each other and at the very least, not duplicate each other.

The WIC should create workforce plans centered around upcoming economic development or other projects, such as the new hospitals at Howard University and the St. Elizabeths campus, new infrastructure projects, large IT contracts, and more. The WIC could coordinate among contractors, employers, government agencies, and training providers. It should identify the positions needed for both the construction build and operation of those projects and create a staffing plan to fill those vacancies with District residents. It should identify the sectors, occupations, and skills needed to fill those positions. Where District residents do not possess the requisite skills or are already employed, the WIC could organize new training programs, including incumbent workers to progress up a career ladder in their field.

The WIC should explore different models of workforce development to determine how to fit them together across agencies and which are the best choice for particular circumstances. The WIC should also determine which agencies already offer such models

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<sup>118</sup> U.S. Department of Labor Employment and Training Administration, “WIOA Spending and Obligation Rate Visualizations,” June 30, 2019 (latest available), available at <https://www.dol.gov/agencies/eta/budget/spending-updates/annual>.

and which agencies should do so. For instance, the intermediary model may be the best approach to develop qualified candidates for the construction of publicly-funded projects, as a companion to the hiring requirements of the District’s First Source law. A sector partnership model may be the best approach to form the underlying framework of an industry-wide career pathway in one or all of the six high-demand industries. Ad hoc, cohort-based training may be the best approach for meeting the demands of a particular subindustry.

Finally, the WIC should ensure that grants and contracts to service providers such as job training organizations meet the needs of the employers, set standards for performance, and align with the WIOA state plan.

## ***2. Work with DOES to improve performance of the eligible training providers***

The WIC should work with DOES to improve outcomes in the federally-funded Workforce Innovation and Opportunity act (WIOA) programs, particularly those geared to adults. The WIC and DOES share responsibility for the WIOA Adult program. The District’s main use of WIOA Adult funds currently is to provide a voucher (called an Individual Training Account) to individuals who receive classroom-based job training from pre-screened providers. The WIC develops the list of these providers, called the Eligible Training Provider List (ETPL). To develop the list, the WIC screens potential providers based on several criteria, and it reviews performance of current providers to determine if they met requirements and can stay on the ETPL. DOES’s current role is to oversee the providers and report outcomes from the program to the U.S. Department of Labor.

The outcomes of the ETPL providers fell during Program Years 2018 and 2019, especially on the measure of credential attainment.<sup>119</sup> In PY18, the target was that 60% of participants would attain a credential. This target was met in the first two of quarters of PY18. However, the target was missed in the last 2 quarters of PY18. By quarter 1 of PY19 (the latest quarter for which the Committee has this data), the credential attainment results were just 29% in the Adult program and 46% in the Dislocated Worker program.

The WIC has held several meetings with providers to begin to work on improving outcomes. The Committee applauds this effort and would like to see the WIC continue this effort or even enhance it by bringing in outside expertise, until providers are regularly meeting—and even exceeding—the target outcomes. If the providers cannot meet targets, they should be removed from the ETPL, in accordance with the WIC’s policy.

## ***3. Publish the Expenditure Guide, and ensure it includes all required information***

The WIC is tasked with preparation of a report outlining information on all workforce development and adult education spending by the District. The Council and

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<sup>119</sup> Workforce Investment Council, “FY2019-2020 Performance Oversight Questions,” Jan. 31, 2020, attachment 30, available at <https://dccouncil.us/wp-content/uploads/2020/01/FY19-2020-Performance-Oversight-Attachments-Combined-with-Headers-1.pdf>.

public have sought this information for years in order to understand how funds are spent, what services are offered, who is being served, and what the outcomes are of our public investments. The WIC must collect this information from the agencies offering such programs and compile it into an annual report. Unfortunately, the WIC has not been able to complete this task. It must redouble its efforts in 2020 and future years to ensure the report is developed completely, is accurate, has consistent data, and is published on time.

The Workforce Development System Expenditure Guide is required by L22-0095, the Workforce Development System Transparency Act. The first annual report was due on Feb. 1, 2019, covering seven agencies that are most central to the public workforce system.<sup>120</sup> It was delivered to the Council in September 2019.<sup>121</sup> While the Committee appreciates the amount of work that went into its preparation, it was missing such a large amount of information that it was largely not usable for analysis of individual programs nor of the system as a whole.<sup>122</sup> Many programs were not included (about 25 just in DOES). A significant portion of performance results data was not reported (the guide states “data not available” or “data not captured”) and many results were not reported for individual vendors, as required. Finally, many data fields had inconsistent data (such as absolute numbers for some programs and percentages for others). One of the biggest problems was that the report’s outcomes were supposed to be those already tracked by the agencies (D.C. Code § 32–1622(f)), so that the report did not require agencies to report on outcomes that were not being tracked. It had a two-year delay in reporting on common measures (the same measures used for all WIOA programs). However, the WIC asked agencies to provide WIOA outcomes for programs that had not yet tracked those measures while programs were in operation. As a result, the outcomes were reported as “not available.”

The Committee provided detailed feedback on the deficiencies in the report and shared them with WIC staff. The staff were very open to hearing this and made a number of improvements in the 2020 process. For instance, the WIC created a guidance document for agencies to help them complete their contributions of information to the report.

Still, the 2020 report, due Feb. 1, 2020, has not been delivered as of June 23, 2020. This year’s report is meant to build on the prior year’s report, as it is required to cover all District agencies offering workforce development or adult education programs. Regarding outcomes, in the 2020 report, the law requires reports on any outcomes tracked in accordance with law, policy, or practice. If data or time lags do not allow reporting for the prior year, then the report should include data from two years before (e.g. employment results).

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<sup>120</sup> One of the agencies, the Deputy Mayor for Greater Economic Opportunity, no longer exists.

<sup>121</sup> WIC, “Workforce Development System Expenditure Guide,” Sept. 13, 2019, available at <https://dcworks.dc.gov/publication/workforce-development-system-expenditure-guide>.

<sup>122</sup> Stephen Berry, “Testimony of Stephen Berry, DC Appleseed Center for Law and Justice before the Council of the District of Columbia Committee on Labor and Workforce Development,” Public Oversight hearing of the Committee on Labor and Workforce Development: “A Review of the Department of Employment Services’ Workforce Development Programs: Project Empowerment and Career Connections,” November 21, 2019, Hearing record page 5, available at [https://lirms.dccouncil.us/downloads/LIMS/44214/Hearing\\_Record/HR23-0132-HearingRecord.pdf](https://lirms.dccouncil.us/downloads/LIMS/44214/Hearing_Record/HR23-0132-HearingRecord.pdf).

The WIC must publish the 2020 Expenditure Guide extremely soon and ensure it includes all programs, has consistent data, and reports outcomes for each program, including at the vendor level. In 2021, the report must also report the common measures used by WIOA (in short, employment, retention, credential attainment, earnings, and skills gains). The WIC should have already started to ensure that all agencies have begun tracking this information now so that they can report the outcomes next year.

#### ***4. Improve operations at the American Jobs Centers***

A central element of any state's or jurisdiction's workforce development system is the American Job Centers (AJCs). The District has four such centers. They are operated by DOES, but under WIOA, the WIC has responsibilities as both a state and local workforce development board for ensuring the optimal functioning of AJCs and continually improving them. AJCs are dual-customer, serving both jobseekers to find employment and businesses to find qualified workers. It is critical that the WIC hire a new One-Stop Operator with a track record of success, and that the board build an evaluation and continual improvement process for AJC services and operations. Strategies to accomplish this follow.

##### **a. Hire a One-Stop Operator with a track record of success; set clear expectations**

A One-Stop Operator (OSO) is required under WIOA. In the District, because the AJC staff (who work for DOES) provide direct services, the OSO's role is largely to coordinate services, as well as to help the WIC meet its federal requirements to provide oversight of the AJCs by analyzing service delivery quality, collecting data on AJC and programmatic performance, making recommendations for continuous improvements, and reporting to the WIC board on these items.

The current OSO contract will expire in Fall 2020, and the WIC must procure a new operator. The WIC should develop a strong statement of work with clear responsibilities, regular reporting to the board, and a feedback mechanism to provide continual improvement. This oversight role is established by WIOA, and the WIC is the entity ultimately responsible for AJC performance. The new OSO should have a track record of success to ensure that the WIC can meet WIOA's requirements and that residents utilizing the AJCs receive high-quality services that meets their expectations.

The WIC, in concert with the Office of Contracting and Procurement (OCP) must release the solicitation extremely soon in order for them to analyze the bids and provide lead-time to a new contractor to prepare for their work and hit the ground running. The WIC must also ensure the board is involved at each stage, including developing the solicitation's statement of work, evaluating bids, and overseeing the eventual OSO's work by receiving regular reports of services and results at the AJCs.

## **b. Develop AJC evaluation criteria as required under WIOA**

A large part of the OSO's role is to help the WIC achieve one of WIOA's key requirements: to continually improve AJCs and the services they provide. Specifically, the WIC, as the State Workforce Development Board (WDB) recognized under WIOA, should set criteria by which to assess the AJCs, evaluate the AJCs, and use those evaluations to drive continual improvements. The WIC should undertake this process in the coming years. Related U.S. Department of Labor guidance follows:

The State WDB must establish objective criteria and procedures for the Local WDBs to use in evaluating the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and the one-stop delivery network (20 CFR 678.800, 34 CFR 361.800, and 34 CFR 463.800). The State WDB must review and update the criteria and procedures every two years, in conjunction with review and modification of the State Plans. The Local WDBs must follow the State WDB's criteria and procedures (though Local WDBs are free to establish higher standards or additional criteria) to evaluate their one-stop centers and one-stop delivery network at least once every three years.

As part of that assessment, the local WDB must certify all comprehensive one-stop centers and affiliate one-stop centers within the local area for effectiveness, physical and programmatic accessibility, and continuous improvement, consistent with the statutorily required criteria of WIOA sec. 121(g)(2) and TEGL 16-16. The Department has defined physical accessibility and programmatic accessibility in the regulations implementing section 188 of WIOA, at 20 CFR 38.13.<sup>123</sup>

### **5. *Provide capacity building to a variety of job training and adult education programs to utilize the teaching methodology Integrated Education and Training***

A promising practice in adult education is Integrated Education and Training (IET), which is a training methodology that combines basic education with and delivers in the context of, occupational skills training. Adults learn more quickly and gain more skills. IET is considered a best practice and used across the nation.<sup>124</sup>

Most District jobseekers do not qualify for many of the city's job training programs because they do not have the minimum required educational skills.<sup>125</sup> They need help to

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<sup>123</sup> U.S. Department of Labor, Employment and Training Administration, "Certification of American Job Center FAQs," May 4, 2017, "1. What is the one-stop certification requirement?" available at <https://www.doleta.gov/wioa/faqs.cfm>.

<sup>124</sup> See, e.g., Beth Hawkins, "Adult Education Comes of Age," *Education Next*, Vol. 19, No. 2, Spring 2019, available at <https://www.educationnext.org/adult-education-comes-of-age-new-approach-blends-basic-academics-job-training/>.

<sup>125</sup> Most programs require minimum educational functioning levels for participation, often at or above the 8th or 9th grade levels. While DOES did not provide the committee with updated test scores for FY2019 as



improve math and/or literacy skills. As a result, they cannot participate in many workforce development programs. OSSE's Adult Education program uses the IET model, but there are limited slots, and few if any other programs use the model.<sup>126</sup> This greatly limits options for individuals in need of training. Many other programs offer jobs placement with no skill development.

Many people seeking jobs or training also do not want to go back to school—they want to work immediately so they can earn an income. While DOES has introduced some remedial math and literacy skills help *before* entering a job training program, programs using the IET model are able to provide both at once.

The WIC should provide capacity building to boost the provision of IET in District job training programs. The WIC should work with agencies across District government to train agency staff, current and potential training providers, and other parties on the IET model so that it may be woven into programs. An added benefit will be that training programs will be able to accept more individuals who otherwise would not meet minimum entry requirements. Furthermore, individuals will boost their math and literacy skills, helping them to be more successful in the labor market in the long term.

**6. Complete industry-level career maps and create a tool to generate individualized career maps**

The WIC has developed career maps at the industry level in several fields. The WIC should complete the maps in the remaining fields that it has identified as high-demand sectors. It should distribute these widely, as recommended by the Career Pathways Strategic plan: “Share information and resources such as the career pathway maps and a career pathways development ‘blueprint’ guide to foster system partner alignment and collaboration around sector strategies and career pathways and support partners’ planning, decision-making, and investments around pathway and sector strategies.”

The sector-level career maps are a good first step. The WIC should next develop or purchase an online tool to allow individuals to create an individualized career map. It should be a system with which jobseekers can interact. Individuals should be able to enter their current skills or employment information and desired job or skills interests; they should then receive information on possible occupations and links to providers both publicly funded and private organizations.

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requested in the Committee's performance oversight materials, the pattern is likely the same as before, in which up to 90 percent of participants in some programs tested below 8th grade in math and nearly half tested below 8th grade in reading.

<sup>126</sup> While DOES offered a grant in 2020 called “integrated education training,” as laid out in the Request for Applications, it did not actually require integrated education *with* training, but only education OR training. See Evette Banfield, “Testimony of Evette Banfield, VP Economic Development Policy, Coalition for Nonprofit Housing and Economic Development, Before the Committee on Labor and Workforce Development, Public Oversight Hearing for Department of Employment Services and Workforce Investment Council,” Wed. March 4, 2020. Additionally, some adult charter schools indicate they use the IET model.

### ***7. Enhance the provider directory to be a searchable and interactive database***

The WIC has developed the first version of a workforce provider directory.<sup>127</sup> It should enhance this directory by adding more providers, including OSSE’s WIOA Title II Adult Education providers and organizations appearing on the Eligible Training Provider List. It should also add specific occupations for which the programs provide training and program results. It could use Expenditure Guide information for much of this.

The WIC should then transition the directory into a database searchable by industry, skill, occupation, and other information. As noted above, it should be tied to a new, interactive tool that individuals can use to identify areas for skills training or development; they should be able to link from the map to the new directory to explore and select a provider.

### **3. FY 2021-2026 CAPITAL BUDGET**

The WIC has no capital budget for FY 2021-2026.

### **4. SUMMARY OF COMMITTEE RECOMMENDATIONS**

#### **a. Fiscal Year 2021 Operating Budget Recommendations**

1. Fund the “Healthcare Workforce Partnership Establishment Act,” a Budget Support Act Subtitle.
  - Increase Program 3012 with \$130,000 in recurring PS funds and \$559,625 in recurring NPS funds.
2. Increase funds for Career Pathways Innovation Fund
  - Add \$100,000 to Program 3012, CSG 40.
3. The proposed WIOA funding provided to the WIC is insufficient

#### **b. Policy Recommendations**

1. Act as the convener of partners in the workforce system to coordinate among agencies and providers: Organize workforce plans around upcoming economic development projects
2. Work with DOES to improve performance of the eligible training providers
3. Publish the Expenditure Guide, and ensure it includes all required information
4. Improve operations at the American Jobs Centers
  - a. Hire a One-Stop Operator with a track record of success; set clear expectations

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<sup>127</sup> Workforce Investment Council, “DC Career Pathways Provider Director,” available at <https://dcworks.dc.gov/page/provider-directory>.

- b. Develop AJC evaluation criteria as required under WIOA
5. Provide capacity building to a variety of job training and adult education programs to utilize the teaching methodology Integrated Education and Training
6. Complete industry-level career maps and create a tool to generate individualized career maps
7. Enhance the provider directory to be a searchable and interactive database

CIRCULATION DRAFT

### III. TRANSFERS TO OTHER COMMITTEES

In addition to the changes recommended for agencies within its jurisdiction, the committee has worked with other committees to identify funding needs and recommends transfers to support programs in those other committees as described below.

#### OFFICE OF THE ATTORNEY GENERAL (CB0)

The committee recommends transferring the following amounts to the Committee on Judiciary.

- \$127,986 in recurring funds to the Office of the Attorney General (OAG) to hire two staff attorneys to expand the capacity of the Social Justice Section (SJS) of the Public Advocacy Division. SJS enforces worker protection laws in the District and has a strong track record of holding employers accountable when they wrongfully withhold employer wages, sick and safe leave, and other rights.

This Committee funded two FTEs for the purpose of wage theft enforcement in FY2018 and has observed the positive results of this investments. As of February 2020, SJS has opened over 30 affirmative wage enforcement investigations and lawsuits.<sup>128</sup> In FY2020 alone, the OAG has successfully resolved two large-scale cases involving alleged wage theft and worker misclassification.<sup>129</sup> In one case, *D.C. v. JD Nursing and Mgmt. Servs., Inc., et al.*, the District successfully obtained a judgment valued at approximately \$216,000 in back wages and penalties. In January, the District settled a lawsuit alleging worker misclassification and failure to pay minimum wage and overtime. The \$2.75 million settlement obtained restitutions for hundreds of workers and penalties payable to the District. OAG also enforces administrative orders issued by the Department of Employment Services (DOES), and has secured judgments totaling over \$200,000. Moreover, in September 2019, OAG released “The Worker Misclassification Report” analyzing how worker misclassification harms District workers, particularly in the construction industry, and detailing the cost to the District.<sup>130</sup> The report has been a valuable resource to this Committee as well as to the worker advocacy community that has been clamoring for better protections for misclassified workers.

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<sup>128</sup> Office of the Attorney General for the District of Columbia, “Responses to Fiscal Year 2019-2020 Performance Oversight Questions, Committee on the Judiciary and Public Safety,” January 28, 2020, page 90, available at <https://dccouncil.us/wp-content/uploads/2020/03/JPS-Performance-Oversight-Responses-2020-OAG.pdf>

<sup>129</sup> *D.C. v. JD Nursing and Mgmt. Servs., Inc., et al.*, 2017 CA 008411 B (D.C. Superior Court), *D.C. v. Power Design, Inc., et al.*, 2018 CA 005598 B (D.C. Superior Court).

<sup>130</sup> Office of the Attorney General for the District of Columbia, “Issue Brief and Economic Report: Illegal Worker Misclassification: Payroll Fraud in the District’s Construction Industry,” September 2019, available at: <https://oag.dc.gov/sites/default/files/2019-09/OAG-Illegal-Worker-Misclassification-Report.pdf>

Presently, OAG currently has over a dozen active investigations aimed at rooting out worker misclassification, minimum wage, overtime, and paid sick and safe leave.<sup>131</sup> The Committee hopes that increasing staff resources within the Social Justice Section will recover wrongfully withheld wages and benefits for dozens more workers, and continue to send the message to District employers that violations will not go unnoticed or unprosecuted.

## OFFICE OF HUMAN RIGHTS (HM0)

The committee recommends transferring the following amounts to the Committee on Government Operations.

- The Committee recommends providing \$1,853,227 (\$1,148,227 in PS and \$705,000 in NPS) to the Office of Human Rights (OHR) in FY2021 to stand up the Office's enforcement of the universal paid leave benefits program. The program will begin to accept applications for benefits on July 1, 2020. The law prohibits retaliation against any person seeking to exercise his or rights under the Universal Paid Leave Act. This provision will be enforced by OHR, as determined by the Executive and stated in the governing regulations.<sup>132</sup> Unfortunately, OHR's budget was not increased to account for these new responsibilities. Therefore, the Committee, along with the Committee on Government Operations, recommend providing funds to enable OHR to hire staff and enforce the law. This funding will come from unbudgeted revenues in the Universal Paid Leave Fund,<sup>133</sup> which, under the Committee's related proposed Budget Support Act subtitle will have a special fund dedicated to funding for enforcement purposes in FY2021 and the future (see Chapter IV.B.8).

