

Council of the District of Columbia
COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT
MEMORANDUM

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: Chairman Phil Mendelson
FROM: Councilmember Charles Allen *CA*
RE: Request to Agendize Measures for the October 3, 2023 Legislative Meeting
DATE: September 28, 2023

I am requesting that the following measures be agendized for the October 3, 2023 Legislative Meeting

Confirmation Resolution

Pursuant to Council Rule 426, regarding a waiver of Rule 231(c), I request that the following