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<sup>131</sup> Office of the Attorney General or the District of Columbia, "Responses to Fiscal Year 2019-2020 Performance Oversight Questions, Committee on the Judiciary and Public Safety," January 28, 2020, page 90, available at <https://dccouncil.us/wp-content/uploads/2020/03/JPS-Performance-Oversight-Responses-2020-OAG.pdf>

<sup>132</sup> Title 7 DCMR Section 3516.1.

<sup>133</sup> Titled the "Universal Paid Leave Implementation Fund" in current law, but transitioning to a special purpose fund, the Universal Paid Leave Enforcement Fund, in FY2021, pursuant to the BSA subtitle, the Universal Paid Leave Fund Amendment Act of 2020 (see Chapter IV.B.8).

## IV. BUDGET SUPPORT ACT RECOMMENDATIONS

On Monday, May 18, 2020, Chairman Mendelson introduced, on behalf of the Mayor, the “Fiscal Year 2021 Budget Support Act of 2020” (Bill 23-0760). The bill contains one subtitle for which the committee has provided comments. The committee also recommends the addition of 9 new subtitles.

### A. RECOMMENDATIONS ON MAYOR’S PROPOSED SUBTITLES

#### 1. Title I, Subtitle C, Revenue-Contingent Cost-of-Living Adjustment Act of 2020

##### a. Purpose, Effect, and Impact on Existing Law

The Mayor’s proposed Budget Support Act (BSA) contained a subtitle<sup>134</sup> that would eliminate all cost-of-living adjustments (COLAs) for employees across covered agencies throughout the four-year financial plan. This includes COLAs incorporated into two previously executed collective bargaining agreements (CBAs) that will be effective in FY2021 and which cover more than 10,000 public servants.<sup>135</sup> The Committee strongly opposes the nullification of CBAs, which are legally binding contracts. And to deny a negotiated pay raise after the sacrifice of so many who reported to work during a viral pandemic is demoralizing and likely to make essential workers feel unvalued and disposable. The Committee believes that the proposed subtitle should be struck from the BSA. Unfortunately, the Committee’s response is restricted by the lack of available funds within the Committee’s jurisdiction. Thus, the Committee proposes alternative language that will ensure the CBAs’ terms will be met should revenues become available.

##### b. Committee Reasoning

The Mayor’s proposed subtitle serves to nullify legally binding contracts. The Executive’s stated purpose was to balance the budget while avoiding layoffs or reductions-in-force (RIFs), given the significant decline in revenue that the District experienced following the onset of the coronavirus pandemic. The Committee is extremely concerned about the impact and potential consequences. The abrogation of existing contracts exposes

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<sup>134</sup> Entitled the “Balanced Budget and Financial Plan Freeze on Salary Schedules, Benefits, and Cost-of-Living Adjustments Act of 2020.”

<sup>135</sup> The two units are Compensation Units 1 & 2 which represents over 9,000 employees and ASFCME District Council 20, Local 2921, which represents over 1,000 paraprofessionals in District public schools; see Council of the District of Columbia (2020). *PR2-0738-Compensation Collective Bargaining Agreement between the District of Columbia and Compensation Units 1 & 2, FY 2018-FY2021, Approval Resolution of 2018*, available at <https://lms.dccouncil.us/Legislation/PR22-0738> (CBA for Compensation unit 1 and 2) and Council of the District of Columbia (2020). *PR23-0676-Interest Arbitration Award and Collective Bargaining Agreement between the District of Columbia Public Schools and the Office of the State Superintendent of Education and the American Federation of State, County, and Municipal Employees, District Council 20, Local 2921, AFL-CIO Emergency Declaration Resolution of 2020*, available at <https://lms.dccouncil.us/Legislation/PR23-0676> (CBA for AFSCME Local 2921). Note that the AFSCME Local 2921 contract terms were determined by arbitration.

the District government to financial and legal liability and breaches the trust of labor units in the collective bargaining process. It also erodes the trust between the District government and District government employees whose contributions enable it to function. Some of these employees have exposed themselves and their families to COVID-19 by reporting for duty during the public health emergency.<sup>136</sup> As one union official wrote to the Council:

The Mayor's budget and financial plan places an unfair burden on the very individuals who helped the District through these extreme times. Wage are collectively bargained. The wages of employees should be based on the realistic assessment of the District's economic capabilities. To arbitrarily decide to freeze pay in the future does not adhere to the District's commitment to bargain collectively with the representatives of employees.<sup>137</sup>

The breach of unions' trust is especially concerning, as are consequences for collective bargaining more generally. Indeed, the Committee heard from hundreds of outraged workers strongly opposed to the pay freeze. The Committee is disappointed that the Mayor did not engage in discussions prior to the decision to freeze pay for four years and negotiate with unions about the proposal. Indeed, many labor representatives only learned of the proposal during the mayor's public press conference announcing the proposed budget.<sup>138</sup> An unintended consequence of this approach by the Bowser Administration may be that it will be more difficult for the Administration to reach agreement on contracts currently being negotiated due to the loss of trust and confidence in DC government's ability and willingness to honor negotiated compensation agreements. Finally, if the labor organizations sue and prevail in court, District government could be held liable for the cost-of-living adjustments, potentially several years of legal fees, and the cost of opposing counsel's legal fees.

The Committee's proposed subtitle does not go as far as the Committee would like, which is to honor the CBAs at issue. But the Committee's proposal is a workable solution that will ensure the existing collective bargaining agreements will be honored in the event revenues become available. The subtitle establishes a trigger, so that if revenues become

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<sup>136</sup> Fire and EMS Department (2020). *DC'S Bravest at Work*. Retrieved from <https://fems.dc.gov/page/DCs-Bravest-at-Work>; Dana Hedgpeth and Fenit Nirappil, "D.C. police officer dies after contracting the corona virus", *Washington Post*, June 5, 2020, available at [https://www.washingtonpost.com/local/public-safety/dc-police-officer-dies-after-contracting-the-coronavirus/2020/06/05/348eaac0-a74d-11ea-b473-04905b1af82b\\_story.html](https://www.washingtonpost.com/local/public-safety/dc-police-officer-dies-after-contracting-the-coronavirus/2020/06/05/348eaac0-a74d-11ea-b473-04905b1af82b_story.html); Tom Jackson, "D.C. juvenile corrections officer who died at covid-19 was committed to youth at home and at work, family and colleagues say", *Washington Post*, April 2, 2020, available at [https://www.washingtonpost.com/local/public-safety/dc-juvenile-corrections-officer-who-died-of-covid-19-was-committed-to-youth-at-home-and-at-work-family-and-colleagues-say/2020/04/02/251d3a2e-751c-11ea-85cb-8670579b863d\\_story.html](https://www.washingtonpost.com/local/public-safety/dc-juvenile-corrections-officer-who-died-of-covid-19-was-committed-to-youth-at-home-and-at-work-family-and-colleagues-say/2020/04/02/251d3a2e-751c-11ea-85cb-8670579b863d_story.html)

<sup>137</sup> American Federal of Government Employees, AFL-CIO, Letter to Chairman Mendelson and members of the Council, RE: AFGE's Opposition to Mayor Bowser's Proposed 2021 Budget Salary Freezes, June 8, 2020.

<sup>138</sup> AFGE letter, June 8, 2020. Other labor leaders may have learned about the proposal in a phone call with the City Administrator the weekend prior to the Mayor's transmission of the proposed budget to the Council; however, the Committee has heard mixed reports.

available, they must be used to fund the two executed CBAs. A companion piece of legislation, the Mayor's proposed Local Budget Act (LBA), did contain a provision providing that if additional revenue became available which exceeds the April 24, 2020, revenue estimate—which was used to determine the available budget as a base for the FY2021 budget formulation—then up to \$50 million would be deposited into the Workforce Investments account. Such funds could be used to increase salaries or benefits; however, the LBA stated that any pay increase would be at the discretion of the Mayor and did not say that the COLAs contained in the executed CBAs would be honored.

The Committee's proposed subtitle would keep in place the Bowser Administration's freeze on cost-of-living-adjustments or changes in salary schedules during FY2021 and the remainder of the financial plan for all employees of executive agencies and the Council.<sup>139</sup> However, the Committee's subtitle *requires* that should future revenue estimates exceed the estimate that formed the base of the current proposed budget, those funds *shall* be allocated to fund the existing collective bargaining agreements. The subtitle also provides that if the excesses fall short of the amount required to fund the two agreements, then the Executive must negotiate with the labor representatives to determine the schedule of payment. If additional funds are or become available, the mayor may fund cost-of-living adjustments for the remaining employees of covered agencies, at her discretion.

Finally, the Mayor's subtitle stated that no raises could be provided during the entirety of the financial plan. It stated, "no increase in salary or benefits, including increases in negotiated salary, wage, and benefits provisions and negotiated salary schedules, shall be provided in Fiscal Years 2021, 2022, 2023, or 2024." This language concerned labor organizations as it appears to preclude bargaining, even if funds become available. Therefore, the Committee's proposal *explicitly includes* the longstanding requirement that "the Mayor... shall negotiate with labor organizations for covered employees in a collective bargaining unit pursuant to the CMPA." The Committee's subtitle also permits raises and salary adjustments if revenues permit.

Please see Chapter V for discussion of the Committee's related recommendation for the Local Budget Act.

**c. Section-by-Section Analysis**

- Sec. 1031. States the short title.
- Sec. 1032. Establishes definitions.
- Sec. 1033. Establishes a freeze on cost-of-living adjustments and maintenance of Fiscal Year 2020 salary schedules and benefits
- Sec. 1034. Provides for raises contingent upon revised revenue estimates

**d. Legislative Recommendations for Committee of the Whole**

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<sup>139</sup> The Council is an independent entity and is not subject to the Mayor's proposal but declines its own annual cost-of-living adjustment on its own accord.



See also Attachment B to this report.

## SUBTITLE C. FREEZE ON PAY INCREASES AND BENEFITS

### Sec. 1031. Short title.

This subtitle may be cited as the “Revenue-Contingent Cost-of-Living Adjustment Act of 2020”.

### Sec. 1032. Definitions.

For the purposes of this subtitle, the term:

(1) “CMPA” means the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 et seq.).

(2) “Covered agency” means an agency, office, or instrumentality of the District government and independent agencies, as defined in section 301(13) of the CMPA, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-603.01(13)), except that the term “covered agency” does not include the District of Columbia Housing Authority, District of Columbia Housing Finance Agency, District of Columbia Water and Sewer Authority, Not-for-Profit Hospital Corporation, the Board of Trustees of the University of the District of Columbia, or the Washington Convention and Sports Authority.

(3) “Negotiated salary schedule” means a salary schedule specified in a collective bargaining agreement.

(4) “Negotiated salary, wage, and benefits provision” means the salary and benefits provided in a collective bargaining agreement.

(5) “Personnel authority” shall have the same meaning as set forth in section 301(14) of the CMPA, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1 601.01(14)).

### Sec. 1033. Freeze on cost-of-living adjustments and maintenance of Fiscal Year 2020 salary schedules and benefits.

(a) Notwithstanding any other provision of law, rule, collective bargaining agreement, memorandum of understanding, side letter, or settlement, whether specifically outlined or incorporated by reference, except as provided in section 1034:

(1) No employee of a covered agency may receive a cost-of-living adjustment during the period from October 1, 2020, through September 30, 2024; provided, that during such time, the Mayor or appropriate personnel authority shall negotiate with labor organizations for covered employees in a collective bargaining unit pursuant to title XVII of the CMPA, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-617.01 et seq.), and may provide cost-of-living adjustments to covered employees in a collective bargaining unit or to other covered employees as revenues permit; and

(2) All Fiscal Year 2020 salary schedules of covered agencies shall be maintained during Fiscal Years 2021 through 2024; provided, that during such time, the

Mayor or appropriate personal authority shall negotiate with labor organizations for covered employees in a collective bargaining unit pursuant to title XVII of the CMPA, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-617.01 et seq.), and may provide increases in negotiated salary, wage, and benefits provisions and negotiated salary schedules to covered employees in a collective bargaining unit or to other covered employees as revenues permit.

(b) To the extent authorized by the CMPA or other applicable law to issue rules to administer the salary or benefits program of a covered agency, the personnel authority for a covered agency may, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), issue rules to implement this subtitle.

#### Sec. 1034. Revised revenue contingency.

Notwithstanding any other provision of law, the portion of the local recurring revenues certified in the August 2020 or later revised revenue estimate for Fiscal Year 2021 that exceeds the annual revenue estimate incorporated in the approved budget and financial plan for Fiscal Year 2021 shall be deposited in the Workforce Investment account and allocated in the following order of priority:

(1) An amount sufficient, up to \$35 million, shall be allocated to satisfy the Fiscal Year 2021 negotiated salary adjustments provided for covered employees in the bargaining units covered by the collective bargaining agreements approved pursuant to the Interest Arbitration Award and Collective Bargaining Agreement between the District of Columbia Public Schools and the Office of the State Superintendent of Education and the American Federation of State, County and Municipal Employees, District Council 20, Local 2921, AFL-CIO Emergency Approval Resolution of 2020, effective March 3, 2020 (D.C. Res. 23-374; 67 DCR 2735), and the Compensation Collective Bargaining Agreement between the District of Columbia Government and Compensation Units 1 and 2, FY 2018-FY2021, Approval Resolution of 2018, deemed approved February 23, 2018 (P.R. 23-378; 67 DCR \_\_\_), (“agreements”); provided, that if amounts certified in a single revenue estimate are insufficient to satisfy the total combined value of the negotiated salary adjustments under both agreements, the Mayor or appropriate personnel authority shall negotiate with the affected bargaining units to determine the schedule of payment.

(2) Any remaining revenues shall be allocated, at the Mayor’s discretion, to provide cost-of-living salary adjustments to the employees of covered agencies who did not receive cost-of-living salary adjustments pursuant to paragraph (1) of this section; provided, that any such adjustments comply with the CMPA’s requirements for establishing employee compensation, including any requirements for Council approval.

#### Sec. 1035. Applicability.

This subtitle shall apply as of July 31, 2020.

#### **e. Fiscal Impact Statement**

This subtitle has no fiscal impact.

## B. RECOMMENDATIONS FOR NEW SUBTITLES

The Committee on Labor and Workforce Development recommends the following new subtitles to be added to the “Fiscal Year 2021 Budget Support Act of 2020”:

1. Healthcare Workforce Partnership Establishment Act of 2020
2. DC Infrastructure Academy Employer Engagement Amendment Act of 2020
3. Workplace Leave Navigators Amendment Act of 2020
4. School Year Internship Pilot Program Amendment Act of 2020
5. Unemployment Insurance Modernization Requirements Amendment Act of 2020
6. District Government Transgender Employment Study Act of 2020
7. Tipped Wage Reporting Clarification Amendment Act of 2020
8. Universal Paid Leave Fund Amendment Act of 2020
9. Shared Work Compensation Program Clarification Amendment Act of 2020

### **1. Title X, Subtitle X, Healthcare Workforce Partnership Establishment Act of 2020**

#### **a. Purpose, Effect, and Impact on Existing Law**

This subtitle would establish and operate a healthcare sector partnership to provide guidance to the District, particularly to the Workforce Investment Council (WIC) about healthcare training. The purpose of the partnership is to increase the number of District residents employed in the healthcare industry—with a focus on jobs at the two new hospitals in the District that will be financed with taxpayer dollars during the financial plan—and to meet the staffing needs of employers not only in the hospital sector but in the District’s managed care organizations, private insurers, and other healthcare providers. The subtitle would fund an organization to facilitate the partnership and fund training for District residents in healthcare occupations.

#### **b. Committee Reasoning**

Sector partnerships are a best practice to carry out activities that align workforce development programs with the hiring needs of an industry. Congress revamped the federal workforce development law in 2014, known as the Workforce Innovation and Opportunity Act (WIOA), and made industry sector partnerships a key component. The law requires workforce boards to create and utilize sector partnerships and says that funds allocated to a local area “shall be used... to develop, convene, or implement industry or sector partnerships.”<sup>140</sup>

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<sup>140</sup> Workforce Innovation and Opportunity Act, 29 USC 32, §3174(c)(1)(A)(v). (Sec. 134 of H.R. 803). There are multiple references to sector partnerships in the Act, including requiring that state workforce boards disseminate information to local areas about sector partnerships, it is allowable use of statewide WIOA funds, and “industry or sector partnership is a defined term (see 29 USC 29 §3102(26)).

Healthcare is a major sector in the District, as the DC Hospital Association testified at the committee's FY2021 budget hearing: "In the District of Columbia, the healthcare industry is the second largest non-governmental employer behind academia. Research shows that the local healthcare industry has a plethora of career opportunities within the District with strong demand for nursing and medical assistants and other skilled technicians."<sup>141</sup> According to Mayor Bowser's DC Economic Strategy, "The healthcare and social assistance sector accounted for 59,000 jobs in the District, with the majority working in hospitals (27,000), ambulatory healthcare services (20,000), and nursing and residential care facilities (7,000)."<sup>142</sup> In other words, one in every 12 DC workers is in healthcare. As the District plans to fund the construction of two new hospitals, the District should capitalize on this investment by providing training for DC residents so they can benefit from the jobs that will be created with their taxpayer dollars.

COVID-19 raises the stakes further. The novel coronavirus has had a detrimental impact not only on the public's health but on our local economy as well. The virus has been particularly deadly for DC's Black and Latino residents, and those are the demographic groups that have also been most severely hurt financially, because many Black and Latino workers are in industries such as hospitality. How DC's recovers economically, and how to help and to protect workers as we expand businesses able to operate, is a paramount concern of the Committee. Thousands of workers may need to find a next or a new job, and healthcare has many openings. Healthcare is a sector that experienced worker shortages prior to COVID-19 and remains an industry with even greater needs for hiring. There are 16 medical centers and hospitals located within the city and DC is a medical hub in the metropolitan region.<sup>143</sup> The Committee's aim is to facilitate the training and employment of District residents to fill those slots and provide good, well-paying jobs.

The subtitle has three components. First, it establishes a Healthcare Workforce Partnership composed of healthcare employers and training providers to provide guidance to the District on healthcare workforce training. Second, the subtitle will create and fund an organization to serve as an "intermediary" to facilitate the Partnership's activities. An "intermediary is an organization that brings together employers and workforce training providers from the same industry to plan, develop, and implement strategies to link training to jobs. Finally, the subtitle creates a grant program at the WIC to fund training in the healthcare field.

The subtitle outlines the recommendations that the Healthcare Workforce Partnership will provide to the WIC on skills training. These recommendations will include the healthcare occupations requiring less than a bachelor's degree in which DC should

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<sup>141</sup> Justin J. Palmer, "Testimony before the Council of the District of Columbia, Committee on Labor and Workforce Development on FY21 Budget Priorities," May 28, 2020, p. 3-4, available at: <https://www.dcha.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=65e5ccc7-72cc-a17f-3a46-3c6e317d4383&forceDialog=0>

<sup>142</sup> Mayor Muriel Bowser, "DC's Economic Strategy," March 2017, page 34, available at: <https://dceconomicstrategy.com/coresectors/health-care-life-sciences/>

<sup>143</sup> Mayor Muriel Bowser, "DC's Economic Strategy," March 2017, page 34.

invest in training and the hiring needs of District funded hospitals, including the number of workers needed disaggregated by occupation. The Partnership would identify the skills needed to obtain employment in the occupations selected; curricula for training; and the feasibility of providing training in-person, virtually or a blended approach. Furthermore, the partnership will develop customized healthcare career pathway maps for the selected occupations and recommendations for tactics and strategies for increasing training slots and attracting and retaining District residents in the healthcare occupations.

The Intermediary will have strong relationships with key organizations in the healthcare community and would appoint community members to the Partnership, a majority of which will be healthcare employers. The Intermediary would provide administrative support to the Partnership, compose and transmit a Healthcare Occupations Report, and provide feedback to the WIC on the statement of work for solicitation of training grants. The Intermediary will broker training providers' and participants' requests for professional development and learning opportunities at the healthcare facilities to offer practical work experience in a student's field of study.

Finally, the subtitle establishes two potential methods for the WIC to arrange for training. The WIC may issue grants to training providers consistent with the Partnership's recommendations, or the WIC may partner with the University of the District of Columbia Community College and the Office of the State Superintendent of Education to provide training directly. In light of the limited resources in FY 2021, a minimum of two healthcare occupational training programs are required, with the anticipation of more in the future when additional resources are available. Upon completion of training, the intermediary will help participants through coaching, practice interviews, job fairs, screening and referral directly to healthcare employers hired. These activities will help plug qualified and trained workers directly into employment opportunities needed and available in the District.

Research shows that sector partnerships are a best practice: they are common in other states and very successful. The National Skills Coalition has developed policy toolkits and scanned the country for states that have implemented sector partnership models. "This scan finds that thirty-two states have policies in place to support local sector partnerships, an increase of eleven states from our previous scan conducted two years ago. Of the thirty-two states, twenty-two provide funding to support local sector partnerships, an increase of seven states from two years ago."<sup>144</sup> The scan goes further to explain, "Increased state support for sector partnerships is largely attributable to WIOA. WIOA, which became effective two years ago, requires sector partnerships as a local workforce activity, and requires states to support those local efforts."<sup>145</sup>

Additionally, the Aspen Institute's concluded, "Research has established sector partnerships' effectiveness in improving training programs' participation and completion

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<sup>144</sup> National Skills Coalition, "Skills in the States: Sector Partnership Policy 50-State Scan," October 2017, page 4, available at: <https://www.nationalskillscoalition.org/resources/publications/file/Sector-Partnership-Scan-1.pdf>

<sup>145</sup> National Skills Coalition, "Skills in the State," October 2017, page 4.

rates. They also yield better employment and earnings outcomes for workers.”<sup>146</sup> Additionally, MDRC, a nonprofit, nonpartisan education and social policy research organization, conducted an evaluation of the WorkAdvance model, a sectoral training and advancement initiative. “Overall, WorkAdvance resulted in large increases in participation in every category of services, as well as in training completion, credential acquisition, and employment in the targeted sector, compared with what would have happened in the absence of the program. Expenditures for the operation of WorkAdvance fell between \$5,200 and \$6,700 per participant at the four providers delivering the program.”<sup>147</sup>

At the Committee’s public budget hearing on DOES, the DC Hospital Association testified in support of a healthcare sector partnership: “We believe that continued investments in on the job training and intermediary support programs offer a pathway to sustainable employment for District residents... I can provide one example of an intermediary program that DCHA has designed. Recognizing the disconnect between the demand for skilled career positions and qualified employment of District residents for them, the Association created a market driven workforce development program, Pathways to Progress, that seeks to address the social and structural barriers thereby paving the way to sustainable healthcare career pathways for chronically unemployed and underemployed populations,” said Justin Palmer, the organization’s Vice President for Public Policy & External Relations.<sup>148</sup>

**c. Section-by-Section Analysis**

Sec. 1XX1. States the Short title.

Sec. 1XX2. Defines terms

Sec. 1XX3. Establishes an “intermediary” and sets required activities.

Sec. 1XX4. Assigns duties to the “intermediary”

Sec. 1XX5. Establishes a “Healthcare Workforce Partnership” and defines membership and sets required activities.

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<sup>146</sup> Ethan Pollack and Alastair Fitzpayne, “Supporting the Development of Industry and Sector Partnerships to Create Regional Jobs and Career Pathways”, July 9, 2019, available at: <https://www.aspeninstitute.org/blog-posts/industry-and-sector-partnerships/#:~:text=Research%20has%20established%20sector%20partnerships,can%20support%20growth%20and%20competitiveness.>

<sup>147</sup> Richard Hendra, et al., “Encouraging Evidence on a Sector-Focused Advancement Strategy,” MDRC, August 2016, available at: <https://www.mdrc.org/publication/encouraging-evidence-sector-focused-advancement-strategy-0>

<sup>148</sup> Justin J. Palmer, “Testimony before the Council of the District of Columbia, Committee on Labor and Workforce Development on FY21 Budget Priorities,” May 28, 2020, p. 3-4, available in Attachment C to this report.

Sec. 1XX6. Establishes “healthcare training programs” and sets conditions of programs.

Sec. 1XX7. Sets method and timing for submission of reports.

**d. Legislative Recommendations for Committee of the Whole**

See also Attachment B to this report.

**SUBTITLE XX. HEALTHCARE WORKFORCE PARTNERSHIP**

Sec. 1XX1. Short title.

This subtitle may be cited as the “Healthcare Workforce Partnership Establishment Act of 2020”.

Sec. 1XX2. Definitions

(1) “HWI grant” means the grant awarded to the Intermediary pursuant to section 3.

(2) “Intermediary” means the entity selected to be the Healthcare Workforce Intermediary pursuant to section 3.

(3) “Partnership” means the Healthcare Workforce Partnership established pursuant to section 5.

(4) “Training” means occupational skills training for occupations in the healthcare sector.

(5) “WIOA” means the Workforce Innovation Opportunity Act, approved July 22, 2014 (128 Stat. 1425; 29 U.S.C. 3101 *et seq.*).

(6) “WIC” means the Workforce Investment Council.

Sec. 1XX3. Establishment of a Healthcare Workforce Intermediary.

(a)(1) By December 1, 2020 the WIC shall select, through award of a grant, the Healthcare Workforce Intermediary to establish, convene, and assist the Healthcare Workforce Partnership.

(2) Consistent with Grant Administration Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code § 1-328.11 *et seq.*), the WIC shall issue multi-year grants for a period of 4 years, subject to the availability of funds.

(b) The entity selected to be the Intermediary shall:

(1) Be a non-profit organization, industry association, or community-based organization; and

(2) Have a proven track record of success convening healthcare sector employers or have a significant role in the healthcare sector;

(3) Have existing relationships with training providers; and

(4) Have a proven track record of successful fundraising.

(d) Over the course of the HWI grant, the WIC shall:

(1) Provide technical assistance to the Partnership through the Intermediary, which may include:

(A) Assisting the Partnership in obtaining data and information from District agencies;

(B) Providing the Partnership with customized labor market and economic analysis;

(C) Providing the Partnership with education and guidance on WIOA; and

(D) Providing the Partnership with information on the number of District residents that training providers have the capacity to train in healthcare occupations;

(2) Submit, to the Partnership for feedback, the proposed statement of work for any grant solicitation for the provision of training at least 30 days before issuing the request for proposals; and

(3) Use the Partnership's Healthcare Occupations Reports to align District government funded workforce development training with current and future healthcare sector hiring needs in the District.

#### Sec. 1XX4. Intermediary duties.

The Intermediary shall:

(1) By April 1, 2021:

(A) Appoint members to the Partnership consistent with the criteria specified in section 1XX5(b)(3);

(B) Convene at least 4 Partnership meetings;

(C) Compose and transmit to the WIC the Partnership's first Healthcare Occupations Report, described in section 1XX5(e);

(2) For the duration of the grant:

(A) Provide administrative support to the Partnership;

(B) Convene Partnership meetings at least quarterly;

(C) Compile and transmit to the WIC feedback from the Partnership on any statement of work for a proposed grant solicitation for the provision of training no more than 15 days after receiving the statement of work pursuant to section 1XX3(d)(2);

(D) Work with the Partnership to coordinate and ensure provision of career coaching, screening and referral services, practice interviews, and job fairs for healthcare sector employment for qualified District training graduates;

(E) Facilitate requests for professional development and learning opportunities for training providers and training participants at healthcare facilities;

(F) Annually, compose and transmit the Partnership's Healthcare Occupations Report, described in section 1XX5(e); and

(G) Perform additional duties on behalf of the Partnership consistent with the purposes of this subtitle and as funds permit; and



(3) During the fourth year of the HWI grant, raise private funds equal to the value of the HWI grant for that year, which the Intermediary shall reserve for use until after the expiration of the HWI grant in order to sustain the Partnership without dedicated District government funding.

Sec. 1XX5. Healthcare Workforce Partnership.

(a)(1) The Intermediary shall establish the Healthcare Workforce Partnership, which shall work to increase the number of District residents employed in the healthcare sector and to meet the staffing needs of District healthcare employers, particularly of hospitals that receive District government funds.

(b)(1) The Director of the WIC, or his or her designee, shall serve as a member of the Partnership.

(2) The Intermediary shall serve as a member of the Partnership, and shall appoint community members in consultation with the WIC.

(3) Community members, the majority of which shall be healthcare sector employers, shall consist of the following:

(A) At least 5 employer representatives of the District's healthcare sector, which shall represent a variety of healthcare disciplines;

(B) At least one representative of a healthcare industry trade association;

(C) At least one representative from a labor organization that represents healthcare workers;

(D) At least one representative from a non-profit organization that offers training programs; and

(E) At least one representative from an adult education integrated education and training program, as defined in 34 C.F.R. § 463.35, in the healthcare sector.

(c) Community members shall serve for the duration of the HWI grant and may be reappointed.

(d) The Partnership shall meet at least each quarter for the duration of the HWI grant;

(e) No later than April 1, 2021, and annually thereafter in advance of the start of a new fiscal year, the Partnership shall submit to the WIC, through the Intermediary, its Healthcare Occupations Report, which shall contain the following:

(1) Recommendations of 3 to 5 healthcare occupations requiring less than a bachelor's degree, which may include occupations for which incumbent workers may be upskilled, in which the District should invest in training;

(2) A summary of the occupational hiring needs of hospitals receiving or committed to receive District government funds, including an estimate of the number of workers needed, disaggregated by healthcare occupation;

(3) A recommendation on the number of District residents the WIC should train in the occupations identified pursuant to paragraph (1) of this subsection;

(4) A list of occupational skills required to obtain employment in the occupations identified pursuant to paragraph (1) of this subsection;

- (5) Recommendations of curricula for training in occupations identified pursuant to paragraph (1) of this subsection;
- (6) An explanation of the feasibility of providing virtual training or distance learning, and recommendations to implement virtual training.
- (7) Customized healthcare career pathway maps for the occupations identified pursuant to paragraph (1) of this subsection;
- (8) Recommendations of strategies and tactics to increase the capacity of training providers to train District residents; and
- (9) Recommendations to attract District resident to, and retain District residents in, occupations identified pursuant to paragraph (1) of this subsection, including necessary tactics to increase candidates' hard and soft skills and to reduce barriers to employment.

Sec. 1XX6. Establishment of a healthcare training program.

(a) By July 1, 2021, the WIC shall establish a healthcare training program (“program”) to fund or arrange for training of District residents in a minimum of 2 healthcare occupations identified in the Partnership’s first Healthcare Occupations Report (“report”), issued pursuant to section 1XX5(e)(1), which may include one occupation for upskilling of incumbent workers.

(b) To provide training, the WIC may:

(1) Issue healthcare training grants (“grants”) to train providers, pursuant to section 4(c) of the Workforce Investment Implementation Act of 2000, effective July 18, 2000 (D.C. Law 13-150; D.C. Official Code § 32-1603(c)); or

(2) Partner with the University of the District of Columbia Community College or Office of the State Superintendent of Education.

(c)(1) If the program includes a grant, subject to availability of funds, each grant shall be for not less than \$100,000 per year for 3 years to provide training for District residents.

(2) To be eligible for a grant, a grantee shall:

(A) Be licensed by the Higher Education Licensure Commission as a post-secondary institution, degree or non-degree seeking;

(B) Agree to utilize the training curricula recommended by the Partnership pursuant to section 1XX5(e)(5); and

(C) Demonstrate consistent successful attainment of the following benchmarks for its training participants:

(i) Completion of training;

(ii) Credential attainment;

(iii) Unsubsidized employment in the occupation of

training; and (iv) Retention of employment for 6 months or longer in the occupation of training.

3) Preference shall be given to grant applicants utilizing an integrated education and training model, as defined 34 C.F.R. § 463.35.

(d)(1) The WIC shall utilize WIOA common performance measures to track program performance.

(2) The WIC shall report on the performance of the program as required by section 102 of the Workforce Development System Transparency Amendment Act of 2018, effective May 5, 2018 (D.C. Law 22-95; D.C. Official Code § 32-1622).

(e) The WIC shall make its best effort to use WIOA Title I funds to issue any grants authorized in this section.

Sec. 1XX7. Monitoring and evaluation.

By May 1, 2021, and annually thereafter, the WIC shall transmit to the Mayor and the Council the Healthcare Occupation Report developed by the Partnership pursuant to section 1XX5(e).

**e. Fiscal Impact Statement**

This subtitle has a fiscal impact of \$530,000 in FY2020 and \$689,625 in FY2022 and future years.

	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
Project Manager Position (inc. fringe)	130,000	130,000	130,000	130,000
Grant to Intermediary	250,000	254,375	258,827	263,356
2 Grants for Training Programs (starts July 2021)	150,000	305,250	310,592	316,027
<b>TOTAL</b>	<b>530,000</b>	<b>689,625</b>	<b>699,418</b>	<b>709,383</b>

## **2. Title X, Subtitle X, DC Infrastructure Academy Employer Engagement Amendment Act of 2020**

### **a. Purpose, Effect, and Impact on Existing Law**

This subtitle will establish Industry Advisory Committees at the DC Infrastructure Academy to guide training to meet the needs of employers in the infrastructure and IT sectors and help more District residents get living-wage jobs and stable careers in these fields.

### **b. Committee Reasoning**

The DC Infrastructure Academy (DCIA) is a marquee workforce development initiative of the Bowser Administration that was launched in March 2018. According to DOES, “DCIA coordinates, trains, screens and recruits residents to fulfill the hiring needs of leading companies within the infrastructure industry.”<sup>149</sup> This subtitle will make employer engagement, which is a best practice in workforce development, a key feature of the Academy. The subtitle will establish Industry Advisory Committees to help guide DCIA training and activities. This will embed the practice of employer feedback to ensure that training will meet employers’ needs and thus help training participants succeed in finding employment after training. By positioning business to help shape the public investments in job training, DCIA will achieve better outcomes for District residents who rely on DCIA to help them find long-term, stable, living-wage careers.

Since DCIA’s inception, employment results have been in need of improvement. According to DOES’ 18-month report on DCIA, 1,234 people enrolled in DCIA programs in FY2018 and FY2019, and of those, 48 obtained employment in FY2018 and 224 in FY2019.<sup>150</sup> Data submitted to the Committee as part of performance oversight materials show that in many programs, less than half of people who completed training then went on to find a job.<sup>151</sup> One seeming exception is the partnership with Pepco Holdings, the DC Quick Path to Energy program, which had a 71 percent employment rate in 2018.<sup>152</sup> While the performance oversight data submitted showed 42 percent received employment in FY2019, DOES Director Unique Morris-Hughes testified, “The Pepco Program has been a great success, with its first cohort of 22 District residents yielding an outcome of 100

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<sup>149</sup> Department of Employment Services, “District of Columbia Infrastructure Academy 18 Month Report,” March 5, 2020, page 3, available at [https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/20200305\\_DCIA%2018%20Month%20Report\\_web.pdf](https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/20200305_DCIA%2018%20Month%20Report_web.pdf).

<sup>150</sup> Department of Employment Services, “District of Columbia Infrastructure Academy 18 Month Report,” March 5, 2020, page 9.

<sup>151</sup> In FY2018, results range from 49% to 54% of completers entered employment; in FY2019, it ranged from 2% to 50% of completers obtained employment. See Department of Employment Services, “Responses to Fiscal Year 2019-2020 Performance Oversight Questions,” February 7, 2020, Attachment to Q 87, pg.983, available at: [https://dccouncil.us/wp-content/uploads/2020/02/DOES-POH-2020-Combined-Attachments-only\\_Part2.pdf](https://dccouncil.us/wp-content/uploads/2020/02/DOES-POH-2020-Combined-Attachments-only_Part2.pdf).

<sup>152</sup> Department of Employment Services, “Responses to Fiscal Year 2019-2020 Performance Oversight Questions,” February 7, 2020, Attachment to Q 87.

percent completion and employment.... The program has been so successful that Pepco's parent company Exelon is looking to make it a national model."<sup>153</sup> The success of Quick Path to Energy once again demonstrates to the Committee that when business is involved in the design and implementation of training, residents are directly connected to employment.

The Director also concurs with the Committee on the need to improve employment results at the Infrastructure Academy. During the March 6, 2020 performance oversight hearing, the Director stated, "There's an opportunity for us to connect more individuals with employment. We acknowledge that."<sup>154</sup> She reiterated this sentiment later by stating, "...we certainly acknowledge that there is an opportunity to get more District residents hired."<sup>155</sup> This subtitle supports models like Quick Path to Energy, which requires employer engagement in workforce training programs and leverages a model that is both nationally recognized and has demonstrated, proven results here in the District.

The subtitle will put the best-practice of employer engagement into action across DCIA by establishing industry advisory committees for each of the industries in which DCIA offers training. These committees will provide recommendations to DCIA on several matters. To shape which committees will be created, the subtitle sets out which industries will be the focus of training at DCIA. The subtitle requires occupational skills training to continue in the industries DCIA has already identified: construction, infrastructure, and information technology. The subtitle makes clear that DCIA may offer training in additional industries for which there is significant demand either regionally or by a major employer. This gives DCIA flexibility to expand its offerings.

Each industry advisory committee will be comprised of a minimum of two employers. The DOES director will select the members. For training that is provided for a single employer (often called "customized training,") the subtitle does not require committee feedback, but it would be welcome. The subtitle does require that the employer for which training is created should provide feedback on that program.

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<sup>153</sup> Unique Morris-Hughes, "A Review of The Department of Employment Services' Workforce Development Programs: Local Adult Training and the DC Infrastructure Academy," Testimony at Public Oversight Roundtable of the Committee on Labor & Workforce Development, Council of the District of Columbia, October 30, 2019, available at: [https://d3n8a8pro7vnmx.cloudfront.net/silverman/pages/510/attachments/original/1583445875/DOES\\_Performance\\_Oversight\\_Hearing\\_Testimony\\_2020\\_%28003%29.pdf?1583445875](https://d3n8a8pro7vnmx.cloudfront.net/silverman/pages/510/attachments/original/1583445875/DOES_Performance_Oversight_Hearing_Testimony_2020_%28003%29.pdf?1583445875)

<sup>154</sup> Department of Employment Services, "Performance Oversight, Government Witnesses," Committee on Labor and Workforce Development Council of the District of Columbia, March, 6, 2020, 40 minutes and 09 seconds, available at: [http://dc.granicus.com/MediaPlayer.php?view\\_id=&clip\\_id=5421&caption\\_id=12067104](http://dc.granicus.com/MediaPlayer.php?view_id=&clip_id=5421&caption_id=12067104)

<sup>155</sup> Department of Employment Services, "Performance Oversight, Government Witnesses," Committee on Labor and Workforce Development Council of the District of Columbia, March, 6, 2020, 40 minutes and 57 seconds, available at: [http://dc.granicus.com/MediaPlayer.php?view\\_id=&clip\\_id=5421&caption\\_id=12067104](http://dc.granicus.com/MediaPlayer.php?view_id=&clip_id=5421&caption_id=12067104)

The industry committees will make annual recommendations on several matters: two to four specific occupational skills trainings that DCIA should offer in that industry; the number of people to train, based on employer need; the industry-recognized credential needed to qualify and ensure trainees earn a credential with market value; the skills a trainee should know to be successful on the job; and the tools, equipment, and materials one will use once they have employment. Finally, the committees would provide guidance on the feasibility of different means of teaching—whether in-person, virtual, or a blend.

DCIA currently may provide training either with in-house talent or through a grant or contract, and this would not change under the subtitle. If DOES utilizes a grant or contract, the industry committees will be invited to review and provide feedback on the statement of work for the solicitations. This will help ensure DCIA hires qualified trainers and that the programming aligns with the industry committees' recommendations at the Infrastructure Academy. There would be timelines for DCIA to receive industry committee feedback on statements of work, to not delay any service delivery.

The subtitle also expands services that may be provided by DCIA to include a holistic approach to training by including support services, the best-practice adult literacy-workforce development model known as integrated education and training, workforce preparation such as soft skill development, and job development like mock interviews and resume writing. Upon completion of the employer customized training, DCIA would then prepare participants for successfully obtaining an industry-recognized credential through practice exams and test preparation sessions and refer qualified candidates to employers.

As required under current law, DCIA training must prepare participants for employment in a job that pays an average wage that is at least 150 percent of the minimum wage, which is \$22.50 on July 1, 2020. To assist in securing employment, DCIA would then be required to refer qualified candidates to employers for interviews and eventually employment. This gives candidates a greater likelihood of success, such as was seen in the Quick Path to Energy partnership with Pepco.

The subtitle retains the current legal requirement that a portion of grant or contract payments is performance-based. At least 25 percent of the award must be contingent on achieving one of two outcomes: 75 percent of participants secure an occupational credential or 80 percent of participants enter unsubsidized employment. Ideally, both milestones could be achieved, but if a candidate is not hired at completion, he or she will still be qualified for a job in a high-growth field.

The committee recommends this subtitle because business-informed job training is a growing practice and has proven results. The subtitle allows DCIA to tailor training precisely for the needs of the industry. It keeps publicly-funded job training current and on-pace with changing needs of the business. The subtitle allows the advisory committees to recommend multiple occupations. DCIA can offer training they deem necessary based on employer feedback. This gives DCIA the autonomy to amend or change pieces of training to fit the demands and evolution of the industry. The Committee also included language to address potential conflicts of interest with employers and training providers.

The Director of DOES selects the employers for the committees, and the committees are a structure to give feedback to help DCIA succeed.

As noted, business input into training is a best practice in workforce development. DOES already seeks input from employers for some of its programming, such as customized training for Pepco and Washington Gas. In fact, DOES shared with the Committee laws from other states that require the same input as the proposed subtitle. The laws concern Career and Technical Education (CTE), which is the practice of teaching specific career skills to students in middle school, high school, and post-secondary institutions. The Colorado Career and Technical Education Act includes technical advisory committees for planning and applying their CTE curricula. It is designed to provide students entry-level occupational skills. Colorado also requires facilities to be sufficiently equipped to permit adequate training.<sup>156</sup> Michigan's Career and Technical Education law mirrors Colorado's law. Michigan has program advisory committees with majority business and industry representation. Monitoring of the programs is based upon feedback from the committees and predetermined state or federal skills standards to include student outcomes. Michigan also includes an expedited approval process of programs that recognizes local workforce needs, emerging technologies, and local demand occupations.<sup>157</sup>

The District also revised its own CTE program model in FY2020 to include Industry Advisory Boards (IAB). The District's state CTE plan requires that IABs have a minimum membership of 10 industry representatives, and it identifies the specific industry sectors for training and education. The IABs are responsible for providing industry expertise on trends affecting course standards and program outcomes. They advise on industry-recognized credentials and participate in monitoring visits and performance reviews. IABs connect students to industry and bring work-based learning to classrooms through tutoring, mentoring, and job shadowing. There is also a provision for developing internships through the IABs and enhancing teachers' content knowledge on the industry.<sup>158</sup>

The Committee shared the legislation with several employers and training providers with close ties to DCIA. All of the feedback was extremely positive. The Washington Metropolitan Transit Authority (WMATA) said, "I think the formation of the Committees is a wonderful idea. With many people out of work, the Academy should be a good resource to align job seekers with new skills and employment. I would be willing to work with your

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<sup>156</sup> Colorado General Assembly, "The Career and Technical Act, formerly the Colorado Vocational Act of 1970, CRS 23-8-101," August 6, 2018, available at [http://www.leg.state.co.us/clics/clics2008a/csl.nsf/fsbillcont3/D33C245489ABC665872573A1005DC03C?open&file=1079\\_enr.pdf](http://www.leg.state.co.us/clics/clics2008a/csl.nsf/fsbillcont3/D33C245489ABC665872573A1005DC03C?open&file=1079_enr.pdf)

<sup>157</sup> Michigan Legislature, "The State School Aid Act Of 1979, Act 451 of 1976. 380.684," Apr. 9, 2017, available at: [https://www.legislature.mi.gov/\(S\(4fc1exdvat2xw4ahdlba5c3l\)\)/mileg.aspx?page=GetMCLDocument&objectname=mcl-380-684](https://www.legislature.mi.gov/(S(4fc1exdvat2xw4ahdlba5c3l))/mileg.aspx?page=GetMCLDocument&objectname=mcl-380-684)

<sup>158</sup> Office of the State Superintendent of Education, "Strengthening Career and Technical Education for the 21st Century Act (Perkins V) STATE PLAN District of Columbia," December 11, 2019, available at: [https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/State Plan v4.0 %28Public Comment%29.pdf](https://osse.dc.gov/sites/default/files/dc/sites/osse/publication/attachments/State%20Plan%20v4.0%20Public%20Comment%29.pdf)

office and DCIA to have an account established with the testing vendor for our Student Bus Operator position.” That way the DCIA could put all interested job seekers through the test and refer those who pass to WMATA to move forward in our process.”<sup>159</sup> As well, IT training provider Hope Project thought the approach would be favorable during a phone call exchange with the Committee, “I think it is great. These are things I already do and think they make the program stronger. We need employers at the table,” said executive director Ray Bell.<sup>160</sup> Another current partner of the DC Infrastructure Academy, Washington Gas, shared with the Committee: “DCIA should continue to be inclusive of employers and industry subject experts to be equal partners at the table. Essentially, we want people to leave with skills and credentials in a sector that will enable them not only to work; but build a career that will inevitably make their families and communities whole. While I don’t think we should limit the types of industries that partner with DCIA, the notion of employer advisory committees is a good idea. Especially if they will serve as an extension of the already existing strategic partner/employer relationships held at the academy and not incur the ability to get our communities gainfully employed.”<sup>161</sup> The feedback was overwhelmingly positive, and the final subtitle language accommodates training in additional industries.

The Committee recommends the DC Infrastructure Academy Employer Engagement Amendment Act to invest District taxpayers’ workforce funds in models that have proven results, reach the widest number of residents, and offer the most customized and current training available. Business-shaped training as outlined in the subtitle will help DCIA achieve its goal of moving District residents into the middle class.

**c. Section-by-Section Analysis**

Sec. 1XX1. States the Short title.

Sec. 1XX2. Amends the Youth Employment Act of 1979, effective January 5, 1980 (D.C. Law 3-46; D.C. Official Code § 32-241 et seq.)

Subsection (a) Amends Section 2(D.C. Official Code § 32-241) by adding new defined terms

Subsection (b) repeals the existing (a-2)

Subsection (c) adds new sections 2e and 2f.

New Section 2e(a) identifies industries for skill training and sets means for receiving feedback from Industry Advisory Committees with timeframes. There are additional duties outlined.

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<sup>159</sup> Steven Boney, letter to Councilmember Silverman, via e-mail, June 15, 2020.

<sup>160</sup> Raymond Bell, conversation with Council Committee on Labor and Workforce Development, via phone, June 16, 2020.

<sup>161</sup> Apera Nwora, Washington Gas Manager Stakeholder Engagement and Outreach, email to Committee staff, June 22, 2020.



New Section 2e(b) identifies services that may be offered.

New Section 2e(c) sets criteria for skills training and sets grant payment conditions.

New Section 2f(a) establishes Industry Advisory Committees and identifies appointment authority and committee composition.

New Section 2f(b) identifies feedback from Industry Advisory Committees to DCIA.

New Section 2f(c) identifies feedback between DCIA and Industry Advisory Committees.

New Section 2f(d) sets a timeframe for Industry Advisory Committees providing feedback to DCIA

**d. Legislative Recommendations for Committee of the Whole**

See also Attachment B to this report.

**SUBTITLE C. DC INFRASTRUCTURE ACADEMY AND EMPLOYER ENGAGEMENT**

Sec. 1XX1. Short title.

This subtitle may be cited as the “DC Infrastructure Academy Employer Engagement Amendment Act of 2020”.

Sec. 1XX2. The Youth Employment Act of 1979, effective January 5, 1980 (D.C. Law 3-46; D.C. Official Code § 32-241 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 32-241) is amended as follows:

(1) A new subsection (1A) is added to read as follows:

“(1A) “Committees” means the Industry Advisory Committees established pursuant to section 2f.”.

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

“(2A) “DCIA” means the DC Infrastructure Academy established by the Mayor.”.

(b) Section 2a(a-2) (D.C. Official Code § 32-242(a-2)) is repealed.

(c) New sections 2e and 2f are added to read as follows:

“Sec. 2e. DC Infrastructure Academy.

“(a) In addition to duties the Mayor prescribes, the DCIA shall:

“(1)(A) Provide occupational skills training (“skills training”) annually in the construction, infrastructure, and information technology industries.

“(B) DCIA may provide skills training in additional industries for which there is significant demand regionally or by a major employer.

“(2) Provide occupational skills training designed to meet the needs of employers by:

“(A) Aligning skills training with the annual recommendations the Committees submit to DCIA pursuant to section 2f(c);

“(B)(i) Submitting a proposed curriculum, at least 30 calendar days prior to the start of any skills training taught by DCIA staff, to the relevant Committee for its feedback; and

“(ii) Implementing any skills trainings taught by DCIA staff consistent with any feedback received from a Committee;

(C)(i) Submitting to the relevant Committee, at least 30 calendar days before soliciting applications or bids on a grant or contract to provide skills training, a request that the Committee review a grant or contract solicitation’s proposed scope of work;

“(ii) Preparing statements of work for grants and contracts to provide skills training that are consistent with any feedback received from a Committee;

(D) For any customized skills training provided specifically for a particular employer, seeking input from the employer consistent with the requirements outlined in subparagraphs (B) and (C) of this paragraph.

“(3) Provide test preparation sessions and practice exams to ready participants to obtain the occupational credentials the Committees identify in their annual reports pursuant to section 2f(c)(4); and

“(4) Provide job referrals, as defined in 20 C.F.R. § 651.10, to employers in the industry sectors identified in paragraph (1) of this subsection for all qualified graduates of DCIA training programs.

“(b) DCIA skills training may include:

“(1) Training services enumerated in section 134(c)(3)(D) of the Workforce Innovation and Opportunity Act of, approved July 22, 2014 (128 Stat. 1529; 29 U.S.C. § 3174(c)(3)(D));

“(2) Supportive services, as defined in 20 C.F.R. § 651.10;

“(3) Integrated education and training, as defined in 34 C.F.R. § 463.35;

“(4) Workforce preparation activities, as defined in 34 C.F.R. 463.34; and

“(5) Job development, as defined in 20 C.F.R. § 651.10.

“(c)(1) At least 66% of the participants receiving skills training through the DCIA each fiscal year shall be trained in occupations that pay an average wage that is at least 150% of the minimum wage specified in section 4 of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1003).

“(2) At least 25% of the value of each grant or contract with a skills training provider shall be contingent on the provider achieving at least one of the following results:

“(A) At least 75% of the provider’s participants receive an industry-recognized credential; and

“(B) At least 80% of the provider’s participants enter permanent, unsubsidized employment in the occupation of training.

“Sec. 2f. Industry Advisory Committees.

“(a)(1) The Director shall establish Industry Advisory Committees (“Committees”) to advise DCIA on occupational skills training offerings with the goal of aligning DCIA’s trainings with industry hiring needs.

“(2) There shall be one committee per industry sector in which DCIA offers occupational skills training pursuant to section 2e(a)(1).

“(3) Each Committee shall consist of representatives of at least 2 employers from the relevant industry sector, whom the Director shall appoint.

“(4)(A) The Director shall make initial appointments to the Committees within 30 days of the effective date of this subtitle.

“(B) Committee members shall disclose all existing and potential conflicts of interest to the Director. No committee member may, in any manner, directly or indirectly, participate in a deliberation upon, or the determination of, any question affecting the financial interest of any corporation, partnership, or association in which the member or a member of the member’s family is directly or indirectly interested. Committee members shall disclose the nature of any financial or personal relationships with any training providers by completing a conflict of interest form.

“(b) No later than December 15, 2020, and annually thereafter in advance of the start of a new fiscal year, each Committee shall submit written recommendations to DCIA, which shall contain the following:

“(1) Recommendations of 2 to 4 specific occupational skills trainings DCIA should offer;

“(2) Number of District residents DCIA should train in the occupations identified pursuant to paragraph (1) of this subsection;

“(3) Occupational skills required to obtain employment in the occupations identified pursuant to paragraph (1) of this subsection;

“(4) A description of tools, equipment, and services necessary to conduct trainings to acquire the skills identified in paragraph (3) of this subsection;

“(5) Industry-recognized credentials required for obtaining employment in the occupations identified pursuant to paragraph (1) of this subsection, when appropriate; and

“(6) The feasibility of providing virtual training or distance learning and recommendations to implement virtual training.

“(c) After receiving a proposed training curriculum from the DCIA pursuant to section 2e(a)(2)(B)(i), a Committee shall provide the DCIA with a written explanation of recommended modifications, if any.

“(d) Within 30 calendar days after receiving a proposed scope of work for a grant or contract from DCIA pursuant to section 2e(a)(2)(C)(i), the Committee shall provide DCIA with a written explanation of recommended modifications, if any.”.

**e. Fiscal Impact Statement**

This subtitle has a fiscal impact of \$129,462 for 1 FTE.

<b>Fiscal Impact of DC Infrastructure Academy Employer Engagement Amendment Act Of 2020</b>					
	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Four-Year Total</b>
Industry Committee Coordinator (1 FTE, Grade 12), DOES <sup>1</sup>	\$129,462	\$129,823	\$130,191	\$130,564	\$520,039

<sup>1</sup>Though cost-of-living increases are frozen we assume fringe benefits grow by 1.5% annually.

### **3. Title X, Subtitle X, Workplace Leave Navigators Amendment Act of 2020**

#### **a. Purpose, Effect, and Impact on Existing Law**

This subtitle will establish a new grant program at the Office of Paid Family Leave at DOES. The program will fund both worker advocacy organizations and business or trade organizations to help workers and businesses navigate workplace leave laws.

#### **b. Committee Reasoning**

District workers are fortunate to have a number of protections that they can rely on to take paid or job-protected time off from work. These include the Accrued Safe and Sick Leave Act, the DC and federal Family and Medical Leave acts, DC's Protecting Pregnant Workers Fairness Act, and temporary laws enacted at the federal and local levels during the coronavirus pandemic of 2020. The District of Columbia will also begin to issue benefits under its new Universal Paid Leave program beginning July 1, 2020. Enacted under the Universal Paid Leave Act of 2016 (UPLA, Law 21-264), the program will provide partial wage replacement to District workers for family leave, parental leave, and medical leave. As the UPL program stands up, it is important that the District ensure that workers are able to access the benefit, and that employers have the support they need to comply with it.

However, from a worker or employer perspective, all the possibilities can be challenging—or even unknown. There is no single governmental office, at the District or federal level, or other resource that is equipped to help businesses understand what their employees may be eligible to use under the law and no resource to help guide workers during family and health events that might be some of the most stressful moments in their lives. Nor is there a source to help businesses as they strive to stay in compliance with various laws.

Workers should not have to become minor experts in every law that might apply to them simply to use the one or two that might provide the best coverage.<sup>162</sup> The Committee has heard from many workers who want to understand which forms of leave they are eligible for, when to inform their employer, when to apply, what documentation to provide, and many other issues that may arise before an applicant even begins to file a claim.<sup>163</sup> And while some workers will file their own claims without assistance, others may need a helping hand to apply, respond to an agency's or employer's questions about their application, or register complaints if they believe their rights have been violated.

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<sup>162</sup> DOES knows well the complexity of the Paid Family Leave program, having spent the last three years staffing, creating infrastructure, developing internal processes, and issuing regulations and public-facing materials.

<sup>163</sup> During the coronavirus pandemic, the Committee and private organizations were flooded with questions about how to navigate existing leave programs under local and federal laws, highlighting the need for such a resource.

A navigator will be an asset to businesses, particularly small businesses where human resource managers wear many hats but which also cannot afford to pay for professional compliance advice. Employers have also reached out to the Committee to inquire about how to best support workers who need to use leave, as well as how they can coordinate different types of leave in their personnel policies. In numerous public hearings during the lead-up to the launch of the paid leave program, the DC Chamber of Commerce and other employer associations testified that they wanted guidance from the agency on how to coordinate benefits; they also called for this in their regulatory comment letters.<sup>164</sup> Businesses have asked the Committee about how PFL fits with short term disability and other employer-provided paid leave, but this is not advice that the Committee can provide.

To assist both workers and businesses to navigate this legal landscape, the Committee recommends the creation of a new grant program to fund community-based organizations that will house navigators to help workers and businesses.

Public witnesses at the Committee's public FY2021 budget hearing testified that there is a need for a workplace leave navigators program. Kim Perry, executive director of DC Action for Children; Joanna Blotner, campaign manager for DC Paid Leave, Jews United for Justice; and Laura Brown, executive director of the First Shift Justice Project, all recommended making funding available to community groups who could provide counseling and guidance to workers who want to use paid family leave or access other, related rights or benefits.<sup>165</sup> They agreed that employers would need education, too. Ms. Blotner added that community groups that have strong roots in the communities will be particularly well-equipped to support individuals during some of the most trying times in their lives. Given the stressful, life-altering reasons why people have to use Paid Leave, it is understandable that some workers will want to speak with a trusted neighbor rather than a government entity. Employer representatives also provided very positive feedback to the Committee regarding the proposed legislation, including one organization leader who related a question that would be perfect for a business-advocacy organization funded under the Workplace Leave Navigators Program to field.

The Workplace Leave Navigators grant program will fill those gaps and allow community organizations to take a comprehensive, cross-agency view of the broader workplace leave landscape, encompassing an array of District and federal laws and agencies. This grant program will enhance agency capacity and serve as an important complement to the existing outreach and services that the Office of Paid Family Leave (OPFL), the Office of Wage-Hour, and the Office of Human Rights offer to the public.

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<sup>164</sup> Testimony before the Committee on Labor and Workforce Development, Council of the District of Columbia, Public Oversight Roundtable Regarding Implementation of the Universal Paid Leave Act, January 30, 2020 (video available at [http://dc.granicus.com/MediaPlayer.php?view\\_id=45&clip\\_id=5345](http://dc.granicus.com/MediaPlayer.php?view_id=45&clip_id=5345)) of the following witnesses: Erika Wadlington, DC Chamber of Commerce (1:01); Justin Palmer, DC Hospital Association (1:11, 1:42); Ilyse Schuman, American Benefits Council (1:12); Unique Morris-Hughes (2:40); See also Laura Brown, Testimony to Committee on Labor and Workforce Development, May 28, 2020, available in Attachment C.

<sup>165</sup> Testimony to Committee on Labor and Workforce Development, May 28, 2020, available in Attachment C.

Agencies cannot provide guidance to workers on laws outside their jurisdiction, nor can they tell employers how to set up their benefits programs.<sup>166</sup> The fact-specific nature of the inquiries makes it necessary for individual claimants to receive individualized assistance; this is not a function that any government agency could provide. Workers cannot call any DC government agency - including the Office of Paid Family Leave (OPFL) - for advice. In the absence of community support, and the lack of authority for a government agency to provide individual guidance, many workers are left only with their supervisors, coworkers, or sometimes HR offices to provide guidance. Yet these sources may lack of legal knowledge, and, possibly experience a conflict of interest in providing advice.

Businesses and workers alike will benefit greatly from having a central, experienced point person available to help them. The grant allows for multiple community organizations to provide services, which would give users options. Further, workers and businesses need help in advance, but government agencies are set up to receive claims when the law has already been violated. Business advocacy organizations can help employers avoid mistakes that could result in a complaint or violation. Additionally, agencies will benefit, as it is more efficient for grantees to proactively engage with applicants so they can file a complete and accurate application when they first approach the agency, as opposed to receiving a denial or going through multiple iterations of an application.

The grants would be issued by the Office of Paid Family Leave at DOES. Worker groups would receive at least twice as much funding as employer groups. Worker groups will be able to help workers file an initial claim for universal paid leave; determine the type of workplace leave for which the worker may be eligible; file an administrative complaint related to the provision of workplace leave, including a complaint of retaliation; respond to or appeal an initial administrative decision or determination related to workplace leave; or provide an employer with appropriate documentation supporting a request for workplace leave. The grant may also be used to provide training and guidance to medical providers or healthcare trade or professional associations on the requirements of workplace leave laws and related documentation. On the business side, grantees would assist employers by sharing best practices or providing guidance on how to coordinate and accommodate different types of workplace leave, along with employer-sponsored disability plans. The Committee has specified that the funds may not be used to initiate or defend lawsuits in court.

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<sup>166</sup> DOES has said on several occasions that it cannot provide advice to claimants or employers when they are attempting to comply with the Universal Paid Leave program; for example, see Testimony before the Committee on Labor and Workforce Development, Council of the District of Columbia Public Oversight Roundtable Regarding Implementation of the Universal Paid Leave Act, January 30, 2020, of Dr. Unique Morris-Hughes, Director, Department of Employment Services (2:40), who stated: “The agency is not in a position legally to advise an employer on how they should modify their own...benefits policy to apply or coordinate with UPL. So we don’t have the ability legally and I would never recommend that any of the staff consult with an employer to say, ‘You should change your benefits system and what you offer to conform or mirror or top off with universal paid family leave’ ... We don’t want to be in the business of advising an employer of *how* to do it. What we can say is that, ‘This is available. You can use the benefit in addition to your own company benefit.’ But we’re not in the position and we will not take the position of consulting and advising on *how* to do it.”

The Committee has identified funds in the Universal Paid Leave Fund to support the Program. This Fund consists of contributions paid by businesses on behalf of workers for the Universal Paid Leave Program. The Universal Paid Leave Act authorizes that up to 10 percent of the funds collected may be used on administration. Another Committee-proposed BSA subtitle, the “Universal Paid Leave Fund Amendment Act of 2020,” (see Chapter IV.B.7 of this report) will reduce that percentage to nine percent, while assigning the other one percent to the agency enforcing the anti-retaliation aspect of UPLA. Of the nine percent for administration, up to 10 percent may be used for public education, which will include the Workplace Leave Navigators Program. As of June 2020, over \$300 million has been collected, allowing for more than \$30 million in administration costs under current law and \$27 million under the proposed subtitle, with up to \$2.7 million for public education. DOES has budgeted \$20 million for administration in FY2021. Thus, the Administrative Fund’s resources will be adequate to fund the Workplace Leave Navigators Program at the Committee’s proposed budget level for FY2021 of \$750,000.

**c. Section-by-Section Analysis**

Sec. XX01. States the short title.

Sec. XX02. Establishes definitions.

Sec. XX03. Establishes the Workplace Leave Navigators Program as a new grant program to be administered by the director of DOES. The Section also includes eligible recipients, uses of funds, and sets requirements for administration of the grant program.

**d. Legislative Recommendations for Committee of the Whole**

See also Attachment B to this report.

**SUBTITLE XX. WORKPLACE LEAVE NAVIGATORS**

Sec. 1XX1. Short title.

This subtitle may be cited as the “Workplace Leave Navigators Program Establishment Amendment Act of 2020”.

Sec. 1XX2. Definitions.

For the purposes of this subtitle, the term:

(1) “Family and medical leave” means leave available under the District of Columbia Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501 *et seq.*).

(2) “Director” means the director of DOES.

(3) “DOES” means the Department of Employment Services.

(4) “Paid sick leave” means leave available under the Accrued Sick and Safe Leave Act of 2008, effective May 13, 2008 (D.C. Law 17-152; D.C. Official Code § 32-531.01 *et seq.*).



(5) “Universal paid leave” means leave benefits available under the Universal Paid Leave Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-264; D.C. Official Code § 32-541.01 *et seq.*).

(6) “Workplace leave” means universal paid leave, paid sick leave, family and medical leave, or any other job-protected leave to which an individual may be entitled under federal or District law.

### Sec. 1XX3. Workplace Leave Navigators Program.

(a) There is established a Workplace Leave Navigators Program (“Program”), which the Director shall administer.

(b) The Program shall be funded with monies from the Universal Paid Leave Administration Fund, established pursuant to section 1153 of the Universal Paid Leave Implementation Fund Act of 2016, passed on 1st reading on July 7, 2020 (Engrossed version of Bill 23-760).

(c) The Program shall provide funds to:

(1) Worker and employee advocacy organizations with demonstrated experience representing employees in matters related to workplace leave for the purpose of assisting individuals in obtaining workplace leave and benefits; and

(2) Nonprofit organizations, businesses, or professional or trade associations with experience representing or assisting employers with the administration or understanding of workplace leave laws for the purpose of providing assistance to employers to share best practices or guidance regarding how to coordinate and accommodate different types of workplace leave, along with employer-sponsored disability plans.

(d)(1) To be eligible to receive Program funds pursuant to subsection (c)(1) of this section, an applicant for Program funds must submit 3 letters of recommendation from District-based worker advocacy organizations.

(2) To be eligible to receive Program funds pursuant to subsection (c)(2) of this section, an applicant for Program funds must submit 3 letters of recommendation from District-based business advocacy or membership organizations.

(e) Program funds issued to worker and employee advocacy organizations for the purposes described in subsection (c)(1) of this section:

(1) Shall be used to assist individuals with:

(A) Filing an initial claim for universal paid leave;

(B) Determining the type of workplace leave for which an individual may be eligible;

(C) Filing an administrative complaint related to the provision of workplace leave, including a complaint of retaliation;

(D) Responding to or appealing an initial administrative decision or determination related to workplace leave; or

(E) Providing an employer with appropriate documentation supporting a request for workplace leave; and

(2) May be used to provide training and guidance to medical providers or healthcare trade or professional associations on the requirements of workplace leave laws pertaining to documentation supporting the need for leave.

(f) Funds for the Program may not be used to prosecute or defend claims in a lawsuit related to the provision of workplace leave.

(g)(1) The Director shall issue Program funds through competitive grants administered pursuant to the requirements set forth in the Grant Administration Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code § 1-328.11 *et seq.*), and section 2(b-1) of the Workforce Job Development Grant-Making Authority Act of 2012, effective April 23, 2013 (D.C. Law 19-269; D.C. Official Code § 1-328.05(b-1)).

(2) The Director shall issue an initial Request for Applications no later than October 31, 2020, and annually thereafter. The Director may issue multi-year grants, subject to the availability of appropriations.

(3) In a fiscal year, the total amount of grants the Director issues for the purposes described in subsection (c)(1) of this section shall be at least twice the amount of grants issued for the purposes described in subsection (c)(2) of this section.

**e. Fiscal Impact Statement**

Funds are sufficient in the Universal Paid Leave Fund to implement this subtitle.

#### **4. Title X, Subtitle X, School Year Internship Pilot Program Amendment Act of 2020**

##### **a. Purpose, Effect, and Impact on Existing Law**

This subtitle would establish a pilot program, the School Year Internships Pilot Program (SYIPP) at DOES in Spring 2021 to provide school-year, paid internships for 250 high school students in a similar manner to the agency's Marion S. Barry Summer Youth Employment Program (SYEP). The subtitle would also require annual reporting of information on all DOES-run youth programs, other than SYEP (which already has reporting requirements); this information is not otherwise publicly available.

##### **b. Committee Reasoning**

The Committee has heard for years from DC high school students, community organizations, public witnesses in hearings, and others that there should be more opportunity for paid internships for District high school students during the school year. The District has a large summer employment program, the Marion Barry Summer Youth Employment Program (MBSYEP), which provides work-life development or work experience to 10,000-12,000 youth each summer. However, there are few opportunities for students to work during the school year. Yet work experience is critical to the long-term success for the District's youth. As Marcia Huff of the Young Women's Project testified about the 100 youth and young adults she has worked with, "I cannot communicate enough the importance of early interventions, training, and support of DC youth. Workforce readiness training and quality job experiences are an essential part of the solution."<sup>167</sup>

Many students wrote directly to the Committee urging the creation of a pilot internship program in FY2021. One student, Marie Tata, a rising senior at Woodrow Wilson High School wrote:

High school students deserve more than just summer work. Preparing for and securing employment is an urgent issue for DC high school students. In DC there are very few opportunities for students to gain paid work experience all year round. High school students deserve more than just summer work. Six weeks of work is not enough time for students to develop deep relationships or grow and develop their skills. High school employment and early work experience is important to me and other high school students because it gives us an opportunity to save up for our futures, build our resumes and helps us practice being in the workforce.<sup>168</sup>

Another student, Mykaela Marsh-Cobb, is a graduating senior at Dunbar High School. She wrote:

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<sup>167</sup> Marcia Huff, "Testimony to the Committee on Labor and Workforce Development, Budget Oversight Hearing, Department of Employment Services," May 28, 2020, p. 2.

<sup>168</sup> Marie Tata, letter to Councilmember Silverman, via email, June 11, 2020.

I am writing to urge you to support a \$576,000 budget allocation for the creation of a DOES year-round employment program for DC high schools. High school students deserve more than just summer work. Small investments can go a long way, especially concerning high school students who plan to attend to college. DOES providing opportunities that are just 6-8 hours a week can have a positive impact on future employment and earnings. Preparing for and securing employment is an urgent issue for DC high [school] students. Early work experiences are especially valuable in struggling families because they provide additional income and help put students on a career path.<sup>169</sup>

The District offers several work-related programs for high school students, including two DC Public Schools programs, but one is a summer program and the other enrolled approximately 120 students from 12 schools in 2019.<sup>170</sup> At DOES, over the past 2 years, approximately 230 students were served, although the Committee does not have information on how many participated in paid internships.<sup>171</sup> Regardless, the students who wrote to the Committee want to see more paid internships available in the future.

The proposed subtitle will establish a pilot project in FY2021 with internships occurring between January and June 2021. They would be paid at \$10 per hour. Students who are at-risk would be prioritized for participation. Internship hosts could be non-profit organizations, public or public charter schools, government agencies, or private businesses. Prospective hosts would apply to be a host, and DOES would prioritize selection of those that will engage an intern in work experience activities, rather than work readiness activities, for the majority of an intern's time. Finally, DOES would develop benchmarks for interns' growth and development in work readiness,<sup>172</sup> and hosts would provide assessment of interns' work readiness within 30 days of the end of the internship.

A second section of the proposed subtitle would require DOES to issue annual reports on all of its year-round youth programs, disaggregated by program. This would include participant numbers; participant demographics; expenditure amounts; names of vendors, hosts, or grantees;

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<sup>169</sup> Mykaela Marsh-Cobb, Letter to Councilmember Silverman, via email, June 11, 2020.

<sup>170</sup> Marcia Huff, Young Women's Project, Testimony to the Committee on Labor and Workforce Development, May 28, 2020, page. 4, available in Attachment C.

<sup>171</sup> DOES, "Workforce development services funded (actual or projected) by DOES workforce funding, FY19-21," June 3, 2020, p. 4, available at [https://d3n8a8pro7vhmx.cloudfront.net/silverman/pages/533/attachments/original/1591383513/DOES\\_Budget\\_Matrix\\_For\\_Discussion\\_Subject\\_to\\_Change\\_%2806-03-20%29.pdf?1591383513](https://d3n8a8pro7vhmx.cloudfront.net/silverman/pages/533/attachments/original/1591383513/DOES_Budget_Matrix_For_Discussion_Subject_to_Change_%2806-03-20%29.pdf?1591383513). Note this is a discussion draft document and does not represent final numbers. However, it is the only information the Committee has about DOES' Year-Round Youth participant numbers. According to the matrix, most in-school youth participated in "in-school youth innovation grants," which the Committee does not believe are paid internships; however, there is no information on the DOES website about the current program design.

<sup>172</sup> Such benchmarks are readily available and do not need to be completely newly created.

**c. Section-by-Section Analysis**

Sec. XX01. States the short title.

Sec. XX02. Amends section 2a(a) of the Youth Employment Act of 1979, effective January 5, 1980 (D.C. Law 3-46; D.C. Official Code § 32-242(a)) to create a school year internship pilot program in FY2021.

Sec. XX03. Amends the Department of Employment Services Local Job Training Quarterly Outcome Report Act of 2012, effective September 20, 2012 (D.C. Law 19-168; D.C. Official Code § 32-771) by adding a new section 2083 to require DOES to issue an annual report on year-round youth programs.

**d. Legislative Recommendations for Committee of the Whole**

See also Attachment B to this report.

**SUBTITLE XX. School Year Internship Pilot Program and Youth Reporting**

Section 1XX1. Short title.

This subtitle may be cited as the “School Year Internship Pilot Program Amendment Act of 2020”.

Section 1XX2. Section 2a(a) of the Youth Employment Act of 1979, effective January 5, 1980 (D.C. Law 3-46; D.C. Official Code § 32-242(a)), is amended by adding a new paragraph (2A) to read as follows:

“(2A) School year internship pilot. — In Fiscal Year 2021, a pilot program called the School Year Internship Pilot Program (“Program”) for 250 District high school students to provide work-based learning opportunities during the school year.

“(A)(i) Students from District high schools, including public schools, public charter schools, and private schools, who are not otherwise participating in an internship, in-school youth employment, or a work readiness program may apply to the Department of Employment Services (“DOES”) to be matched with an internship host through the Program.

“(ii) DOES shall give the applications of at-risk students priority over all other applications.

“(iii) For the purposes of this subparagraph the term “at-risk” means a public school, public charter school, or private school student who is identified as one or more of the following:

“(I) Homeless;

“(II) In the District’s foster care system;

“(III) Qualifies for the Temporary Assistance for the Needy Families program or the Supplemental Nutrition Assistance Program; or

“(IV) A high school student that is one year older, or more, than the expected age for the grade in which the student is enrolled.

“(B) DOES shall notify students of their placement with an internship host by January 5, 2021.

“(C) Interns shall work for their internship host between January 2021, and June 2021.

“(D) DOES shall pay interns a training rate of \$10 per hour, which it shall pay by way of a debit card provided to the intern or direct deposit.

“(E)(i) Internship hosts may be non-profit organizations, public schools or public charter schools, government agencies, or private businesses.

“(ii) Prospective internship hosts shall submit applications to participate in the Program no later than December 1, 2020. The application shall include a detailed job description that identifies specific tasks, projects, or duties that the intern will perform and the name and job title of the individual who will directly supervise the intern.

“(iii) DOES shall review internship host applications, and shall give priority to applications that will engage an intern in work experience activities, rather than work readiness activities, for the majority of an intern’s time.

“(F) DOES shall implement the Program through public-private partnerships between the District government and an internship host that has the ability to employ youth under the Program, subject to all federal and District laws, rules, and regulations relating to the procurement and award of contracts, grants, or other government assistance.

“(G)(i) DOES shall develop benchmarks for interns’ growth and development in work readiness, which internship hosts shall utilize to assess an intern’s work readiness.

“(ii) An internship host shall provide its written assessment of an intern’s work readiness to DOES within 30 days after the end of the internship.”.

Sec. 1XX3. The Department of Employment Services Local Job Training Quarterly Outcome Report Act of 2012, effective September 20, 2012 (D.C. Law 19-168; D.C. Official Code § 32-771) is amended by adding a new section 2083 to read as follows:

“Sec. 2083. Department of Employment Services annual report on year-round youth programs.

“(a) Starting December 15, 2020, and annually thereafter, the Department of Employment Services (“Department”) shall publish on its website and submit to the Council a report on the operations of its year-round youth programs, including:

- “(1) The In-School Youth Program;
- “(2) The Out-of-School Youth Program;
- “(3) The Marion Barry Youth Leadership Institute;
- “(4) Pathways for Young Adults Program;
- “(5) Youth Earn and Learn Program;
- “(6) The High School Internship Program;
- “(7) In-school Youth Innovation Grants; and
- “(8) In-school DCHR internship program.

“(b) The report shall include the following information for each program from the previous fiscal year:

- “(1) The number of participants newly enrolled;
- “(2) The total number of participants, disaggregated by ward, grade, school, age and, if known, at-risk status;
- “(3) Each program’s total expenditures, disaggregated by fund type (federal, local, Intra-district, or Special Purpose Revenue funds); and

“(4) The names of any vendors, grantees, host employers (including public schools and public charter schools for the High School Internship Program), host sites, or other organizations providing services to youth.

“(c) The Department may withhold from the report required pursuant to subsection (b) of this section any information precluded from release by federal law, rule, or policy; provided that, if at a later time, such information may be released, the Department shall supplement the next annual report following the date on which the information may be shared with the withheld information.

“(d) For the purposes of this section, the term “at-risk” means a public school, public charter school, or private school student who is identified as one or more of the following:

“(1) Homeless;

“(2) In the District’s foster care system;

“(3) Qualifies for the Temporary Assistance for the Needy Families program or the Supplemental Nutrition Assistance Program; or

“(4) A high school student that is one year older, or more, than the expected age for the grade in which the student is enrolled.”

**e. Fiscal Impact Statement**

This subtitle has a fiscal impact of \$915,669, \$887,443 in one-time funds and \$28,226 in recurring funds.

<b>Fiscal Impact of School Year Internship Pilot Program Amendment Act of 2020</b>					
	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>	<b>Four-Year Total</b>
Program Analyst (1 FTE, Grade 12), DOES <sup>1</sup>	\$112,905	\$28,304	\$28,384	\$28,464	\$198,057
Recruitment and Case Management Staff (4 FTEs, Grade 9), DOES <sup>2</sup>	\$253,293	\$0	\$0	\$0	\$253,293
Student Wages <sup>3</sup>	\$355,245	\$0	\$0	\$0	\$355,245
Student Laptops with WiFi	\$166,000	\$0	\$0	\$0	\$166,000
<b>TOTAL</b>	<b>\$887,443</b>	<b>\$28,304</b>	<b>\$28,384</b>	<b>\$28,464</b>	<b>\$972,595</b>

<sup>1</sup>This position reduces to a 0.25 FTE position in FY 2022 since many of the staff member’s duties end with the internship pilot program in FY 2021. Though cost-of-living increases are frozen we assume fringe benefits grow by 1.5% annually.

<sup>2</sup>Positions are pro-rated for 10 months of the year, October 2020 through July 2021, since the internship program ends in June.

<sup>3</sup>Assumes the 250 interns work an average of 6 hours a week for 22 weeks. The \$10 per hour wage includes a 7.65% FICA tax.

## **5. Title X, Subtitle X, Unemployment Insurance Modernization Requirements Amendment Act of 2020**

### **a. Purpose, Effect, and Impact on Existing Law**

This subtitle would set requirements for the ongoing Unemployment Insurance (UI) modernization project, a \$45 million capital project being managed by DOES. It would also ensure that during times such as the coronavirus pandemic, workers who don't have a computer and/or printer to file claims and complaints at DOES are not left out and have a mechanism to submit their applications for benefits.

### **b. Committee Reasoning**

The UI modernization project has been funded since 2012, but there has been little progress in making this critical safety net program compatible with current technology or in meeting the needs of the workers it is supposed to help. When the project is fully completed, DOES should have state-of-the-art back-end and user-facing components on both the tax collection (employer) and benefits claims and payments (worker) sides. In order to address the extreme lag in project progress, the Committee's proposed subtitle would mandate issuance of a Request for Proposals to modernize the benefits portal by October 30, 2020; to award a contract by January 15, 2021; and to complete the project by the end of FY 2022, the final year when funds must be spent on this project according to the Capital Improvement Plan.

During the first months of the coronavirus public health emergency when UI claims topped 100,000, the Committee and the public saw first-hand the serious flaws in the outdated benefits system. The system excludes large swaths of workers because the online application only functions well using Internet Explorer, a browser not supported by its manufacturer for many years. Nor is the application accessible using any kind of mobile device, including a smartphone. Furthermore, the application is not accessible in languages other than English or Spanish, a violation of the District's Language Access Act. And finally, it is not fully compliant with the Americans with Disabilities Act (ADA). (See further discussion in Chapter II.C.3 with recommendations for DOES on the UI modernization project.)

The subtitle therefore requires that the modernized benefits portal be accessible from all major internet browsers and on mobile devices; accessible to people with disabilities in compliance with the ADA; and compliant with the District's Language Access Act.

Additionally, the subtitle will require that DOES maintain hard copy application forms, instructions for filling out such forms, and a lockbox for submitting forms to DOES in a public location. The lockbox will only be available in extraordinary circumstances like the coronavirus pandemic when libraries and the American Jobs Centers are closed and therefore applicants cannot access public computers. The forms to be provided are unemployment insurance claim applications, workers compensation applications, and



agency complaint forms. The lockbox need only be available during times when the DOES headquarters is staffed by a security guard. The forms and lockbox will not need to be available when DOES is closed on weekends, holidays, or staff training days.

**c. Section-by-Section Analysis**

Sec. XX01. States the short title.

Sec. XX02. Establishes requirements for the Unemployment Insurance modernization project, including deadlines and user-facing elements.

Sec. XX03. Requires DOES to provide blank claims and complaints forms, a locked box to submit such forms, and other materials, when the headquarters is closed.

**d. Legislative Recommendations for Committee of the Whole**

See also Attachment B to this report.

**SUBTITLE XX. UNEMPLOYMENT INSURANCE MODERNIZATION REQUIREMENTS**

Sec. 1XX1. Short title.

This subtitle may be cited as the “Unemployment Insurance Modernization Requirements Act of 2020”.

Sec. 1XX2. Unemployment insurance modernization requirements.

(a) The Department of Employment Services (“DOES”) shall launch an integrated, fully modernized, and fully functioning unemployment insurance information technology benefits and tax system (“benefits system”) for public use no later than September 30, 2022.

(b) The benefits system shall include an internet accessible public interface that:

(1) Can be accessed from all major internet browsers and used on mobile devices and personal computers;

(2) Is accessible to people with disabilities in compliance with section 504 of the Rehabilitation Act of 1973, approved September 26, 1973 (87 Stat. 394; 29 U.S.C. 794), and title II of the Americans with Disabilities Act, approved July 26, 1990 (104 Stat. 337; 42 U.S.C. 12131 *et seq.*); and

(3) Complies with the Language Access Act of 2004, effective March 14, 2007 (D.C. Law 15-167; D.C. Official Code § 2-1931 *et seq.*).

(c)(1) The Office of Contracting and Procurement (“OCP”), in consultation with DOES, shall issue a Request for Proposals for the full modernization of the benefits system, consistent with the requirements of subsections (a) and (b) of this section, no later than October 30, 2020.

(2) The OCP shall award a contract for the full modernization of the benefits system no later than January 15, 2021.

Sec. 1XX3. (a) Beginning no later than 15 days after the effective date of this subtitle, on any day when American Job Centers are closed (excluding weekends, holidays, and staff training days), the Department of Employment Services (“DOES”) shall provide the following materials at its headquarters from 8:30 a.m. to 5:00 p.m.:

(1) Hard copies of unemployment insurance benefits applications, with hard copies of all instructions that are available online for completing the application;

(2) Hard copies of DOES complaint forms for violations of District labor laws, including wage and hour, accrued paid sick time, and workers' compensation laws, with hard copies of all instructions that are available online for completing each form;

(3) Envelopes individuals may use in submitting their applications and complaint forms, with space on the outside to identify the form being submitted; and

(4) A locked box with a slot into which individuals may deposit their completed applications and complaint forms.

(b) The DOES shall make the materials identified in subsection (a) of this section available in a location at its headquarters that is publicly and handicap accessible.

**e. Fiscal Impact Statement**

This Committee believes this subtitle has no fiscal impact, but as of the mark-up of this report, it did not receive confirmation from the Office of the Chief Financial Officer.

## **6. Title X, Subtitle X, District Government Transgender Employment Study Act of 2020**

### **a. Purpose, Effect, and Impact on Existing Law**

This subtitle would amend the Comprehensive Merit Personnel Act of 1978 to require the Mayor to contract with an entity to study the employment of transgender and non-binary individuals in District agencies and District agencies' employment practices as they relate to individuals who identify as transgender or non-binary.

### **b. Committee Reasoning**

Studies indicate that transgender and non-binary individuals face employment discrimination, wage disparities, and workplace harassment. In fact, in 2015, the Office of Human Rights (OHR) published a report called, "Qualified and Transgender," which presented findings of a set of tests OHR conducted to understand how employers respond to resumes from applicants perceived as transgender compared with resumes of applicants perceived as cisgender.<sup>173</sup> According to their findings, 48 percent of employers appeared to prefer at least one less-qualified applicant perceived as cisgender over a more-qualified applicant perceived as transgender.

While the District government has adopted workplace and hiring policies that attempt to prevent discrimination against transgender and non-binary individuals, anecdotal reports indicate that there is still more work to be done to ensure equal opportunity, equity in compensation, and a workplace climate free from harassment.

The committee recommends including this subtitle in the FY 2021 Budget Support Act to require the Mayor to contract with an entity to study transgender and non-binary employment within District government agencies. The study will provide District agencies and the Council with a better understanding of transgender and non-binary employees' and prospective employees' experiences within District government, providing a platform to improve hiring and employment practices and workplace climate. The study will also provide a backdrop for how the District can work with other employers to improve their hiring practices and possibly how the District can improve employment and training programs to support transgender and non-binary residents in accessing jobs.

The subtitle would require the Mayor to contract with an entity to study transgender and non-binary employment in District government agencies. The subtitle details minimum requirements for the study. These are: data on the number of transgender and non-binary employees currently employed at District government agencies, including demographic information; a review of the District government agencies' transgender and non-binary inclusion policies and an evaluation of the extent to which policies are implemented or

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<sup>173</sup> See DC Office of Human Rights, "Qualified and Transgender", November 2015, available at [https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/QualifiedAndTransgender\\_FullReport\\_1.pdf](https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/QualifiedAndTransgender_FullReport_1.pdf).

experienced by transgender or non-binary employees; an evaluation of District agencies' recruitment, hiring, retention, and promotion practices related to prospective and current transgender and non-binary employees; an analysis of disparities in earnings, title, pay grade, length of time in position, and educational attainment between employees who identify as transgender or non-binary and employees who identify as cisgender; an assessment of transgender or non-binary employees' workplace experiences as employees of District government agencies, including experiences of discrimination, harassment, or mistreatment on the job; an evaluation of data for transgender and non-binary participants in Department of Employment Services' job training programs; and recommendations for how agencies can improve hiring and employment practices as they relate to individuals who identify as transgender or non-binary. While many of these items may only be obtainable through surveys, they will provide a snapshot of transgender or non-binary employees currently employed with the District and an indication of their experiences as employees.

Second, the subtitle allows the entity implementing the study to use survey tools. It requires the entity to either have, or partner with another entity that has experience studying and knowledge of sexual orientation and gender identity. It also requires the entity to explain that participation in requests for information is voluntary and prohibits the entity from disclosing, or retaining beyond the course of the study, any personally identifiable information it gathers. The entity must also ensure the privacy, dignity, and confidentiality of District government employees. Finally, the entity must consult with the Office of Human Rights to develop a proposed plan of the study and on surveys to be administered and resulting recommendations. It is important that the entity have experience studying and researching questions of gender identity and working with transgender individuals in order to ensure that the entity designs the study and survey tools in a manner that affirms and shows respect toward respondents. Additionally, the confidentiality of employees is critical. Without these assurances, survey responses may be diminished. Additionally, consultation with the Office of Human Rights will help ensure that the study is respectful of all employees, consistent with the DC Human Rights Act, and not unnecessarily intrusive.

Third, the subtitle allows the Mayor to use electronic communications to facilitate the entity's outreach to District employees.

Fourth, the subtitle requires the Mayor to coordinate with the entity implementing the study to review their recommendations to ensure they comply with the DC Human Rights Act. It also requires the Mayor to review employment discrimination and workplace harassment data; provide the contractor with the information necessary to facilitate carrying out the study; and submit a report by December 31, 2021.

**c. Section-by-Section Analysis**

Sec. xx01. States the short title.

Sec. xx02. Defines terms used in the subtitle.

Sec. xx03. Requires the Mayor to contract with an entity to conduct a study to examine transgender and non-binary employment and transgender and non-binary employees' experiences within District government agencies; the study at a minimum must include data on the number of transgender and non-binary employees currently employed at District government agencies, including demographics; a review of District government agencies' transgender and non-binary inclusion policies and an evaluation of the extent to which policies are implemented or experienced by transgender or non-binary employees; an evaluation of District agencies' recruitment, hiring, retention, and promotion practices related to prospective and current transgender and non-binary employees; an analysis of disparities in earnings, title, pay grade, length of time in position, and educational attainment between employees who identify as transgender or non-binary and employees who identify as cisgender; an assessment of transgender or non-binary employees' workplace experiences as employees of District government agencies, including experiences of discrimination, harassment, or mistreatment on the job; an evaluation of data for transgender or non-binary participants in Department of Employment Services' job training programs; and recommendations for how agencies can improve hiring and employment practices; requires the entity to 1) Have, or partner with another entity with experience studying and knowledge of sexual orientation and gender identity; 2) Include a statement indicating that participation in requests for information is voluntary in communications to employees; 3) Ensure the privacy, dignity, and confidentiality of District government employees; and 4) Consult with the Office of Human Rights on the study; prohibits the entity from disclosing, or retaining after the study is complete, personally identifiable information; allows the Mayor to use electronic communication to assist the entity completing the study; requires the Mayor to review the entity's proposal and ensure it is consistent with the DC Human Rights Act, provide the contractor with the information necessary to facilitate the study; and submit a report by December 31, 2021.

**d. Legislative Recommendations for Committee of the Whole**

See also Attachment B to this report.

**SUBTITLE XX. DISTRICT GOVERNMENT TRANSGENDER AND NON-BINARY EMPLOYMENT STUDY**

Sec. XXX. Short title.

This subtitle may be cited as the "District Government Transgender and Non-Binary Employment Study Act of 2020".

Sec. XXX. The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq*) is amended by adding a new Title VII-B to read as follows:

"TITLE VII-B GENDER IDENTITY STUDY

"Sec. 760. Definitions.

"For the purposes of this title, the term:

“(1) “Cisgender” means individuals whose sex assigned at birth matches the individual’s perceived gender.

“(2) “Gender identity” means an individual’s internal sense of the individual’s gender, which may be the same as or different from sex assigned at birth and can include male, female, neither, or both.

“(3) “Non-binary” includes individuals whose gender identity is neither entirely male nor entirely female, or varies between the two.

“(4) “Transgender” includes individuals whose gender identity or expression is different from that typically associated with their assigned sex at birth.

“Sec. 761. Study of transgender and non-binary employment.

“(a) The Mayor shall contract with an entity to conduct a study of employment data, hiring and recruitment practices, and workplace climate in District government agencies in relation to people who are transgender or non-binary. At a minimum, the study shall include:

“(1) A census of employees who identify as transgender or non-binary, including information on the employees’ race and ethnicity, gender identity, and age;

“(2) A review of District government agencies’ transgender and non-binary inclusion policies, including policies developed under the Human Rights Act of 1977, effective December 13, 1977, (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), (“Human Rights Act”) and any regulations promulgated pursuant to the Human Rights Act, and an evaluation of the extent to which District government agencies have implemented such polices and how transgender and non-binary employees experience such polices;

“(3) An evaluation of District government agencies’ actual recruitment, hiring, retention, and promotion practices related to prospective and current transgender and non-binary employees;

“(4) An analysis of any disparities in earnings, title, pay grade, length of time in position, and educational attainment between employees who identify as transgender or non-binary and employees who identify as cisgender;

“(5) An assessment of transgender and non-binary employees’ workplace experiences as employees of District government agencies, including experiences of discrimination, harassment, or mistreatment on the job; and

“(6) An evaluation of data, including participant demographics and program outcomes, for transgender or non-binary participants in the Department of Employment Services’ job training programs; and

“(7) Recommendations for District government agencies on improving employment and hiring practices as they relate to individuals who are transgender or non-binary.

“(b) The contractor may survey employees to gather data for the purposes of the study.

“(c) The contractor completing the study shall:

“(1) Have, or partner with another entity with, experience studying and knowledge of sexual orientation and gender identity;

“(2) Include a statement in requests for information and surveys sent to employees explaining that providing information is voluntary;

“(3) Ensure the privacy, dignity, and confidentiality of employees;

“(4) Not disclose, or retain after the study is complete, personally identifiable information gathered in the course of the study; and

“(5) Consult with the Office of Human Rights in developing a detailed proposed plan of the study, surveys to be administered, and any resulting recommendations from the entity.

“(d) The Mayor may use electronic communication tools, including e-mail, to facilitate the contractor’s outreach to District government employees.

“(e) The Mayor shall:

“(1) Review the contractor’s proposals and recommendations to ensure they are consistent with the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2–1401.01 *et seq.*);

“(2) Review data, with personally identifiable information removed, on harassment and discrimination complaints filed by transgender and non-binary employees against District government agencies since January 1, 2015;

“(3) Provide the contractor with the information necessary to facilitate subsection (a) of this section; and

“(4) Submit a final report with findings and recommendations to the Council no later than December 31, 2021. The final report submitted to the Council shall not contain any personally identifiable information.”.

**e. Fiscal Impact Statement**

This subtitle has a one-time cost of \$150,000 to allow the Mayor to contract with an entity for the study.

## **7. Title X. Subtitle X. Tipped Wage Reporting Clarification Amendment Act of 2020.**

### **a. Purpose, Effect, and Impact on Existing Law**

This subtitle modifies the Tipped Wage Workers Fairness Amendment Act of 2018, Local Law 22-196, by clarifying the content of public-facing materials and establishing clear timetables for implementation. It also amends the Minimum Wage Act Revision Act of 1992 to specify the contents of quarterly reports that third-party payroll businesses and hotel employers must file with DOES when these entities employ tipped workers.

### **b. Committee Reasoning**

The proposed subtitle would modify portions of L22-196 which have not yet been fully implemented because adequate funds were not yet appropriated. The Department of Employment Services (DOES) informed the Committee in early 2020 that this lack of funding to develop the reporting portal meant that third-party payroll businesses and hotel employers that were required to submit quarterly reports to the agency had to submit those documents in hard copy. Over the last year, the Committee has been able to consider input from DOES, employers, and third-party payroll businesses and their representatives to make sure that the portal works for everyone. In light of this feedback, the Committee has clarified exactly what third-party payroll businesses and hotel employers need to submit to DOES. Previous legislative language also mischaracterized how employers and third-party payroll businesses report tip data in practice; this has been fixed. The existing legislation also provides a mechanism for third-party payroll businesses and their employer clients to separately agree which of them will be responsible for providing a tip-sharing policy to DOES. A \$500 penalty will apply to employers that fail to use a third-party payroll business to process their payroll

Another previously-unfunded provision in the law requires the Mayor to create a universal notice that employers must post to inform workers about workplace protections that apply in the District of Columbia. That provision says that an employer may post this universal notice in lieu of individual postings that are required by other minimum wage, sick leave, pregnant workers' fairness, and other laws. The language has been drafted to appeal to as many employees as possible. According to workers and their advocates, notices which too heavily rely on legal citations and jargon do little to actually inform employees of what their rights are. This subtitle specifies that simple, everyday language must be included on the poster along with the contact information for DOES so the employee can learn more. However, the current subtitle omits the Universal Paid Leave Act (UPLA) notice from the list of individual notices. This is because the UPLA poster is a key mechanism for alerting workers that the new program has been launched, particularly in early FY2021 when benefits will only have been available to workers for a few months.

Finally, certain language in the existing law references specific calendar dates (for example, April 1, 2020) which have passed. These dates have been replaced so that the mandate will be triggered according to the date that the provision is funded.



**c. Section-by-Section Analysis**

Sec. xx01. States the short title.

Sec. xx02. The law now details the content to be included on universal notice posters that employers may post in lieu of individual posters required under several separate laws, excluding the Universal Paid Leave Act.

Sec. xx03. An amendment to the Minimum Wage Act Revision Act of 1992 details the contents of quarterly employee wage reports that third-party payroll businesses and hotel employers are responsible for providing to the Mayor regarding the hours and compensation of their tipped employees. It provides a way for third-party payroll businesses and hotel employers to decide which of them will provide a tip-sharing policy to DOES. It adds a \$500 penalty for an employer that fails to use a third-party payroll business when DOES has not received quarterly wage reports from the employer's business.

**d. Legislative Recommendations for Committee of the Whole**

See also Attachment B to this report.

**SUBTITLE X. TIPPED WAGE WORKERS FAIRNESS CLARIFICATION  
AMENDMENT ACT OF 2020.**

Sec. XX01. This subtitle may be cited as the "Tipped Workers Fairness Clarification Amendment Act of 2020".

Sec. XX02. The Tipped Wage Workers Fairness Amendment Act of 2018, effective December 13, 2018 (D.C. Law 22-196; D.C. Official Code § 32-161 *et seq.*), is amended as follows:

(a) Section 3 (D.C. Official Code § 32-161) is amended as follows:

(1) Subsection (a)(1) is amended as follows:

(A) Strike the phrase "By April 1, 2020" and insert the phrase "Within 120 days after the date this section becomes applicable" in its place.

(B) Subparagraph (F) is repealed.

(2) Subsection (b) is amended as follows:

(A) Paragraph (1) is amended as follows:

(i) The lead-in language is amended by striking the phrase "By April 1, 2020" and inserting the phrase "Within 120 days after the date this section becomes applicable" in its place.

(ii) Subparagraph (B) is amended to read as follows:

"(B) The following text formatted in a large font and for maximum readability, including the use of bullet points to call out each specified right on a separate line:

“EMPLOYEE RIGHTS IN THE DISTRICT OF COLUMBIA: Do you know your rights as an employee working in Washington, D.C.? Employees have the right:

- To be paid at least the minimum wage;
- To be paid on time;
- To receive a detailed pay stub;
- To accrue and use paid sick and safe leave;
- To request time off to attend a child’s school-related activities;
- To qualify for unpaid family and medical leave;
- To be compensated for work-related illness or injury;
- To remain free from discrimination;
- To be accommodated in the workplace during pregnancy;
- To remain free from employer retaliation for discussing or exercising any of these rights; and
- To file a complaint for violation of workplace rights with the Department of Employment Services (DOES) or the Office of Human Rights (OHR);

To learn about these and other workplace rights, visit the website below. This notice does not create, expand, or limit rights under District or federal law.”;

(B) Paragraph (2) is amended by striking the phrase “The poster” and inserting the phrase “Below the text required pursuant to paragraph (1)(B) of this subsection, the poster” in its place.

(3) Subsection (d)(6) is repealed.

Sec. 1XX3. The Minimum Wage Act Revision Act of 1992, effective March 11, 2014 (D.C. Official Code § 32-1001 *et seq.*) is amended as follows:

(a) Section 10a (D.C. Official Code § 32-1009.01) is amended as follows:

(1) Subsection (a) is amended to read as follows:

“(a)(1) As of January 1, 2020, the third-party payroll businesses required pursuant to section 9(a-1) to process payroll for an employer that employs a tipped worker and hotel employers that employ a tipped worker shall submit a quarterly wage report for the preceding calendar quarter to the Mayor no later than 30 days after the end of each calendar quarter.

“(2) Each quarterly wage report shall certify that each tipped worker was paid at least the required minimum wage, including gratuities, and shall include the following:

“(A) Itemized, for each tipped worker, the worker’s:

“(i) Name;

“(ii) Average hourly wage received per week during the

quarter;

“(iii) Total hours worked at or above the minimum hourly wage established under section 4(f) per week;

“(iv) Gross wages received per week; and

“(v) Total gratuities received per week.

“(B) For a hotel employer, a certification that all of the information in the report is accurate;

“(C) For a third-party payroll business, a certification that the information in the report was generated using the same payroll data used to generate the information required to be furnished to employees pursuant to section 9(b); and

“(D) If tips were shared, a copy of the employer’s tip-sharing policy used during the quarter, unless the third-party payroll business and the employer have agreed that the employer will submit the tip-sharing policy, in which case, a certification that such an agreement was in place during the calendar quarter.

“(3)(A) An employer that agrees to submit its tip-sharing policy directly to the Mayor shall submit the policy to the Mayor no later than 30 days after the end of each calendar quarter.

“(B) If the Mayor does not receive the tip-sharing policy of an employer that employs a tipped worker by the submission deadline for quarterly wage reports, the Mayor shall presume that the employer did not have a tip-sharing policy in place during the calendar quarter.”.

(2) Subsection (b)(2) is amended to read as follows:

“(2) A person required to submit documents pursuant to subsection (a) of this section shall submit the documents online through the Internet-based portal, unless the Mayor exempts the person from online reporting because it creates a hardship for the person, in which case, the person shall submit the documents in hard-copy form.”.

(3) A new subsection (d) is added to read as follows:

“(d) For the purposes of this section the term “tipped worker” means an employee paid in accordance with section 4(f).”.

(b) Section 12(d)(1) (D.C. Official Code § 32-1011(d)(1)) is amended by adding a new subparagraph (E-i) to read as follows:

“(E-i) \$500 against an employer for each failure to timely submit the quarterly wage report required pursuant to section 10a, in its entirety, unless the employer proves that it used a third-party payroll business to process the relevant quarter’s payroll for the employer.”.

**e. Fiscal Impact Statement**

This subtitle has no fiscal impact.

## **8. Title X, Subtitle X, Universal Paid Leave Fund Amendment Act of 2020**

### **a. Purpose, Effect, and Impact on Existing Law**

This subtitle will restructure the funding mechanism for the administration and enforcement of the Universal Paid Leave Act (UPLA). The act created an implementation fund to capture contributions, pay out benefits, and cover administration costs, but it did not specify how enforcement should be funded. It also allowed for a certain portion of funds to be used for public education but did not tie them to the administrative costs. The Mayor's budget proposal includes some structural changes in the funding mechanism, which needs conforming changes in the authorizing law. The Committee recommends revising the statute and the proposed structural changes to clarify how administrative and enforcement funding will flow to the appropriate agencies and ensure all associated needs are funded.

### **b. Committee Reasoning**

The UPLA created a single fund, the UPL Implementation Fund (§ 32-551.01), into which contributions are deposited (§ 32-541.03) and out of which benefits are paid (§ 32-551.01). The law also authorizes spending from the Fund for public education up to 0.25 percent of the total amount in the Fund (§ 32-541.06(j)) and administrative costs up to 10 percent of the total amount in the Fund (§ 32-551.01).

In FY2020, the UPL Implementation Fund (620) was housed at DOES, the agency responsible for implementing UPLA. It had certified revenue of \$10 million in FY2020. This fund formed the basis of DOES' Office of Paid Family Leave administrative budget.

In the FY2021 proposed budget, what was the UPL Implementation Fund (620) became the UPL Administration Fund (still at DOES), with certified revenues of \$12.4 million in FY2020 and \$20.7 million in FY2021 and on through the financial plan. The proposed FY2021 budget also includes the creation of the Universal Paid Leave agency (UL0), with a single program solely for the payment of benefits.<sup>174</sup> The agency has a proposed FY2021 budget of \$271 million, which is solely through a Universal Paid Family Leave Fund.<sup>175</sup>

Current law directs employer contributions to the UPL Implementation Fund and authorizes expenditures out of the UPL Implementation Fund. Additionally, although the program is set to launch on July 1, 2020, and the regulations state that the Office of Human Rights (OHR) will enforce the anti-retaliation provisions of UPLA, the Mayor did not provide any funding to OHR for this purpose.

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<sup>174</sup> Although the Mayor's proposed agency budget chapter states that that the agency "provides central functions necessary to execute daily activities and pays benefits," according to OCFO staff, this was a mistake and must be corrected. The Universal Paid Leave agency's funding will be used for the provision of benefits payments, while central functions will be done by DOES.

<sup>175</sup> The Fund name is corrected in this subtitle.

Therefore, the Committee recommends a subtitle to harmonize the statute with the financial structure and establish funding vehicles for both administrative and enforcement costs. It renames the Universal Paid Leave Implementation Fund as the Universal Paid Leave Fund for the deposit of contributions and the payment of benefits. The subtitle creates two special lapsing funds for the necessary expenditures:

1. The **Universal Paid Leave Administration Fund**, which will be funded with up to nine percent of revenues deposited into the main Universal Paid Leave Fund. The UPL administration fund may be utilized by OPFL for staffing and other costs necessary to implement the paid leave program. Up to 10 percent of the administration fund's money may be utilized for public education.
2. The **Universal Paid Leave Enforcement Fund**, which will be funded with up to one percent of the revenues deposited into the main Universal Paid Leave Fund. The enforcement fund may be utilized by OHR for enforcement of § 32-541.10(a) and (b), which may include outreach and education related to individuals' rights under UPLA.

The Committee notes that the current law allows up to 10 percent of all contributions collected to be used for administration, and an additional 0.25 percent for public education. The Committee's proposed subtitle maintains the 10 percent cap and includes funding for enforcement within that cap. It achieves this by subdividing the 10 percent limit such that nine percent of overall funds may be used by DOES for administration and up to one percent of overall funds may be used by OHR for enforcement. The Committee includes public education in DOES' portion and thus the 0.25 percent previously set aside for public education may be utilized for benefits payments in the future.

Finally, the UPL Fund is authorized to provide funding for the Workplace Leave Navigators Program, a new grant program established by this Committee (see Chapter IV.B.3 of this report for further information). The UPL Fund subtitle also states that at least \$500,000 of the public education portion of the administration fund shall be utilized for the Program annually.

### c. **Section-by-Section Analysis**

Sec. XX01. States the short title.

Sec. XX02. Amends Section 1151(a) of the Universal Paid Leave Implementation Fund Act of 2016, effective October 8, 2016 (D.C. Law 21-160; D.C. Official Code § 32-551.01) to rename the Universal Paid Leave Implementation Fund as the Universal Paid Leave Fund; to add new sections 1153 and 1154 to create the Universal Paid Leave Administration Fund to be administered by DOES and the Universal Paid Leave Enforcement Fund to be administered by OHR; to establish the maximum amount of funds that may be placed into the special funds; and to authorize use of the public education funds for the Workplace Leave Navigators Program established by the Workplace Leave Navigators Amendment Act of 2020.

Sec. XX03. Amends Section 106(j)(1) of the Universal Paid Leave Act of 2016, effective April 7, 2017 (D.C. Law 21-264; D.C. Official Code § 32-541.06(j)(1)) to identify the location of the paid leave public education funding.

**d. Legislative Recommendations for Committee of the Whole**

See also Attachment B to this report.

**SUBTITLE \_\_\_\_ UNIVERSAL PAID LEAVE FUND**

Sec. 1XX1. This subtitle may be cited as the “Universal Paid Leave Fund Amendment Act of 2020.”

Sec. 1XX2. The Universal Paid Leave Implementation Fund Act of 2016, effective October 8, 2016 (D.C. Law 21-160; D.C. Official Code § 32-551.01), is amended as follows:

(a) A new section 1151a is added to read as follows:

“Sec. 1151a. Definitions.

“For the purposes of this subtitle, the term “Act” means the Universal Paid Leave Act of 2016, effective April 7, 2017 (D.C. Law 21-264; D.C. Official Code § 32-541.01 *et seq.*).”.

(b) Section 1152 (D.C. Code 32-551.01) is amended as follows:

(1) The section heading is amended by striking the word “Implementation”.

(2) Subsection (a) is amended by striking the word “Implementation”.

(3) Subsection (b) is amended to read as follows:

“(b)(1) Money in the Fund shall be used to implement the Act, which shall include paying for benefits provided under the Act and for administrative and enforcement costs incurred pursuant to the Act.

“(2) In a fiscal year:

“(A) No more than 9% of the funds deposited into the Fund shall be used to pay for the administration of the Act. The amount appropriated annually for administrative costs shall be deposited in the Universal Paid Leave Administration Fund, established pursuant to section 1153; and

“(B) No more than 1% of the funds deposited into the Fund shall be used to pay for the enforcement of the Act. The amount appropriated annually for enforcement costs shall be deposited in the Universal Paid Leave Enforcement Fund, established pursuant to section 1154.”.

(4) Subsection (f) is amended by striking the period and inserting the phrase “and the Workplace Leave Navigators Program established pursuant to the Workplace Leave Navigators Program Establishment Amendment Act of 2020, passed on 1st reading on July 7, 2020 (Bill 23-760).” in its place.

(c) New sections 1153 and 1154 are added to read as follows:

“Sec. 1153. Universal Paid Leave Administration Fund.

“(a) There is established as a special fund the Universal Paid Leave Administration Fund (“Fund”), which shall be administered by the Department of Employment Services in accordance with subsections (c) and (d) of this section.

“(b) Amounts appropriated annually for administrative costs of the Act from the Universal Paid Leave Fund, pursuant to section 1152(b)(2)(A), shall be deposited in the Fund.

“(c) Money in the Fund shall be used for the following purposes:

“(1) Administration of the Act; and

“(2) No more than 10% for public education, pursuant to section 106(j) of the Act, effective October 8, 2016 (D.C. Law 21-160; D.C. Official Code § 32-541.06(j)); provided, that at least at least \$500,000 annually shall be used to fund the Workplace Leave Navigators Program established pursuant to section 1XX3 of the Workplace Leave Navigators Program Establishment Amendment Act of 2020, passed on 1st reading on July 7, 2020 (Bill 23-760).

“(d) Money deposited into the Fund but not expended in a fiscal year shall revert to the Universal Paid Leave Fund, established pursuant to section 1152.

“Sec. 1154. Universal Paid Leave Enforcement Fund.

“(a) There is established as a special fund the Universal Paid Leave Enforcement Fund (“Fund”), which shall be administered by the Office of Human Rights in accordance with subsections (c) and (d) of this section.

“(b) Amounts appropriated annually for enforcement costs of the Act from the Universal Paid Leave Fund, pursuant to section 1152(b)(2)(B), shall be deposited in the Fund.

“(c) Money in the Fund shall be used for the enforcement of section 110(a) and (b) of the Act, effective October 8, 2016 (D.C. Law 21-160; D.C. Official Code § 32-541.10(a)-(b)), which may include education and outreach on individuals’ rights under the Act.

“(d) Money deposited into the Fund but not expended in a fiscal year shall revert to the Universal Paid Leave Fund, established pursuant to section 1152.”.

Sec. 1XX3. Conforming amendments.

The Universal Paid Leave Act of 2016, effective April 7, 2017 (D.C. Law 21-264; D.C. Official Code § 32-541.01 *et seq.*), is amended as follows:

(a) Subsection 101 (D.C. Official Code § 32-541.01) is amended as follows:

(1) Paragraph (10)(A) is amended by striking the word “Implementation”.

(2) Paragraph (21) is amended by striking the phrase “Implementation Fund” means the Uniform Paid Leave Implementation Fund” and inserting the phrase “Fund” means the Uniform Paid Leave Fund” in its place.

(b) Section 103 (D.C. Official Code § 32-541.03) is amended as follows:

(1) The section heading is amended by striking the word “Implementation”.

(2) Subsection (a) is amended by striking the word “Implementation”.

(3) Subsection (b) is amended by striking the word “Implementation”.

(4) Subsection (c) is amended by striking the word “Implementation”.

(5) Subsection (d) is amended by striking the word “Implementation”.

(6) Subsection (e) is amended by striking the word “Implementation”.

(7) Subsection (f) is amended by striking the word “Implementation”.

(c) Section 104(g)(6)(A) (D.C. Official Code § 32-541.04(g)(6)(A)) is amended by striking the word “Implementation”.

(d) Section 105(a)(2) (D.C. Official Code § 32-541.05(a)(2)) is amended by striking the word “Implementation”.

(e) Section 106(j)(1) (D.C. Official Code § 32-541.06(j)(1)) is amended to read as follows: “(j)(1) The Mayor shall conduct a public-education campaign, which shall be paid for out of the Universal Paid Leave Administration Fund, pursuant to section 1153(c)(2) of the Universal Paid Leave Implementation Fund Act of 2016, passed on 1st reading on July 7, 2020 (Bill 23-760), to inform individuals of the benefits provided for in this act.”.

(f) Section 109(c) (D.C. Official Code § 32-541.09(c)) is amended as follows:

(1) Paragraph (1) is amended by striking the word “Implementation”.

(2) Paragraph (2) is amended by striking the word “Implementation” both times it appears.

**e. Fiscal Impact Statement**

Funds are sufficient in the Universal Paid Leave Fund to implement this subtitle.



## **9. Title X, Subtitle X, Shared Work Compensation Program Clarification Amendment Act of 2020**

### **a. Purpose, Effect, and Impact on Existing Law**

This subtitle will reform the District's Shared Work (Short Time Compensation, or STC) unemployment compensation program to conform to federal law and to follow model legislation from the U.S. Department of Labor. The Council passed this legislation on a temporary basis at the May 19, 2020, Legislative Meeting.<sup>176</sup> This subtitle will make the legislation permanent, which is necessary in order for the District to access federal grant funds available for the implementation of state shared work plans.

### **b. Committee Reasoning**

The District initially created a Shared Work unemployment compensation program in 2010 during the Great Recession.<sup>177</sup> Shared Work allows employers to reduce work hours, rather than lay off workers, and workers are able to receive prorated unemployment insurance to help make up for the lost income. This is especially important during economic downturns. However, despite it being in law, the program had never been implemented in the District before the coronavirus pandemic. In 2020, Congress passed legislation that incentivized states to create or expand Shared Work programs, and it provided full federal reimbursement for payments in 2020 and grant funds to help states expand their programs.<sup>178</sup> It is very important to the Committee that the District's Shared Work program be utilized widely. Not only does the program help avoid layoffs, but it will allow the District to reduce expenditures from the District's Unemployment Insurance Trust Fund because unemployment assistance offered through Shared Work in 2020 comprises only federal dollars.

However, states are ineligible for an STC grant under Section 2110 of the federal CARES Act if the state's STC law is subject to discontinuation. The District's current law was passed on an emergency and temporary basis and thus is subject to discontinuation. As a result, the Committee recommends passing the Shared Work amendments on a permanent basis. Without permanent legislation, the District would lose out on its share of available Shared Work Program grant funds in the amount of \$431,513.

Specifically, the subtitle provides clearer definitions of health and retirement, participating employees, and usual hours of work for the purposes of a shared work plan and redefines the shared work benefit to distinguish it from regular unemployment benefits. The amendments also explicitly denote the purpose of shared work plans to avoid layoffs and furloughs. The amendment expands the shared work application requirements to detail employee and benefit information that must be included; addressed requirements related to health benefits and retirement benefits under the defined benefit pension plans, includes

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<sup>176</sup> B23-758, the "Coronavirus Support Temporary Amendment Act of 2020."

<sup>177</sup> Law 18-238, the "Keep D.C. Working Act of 2010."

<sup>178</sup> Public Law 116-136, the "Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020."

additional employer requirements to protect employees potentially included under a shared work plan, and incorporates language on to relaxing shared work employer requirements during a public health emergency. The subtitle provides greater flexibility to DOES and employers on determining the effective date of the shared work plans, clarifies the process and impact of modifications to a shared work plan, and the eligibility requirements and relation to the traditional able and available requirements. The subtitle more clearly articulates the maximum amount of benefits an employee on a shared work plan can receive and the experience rating impacts of the benefits paid out. The subtitle amends the definition of the weekly benefit amount to more closely tie it to traditional unemployment benefit amounts and clarifies how and when shared work plans expire or can be terminated or revoked.”

**c. Section-by-Section Analysis**

Sec. XX01. States the short title.

Sec. XX02. Amends the Keep D.C. Working Act of 2010, effective October 15, 2010 (D.C. Law 18-238; D.C. Official Code § 51-171 *et seq.*) to

- (a) add and update definitions
- (b) update existing law concerning the application and approval process for a work share plan and program requirements
- (c) update existing law concerning the approval or disapproval of an application and employer requirements
- (d) update existing law concerning the effective date and expiration, termination, or revocation of a shared work plan
- (e) update existing law concerning plan modification
- (f) update existing law concerning employee eligibility
- (g) update existing law concerning the benefit formula.

**d. Legislative Recommendations for Committee of the Whole**

See also Attachment B to this report.

**SUBTITLE XXXX. SHARED WORK COMPENSATION PROGRAM**

Sec. XXX. Shared work compensation program clarification.

Sec. 1XX1. Short title.

This subtitle may be cited as the “Shared Work Compensation Program Clarification Amendment Act of 2020”.

Sec. 1XX2. The Keep D.C. Working Act of 2010, effective October 15, 2010 (D.C. Law 18-238; D.C. Official Code § 51-171 *et seq.*), is amended as follows:

- (a) Section 2 (D.C. Official Code § 51-171) is amended as follows:
  - (1) Paragraph (4) is repealed.
  - (2) New paragraphs (4A) and (4B) are added to read as follows:

“(4A) “Health and retirement benefits” means employer-provided health benefits, and retirement benefits under a defined benefit plan, as defined in section 414(j) of the Internal Revenue Code of 1986, approved September 2, 1974 (88 Stat. 925; 26 U.S.C. § 414(j)), or contributions under a defined contribution plan, as defined in section 414(i) of the Internal Revenue Code of 1986, approved September 2, 1974 (88 Stat. 925; 26 U.S.C. § 414(i)), which are incidents of employment in addition to the cash remuneration earned.

“(4B) “Participating employee” means an employee who voluntarily agrees to participate in an employer’s shared work plan.”

(3) Paragraph (5) is amended to read as follows:

“(5) “Usual weekly hours of work” means the usual hours of work per week for full-time or part-time employees in the affected unit when that unit is operating on its regular basis, not to exceed 40 hours and not including hours of overtime work.”

(4) Paragraph (7) is amended to read as follows:

“(7) “Shared work benefits” means the unemployment benefits payable to a participating employee in an affected unit under a shared work plan, as distinguished from the unemployment benefits otherwise payable under the employment security law.”

(5) Paragraph (8) is amended to read as follows:

“(8) “Shared work plan” means a written plan to participate in the shared work unemployment compensation program approved by the Director, under which the employer requests the payment of shared work benefits to participating employees in an affected unit of the employer to avert temporary or permanent layoffs, or both.”

(b) Section 4 (D.C. Official Code § 51-173) is amended to read as follows:

“Sec. 4. Employer participation in the shared work unemployment compensation program.

“(a) Employer participation in the shared work unemployment compensation program shall be voluntary.

“(b) An employer that wishes to participate in the shared work unemployment compensation program shall submit a signed application and proposed shared work plan to the Director for approval.

“(c) The Director shall develop an application form consistent with the requirements of this section. The application and shared work plan shall require the employer to:

“(1) Identify the affected unit (or units) to be covered by the shared work plan, including:

“(A) The number of full-time or part-time employees in such unit;

“(B) The percentage of employees in the affected unit covered by the plan;

“(C) Identification of each individual employee in the affected unit by name and social security number;

“(D) The employer’s unemployment tax account number, and

“(E) Any other information required by the Director to identify participating employees;

“(2) Provide a description of how employees in the affected unit will be notified of the employer’s participation in the shared work unemployment compensation program if such application is approved, including how the employer will notify those employees in a collective bargaining unit as well as any employees in the affected unit who are not in a collective bargaining unit. If the employer will not provide advance notice of the shared work plan to employees in the affected unit, the employer shall explain in a statement in the application why it is not feasible to provide such notice;

“(3) Identify the usual weekly hours of work for employees in the affected unit and the specific percentage by which hours will be reduced during all weeks covered by the plan. A shared work plan may not reduce participating employees’ usual weekly hours of work by less than 10% or more than 60%. If the plan includes any week for which the employer regularly provides no work (due to a holiday or other plant closing), then such week shall be identified in the application;

“(4) If the employer provides health and retirement benefits to any participating employee whose usual weekly hours of work are reduced under the plan, certify that such benefits will continue to be provided to participating employees under the same terms and conditions as though the usual weekly hours of work of such participating employee had not been reduced or to the same extent as employees not participating in the shared work plan. For defined benefit retirement plans, the hours that are reduced under the shared work plan shall be credited for purposes of participation, vesting, and accrual of benefits as though the participating employee’s usual weekly hours of work had not been reduced. The dollar amount of employer contributions to a defined contribution plan that are based on a percentage of compensation may be reduced due to the reduction in the participating employee’s compensation. A reduction in health and retirement benefits scheduled to occur during the duration of a shared work plan that is equally applicable to employees who are not participating in the plan and to participating employees does not violate a certification made pursuant to this paragraph;

“(5) Certify that the aggregate reduction in work hours under the shared work plan is in lieu of temporary or permanent layoffs, or both, and provide a good faith estimate of the number of employees who would be laid off in the absence of the proposed shared work plan;

“(6) Agree to:

“(A) Furnish reports to the Director relating to the proper conduct of the shared work plan;

“(B) Allow the Director or the Director’s authorized representatives access to all records necessary to approve or disapprove the application for a shared work plan;

“(C) Allow the Director to monitor and evaluate the shared work plan; and

“(D) Follow any other directives the Director considers necessary for the agency to implement the shared work plan consistent with the requirements for shared work plan applications;

“(7) Certify that participation in the shared work unemployment compensation program and implementation of the shared work plan will be consistent with the employer’s obligations under applicable federal and District laws;

“(8) State the duration of the proposed shared work plan, which shall not exceed 365 days from the effective date established pursuant to section 6;

“(9) Provide any additional information or certifications that the Director determines to be appropriate for purposes of the shared work unemployment compensation program, consistent with requirements issued by the United States Secretary of Labor; and

“(10) Provide written approval of the proposed shared work plan by the collective bargaining representative for any employees covered by a collective bargaining agreement who will participate in the plan.”.

(c) Section 5 (D.C. Official Code § 51-174) is amended to read as follows:

“Sec. 5. Approval and disapproval of a shared work plan.

“(a)(1) The Director shall approve or disapprove an application for a shared work plan in writing within 15 calendar days of its receipt and promptly issue a notice of approval or disapproval to the employer.

“(2) A decision disapproving the shared work plan shall clearly identify the reasons for the disapproval.

“(3) A decision to disapprove a shared work plan shall be final, but the employer may submit another application for a shared work plan not earlier than 10 calendar days from the date of the disapproval.

“(b) Except as provided in subsections (c) and (d) of this section, the Director shall approve a shared work plan if the employer:

“(1) Complies with the requirements of section 4; and

“(2) Has filed all reports required to be filed under the employment security law for all past and current periods, and:

“(A) Has paid all contributions and benefit cost payments; or

“(B) If the employer is a reimbursing employer, has made all payments in lieu of contributions due for all past and current periods.

“(c) Except as provided in subsection (d) of this section, the Director may not approve a shared work plan:

“(1) To provide payments to an employee if the employee is employed by the participating employer on a seasonal, temporary, or intermittent basis;

“(2) If the employer's unemployment insurance account has a negative unemployment experience rating;

“(3) If the employer's unemployment insurance account is taxed at the maximum tax rate in effect for the calendar year;

“(4) For employers who have not qualified to have a tax rate assigned based on actual experience; or

“(5) For employees who are receiving or who will receive supplemental unemployment benefits, as that term is defined in section 501(c)(17)(D) of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(17)(D)), during any period a shared work plan is in effect.

“(d) During the effective period of a shared work plan entered into during a public health emergency, subsection (c) of this section shall not apply. During a public health emergency, the Director may not approve a shared work plan:

“(1) To provide payments to an employee if the employee is employed by the participating employer on a seasonal, temporary, or intermittent basis;

“(2) For employees who are receiving or who will receive supplemental unemployment benefits, as that term is defined in section 501(c)(17)(D) of the Internal

Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(17)(D)), during any period a shared work plan is in effect; or

“(3) For employers that have reported quarterly earnings to the Director for fewer than 3 quarters at the time of the application for the shared work unemployment compensation program.

“(e) For the purposes of this section, the term “public health emergency” means the public health emergency declared in the Mayor’s order dated March 11, 2020, and any extensions thereof.”.

(d) Section 6 (D.C. Official Code § 51-175) is amended to read as follows:

“Sec. 6. Effective date and expiration, termination, or revocation of a shared work plan.

“(a) A shared work plan shall be effective on the date that is mutually agreed upon by the employer and the Director, which shall be specified in the notice of approval to the employer.

“(b) The duration of the plan shall be 365 days from the effective date, unless a shorter duration is requested by employer or the plan is terminated or revoked in accordance with this section.

“(c) An employer may terminate a shared work plan at any time upon written notice to the Director, participating employees, and a collective bargaining representative for the participating employees. After receipt of such notice from the employer, the Director shall issue to the employer, the appropriate collective bargaining representative, and participating employees an Acknowledgment of Voluntary Termination, which shall state the date the shared work plan terminated.

“(d) The Director may revoke a shared work plan at any time for good cause, including:

“(1) Failure to comply with the certifications and terms of the shared work plan;

“(2) Failure to comply with federal or state law;

“(3) Failure to report or request proposed modifications to the shared work plan in accordance with section 7;

“(4) Unreasonable revision of productivity standards for the affected unit;

“(5) Conduct or occurrences tending to defeat the purpose and effective operation of the shared work plan;

“(6) Change in conditions on which approval of the plan was based;

“(7) Violation of any criteria on which approval of the plan was based; or

“(8) Upon the request of an employee in the affected unit.

“(e) Upon a decision to revoke a shared work plan, the Director shall issue a written revocation order to the employer that specifies the reasons for the revocation and the date the revocation is effective. The Director shall provide a copy of the revocation order to all participating employees and their collective bargaining representative.

“(f) The Director may periodically review the operation of an employer’s shared work plan to ensure compliance with its terms and applicable federal and District laws.

“(g) An employer may submit a new application for a shared work plan at any time after the expiration or termination of a shared work plan.”.

(e) Section 7 (D.C. Official Code § 51-176) is amended to read as follows:

“Sec. 7. Modification of a shared work plan.

“(a) An employer may not implement a substantial modification to a shared work plan without first obtaining the written approval of the Director.

“(b)(1) An employer must report, in writing, every proposed modification of the shared work plan to the Director a least 5 calendar days before implementing the proposed modification. The Director shall review the proposed modification to determine whether the modification is substantial. If the Director determines that the proposed modification is substantial, the Director shall notify the employer of the need to request a substantial modification.

“(2) An employer may request a substantial modification to a shared work plan by filing a written request with the Director. The request shall identify the specific provisions of the shared work plan to be modified and provide an explanation of why the proposed modification is consistent with and supports the purposes of the shared work plan. A modification may not extend the expiration date of the shared work plan.

“(c)(1) At the Director’s discretion, an employer’s request for a substantial modification of a shared work plan may be approved if:

“(A) Conditions have changed since the plan was approved; and

“(B) The Director determines that the proposed modification is consistent with and supports the purposes of the approved plan.

“(2) The Director shall approve or disapprove a request for substantial modification, in writing, within 15 calendar days of receiving the request and promptly shall communicate the decision to the employer. If the request is approved, the notice of approval shall contain the effective date of the modification.”

(f) Section 8 (D.C. Official Code § 51-177) is amended to read as follows:

“Sec. 8. Employee eligibility for shared work benefits.

“(a) A participating employee is eligible to receive shared work benefits with respect to any week only if the individual is monetarily eligible for unemployment compensation, not otherwise disqualified from unemployment compensation, and:

“(1) With respect to the week for which shared work benefits are claimed, the participating employee was covered by a shared work plan that was approved prior to that week;

“(2) Notwithstanding any other provision of the employment security law relating to availability for work and actively seeking work, the participating employee was available for the individual’s usual hours of work with the shared work employer, which may include availability to participate in training to enhance job skills approved by the Director, such as employer-sponsored training or training funded under the Workforce Innovation and Opportunity Act, approved July 22, 2014 (128 Stat. 1425; 29 U.S.C. § 3101 et seq.); and

“(3) Notwithstanding any other provision of law, a participating employee is deemed unemployed for the purposes of determining eligibility to receive unemployment compensation benefits in any week during the duration of such plan if the individual’s remuneration as an employee in an affected unit is reduced under the terms of the plan.

“(b) A participating employee may be eligible for shared work benefits or unemployment compensation, as appropriate, except that no participating employee may

be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established for regular unemployment compensation; nor shall a participating employee be paid shared work benefits for more than 52 weeks under a shared work plan or in an amount more than the equivalent of the maximum of 26 weeks of regular unemployment compensation.

“(c) The shared work benefit paid to a participating employee shall be deducted from the maximum entitlement amount of regular unemployment compensation established for that individual's benefit year.

“(d) Provisions applicable to unemployment compensation claimants under the employment security law shall apply to participating employees to the extent that they are not inconsistent with this act. A participating employee who files an initial claim for shared work benefits shall receive a monetary determination of whether the individual is eligible to receive benefits.

“(e) A participating employee who has received all of the shared work benefits or combined unemployment compensation and shared work benefits available in a benefit year shall be considered an exhaustee, as defined in section 7(g)(1)(H) of the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 949; D.C. Official Code § 51–107(g)(1)(H)) (“Act”), for purposes of eligibility to receive extended benefits pursuant to section 7(g) of the Act (D.C. Official Code § 51–107(g)), and, if otherwise eligible under that section, shall be eligible to receive extended benefits.

“(f) Shared work benefits shall be charged to employers’ experience rating accounts in the same manner as unemployment compensation is charged under the employment security law, unless waived by federal or District law. Employers liable for payments in lieu of contributions shall have shared work benefits attributed to service in their employ in the same manner as unemployment compensation is attributed, unless waived by federal or District law.”.

(g) Section 9 (D.C. Official Code § 51-178) is amended as follows:

(1) Subsection (a) is amended to read as follows:

“(a)(1) Except as provided in paragraph (2) of this subsection, the weekly benefit for a participating employee shall be the product of the regular weekly unemployment compensation amount for a week of total unemployment multiplied by the percentage of reduction in the participating employee’s usual weekly hours of work.

“(2) The shared work benefit for a participating employee who performs work for another employer during weeks covered by a shared work plan shall be calculated as follows:

“(A) If the combined hours of work in a week for both employers results in a reduction of less than 10% of the usual weekly hours of work the participating employee works for the shared work employer, the participating employee is not eligible for shared work benefits;

“(B) If the combined hours of work for both employers results in a reduction equal to or greater than 10% of the usual weekly hours worked for the shared work employer, the shared work benefit payable to the participating employee is determined by multiplying the weekly unemployment benefit amount for a week of total unemployment by the percentage by which the combined hours of work have been reduced. A week for which benefits are paid under this subparagraph shall be reported as a week of shared work benefits.



“(C) If an individual worked the reduced percentage of the usual weekly hours of work for the shared work employer and is available for all the participating employee’s usual hours of work with the shared work employer, and the participating employee did not work any hours for the other employer, either because of the lack of work with that employer or because the participating employee is excused from work with the other employer, the participating employee shall be eligible for the full value of the shared work benefit for that week.”.

(2) Subsection (b) is repealed

(3) New subsections (c) and (d) are added to read as follows:

“(c) A participating employee who is not provided any work during a week by the shared work employer or any other employer and who is otherwise eligible for unemployment compensation shall be eligible for the amount of regular unemployment compensation to which the individual would otherwise be eligible.

“(d) A participating employee who is not provided any work by the shared work employer during a week, but who works for another employer and is otherwise eligible for unemployment compensation may be paid unemployment compensation for that week subject to the disqualifying income provision and other provisions applicable to claims for regular unemployment compensation.”.

**e. Fiscal Impact Statement**

This subtitle has no fiscal impact.

## V. RECOMMENDATIONS FOR LOCAL BUDGET ACT

### Recommendation for Revised Revenue Estimate

The committee recommends the Local Budget Act include language directing excess revenues to the Workforce Investments Account in order to provide negotiated cost-of-living adjustments for members of bargaining units with executed collective bargaining agreements.

The Mayor's proposed Budget Support Act (BSA) contained a subtitle<sup>179</sup> that would eliminate all cost-of-living adjustments (COLAs) for employees across covered agencies throughout the four-year financial plan. This includes COLAs incorporated into two previously executed collective bargaining agreements (CBAs) that will be effective in FY2021 and which cover more than 10,000 public servants.<sup>180</sup> The Committee strongly opposes the nullification of CBAs, which are legally binding contracts.

The Mayor's proposed Local Budget Act (LBA) contained a provision providing that if additional revenue became available above the April 24, 2020, revenue estimate—which was used to determine the available budget as a base for the FY2021 budget formulation—then up to \$50,000,000 would be deposited into the Workforce Investments account. Such funds could be used to increase salaries or benefits; however, the LBA stated that any pay increase would be at the discretion of the Mayor and did not say that the COLAs contained in the executed CBAs would be honored.

The Committee believes that the proposed subtitle should be struck from the BSA. Unfortunately, the Committee's response is restricted by the lack of available funds within the Committee's jurisdiction. Thus, the Committee proposes alternative language that will ensure the CBAs' terms will be met should revenues become available.

As a companion to the Committee's recommended BSA subtitle, The Committee recommends that the Revised Revenue Estimate section of the LBA should be revised. The revision would require that, regardless of any other provision of law, if excess revenues become available above the April 24, 2020 revenue estimate—which forms the basis of the FY2021 proposed budget—then the revenue must be placed in the Workforce Investment

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<sup>179</sup> Entitled the "Balanced Budget and Financial Plan Freeze on Salary Schedules, Benefits, and Cost-of-Living Adjustments Act of 2020."

<sup>180</sup> The two units are Compensation Units 1 & 2 which represents over 9,000 employees and ASFCME District Council 20, Local 2921, which represents over 1,000 paraprofessionals in District public schools; see Council of the District of Columbia (2020). *PR2-0738-Compensation Collective Bargaining Agreement between the District of Columbia and Compensation Units 1 & 2, FY 2018-FY2021, Approval Resolution of 2018*, available at <https://lirms.dccouncil.us/Legislation/PR22-0738> (CBA for Compensation unit 1 and 2) and Council of the District of Columbia (2020). *PR23-0676-Interest Arbitration Award and Collective Bargaining Agreement between the District of Columbia Public Schools and the Office of the State Superintendent of Education and the American Federation of State, County, and Municipal Employees, District Council 20, Local 2921, AFL-CIO Emergency Declaration Resolution of 2020*, available at <https://lirms.dccouncil.us/Legislation/PR23-0676> (CBA for AFSCME Local 2921). Note that the AFSCME Local 2921 contract terms were determined by arbitration.

Account and used to meet the terms of the executed CBAs. These terms are legislated in the companion BSA subtitle, the Revenue-Contingent Cost-of-Living Adjustment Act of 2020 (see Chapter IV.A.1).

**Recommendations:**

**1. The Committee recommends revising the LBA long title as follows on page 2, beginning on line 75:**

Strike the phrase “Balanced Budget and Financial Plan Freeze on Salary Schedules, Benefits, and Cost-of-Living Adjustments Act of 2020” and insert the phrase “Revenue-Contingent Cost-of-Living Adjustment Act of 2020” in its place.

**2. The Committee recommends the LBA provision read as follows:**

**REVISED REVENUE ESTIMATE**

(a) Notwithstanding any other provision of law, the amount appropriated as local funds in this act shall be increased by the recurring amount the August 2020 or later revised revenue estimates for Fiscal Year 2021 exceed the revenue estimate of the Chief Financial Officer of the District of Columbia dated April 24, 2020, in an amount of up to \$50,000,000.

(b) The funds appropriated by this section shall be deposited in the Workforce Investment account to be expended to increase salaries or benefits in Fiscal Year 2021 as set forth in the Revenue-Contingent Cost-of-Living Adjustment Act of 2020.

## VI. COMMITTEE ACTION AND VOTE

On Wednesday, June 24, 2020, at \_\_\_p.m. via Webex internet video platform and broadcast on DC Cable Channel 13, the Committee on Labor and Workforce Development met to consider and vote on the FY 2021 operating and capital budget for agencies under its purview, the committee's recommendations for the FY 2021 Budget Federal Portion Adoption and Request Act, the FY 2021 Budget Local Portion Adoption Act, the FY 2021 Budget Support Act, and the committee's budget report. Chairperson Elissa Silverman determined the presence of a quorum consisting of herself and Councilmembers Allen (Ward 6), Grosso (At-Large), McDuffie (Ward 5), and Robert White (At-Large).

Chairperson Silverman provided an overview of the committee report and the committee's recommended changes to the Mayor's proposed FY 2021 budget. After her statement, the Chairperson asked if there was any discussion.

\_\_\_\_\_[Summary of discussion]\_\_\_\_\_

There being no further discussion, Chairperson Silverman moved for approval of the committee's FY 2021 budget report, with leave for staff to make technical, editorial, and conforming changes to reflect the committee's actions. The committee's FY 2021 budget report was [\_\_\_\_\_].

Chairperson Silverman asked if there was any additional business before the committee. Hearing none, the meeting adjourned at \_\_\_\_p.m.

## VII. ATTACHMENTS

- A. Committee Adjustments
- B. Bill 23-760, Fiscal Year 2021 Budget Support Act of 2020 Recommended Subtitles
- C. Thursday, May 28, 2020, and Thursday, June 04, 2020 Fiscal Year 2021 Budget Oversight Hearing Witness List and Testimony.

CIRCULATION DRAFT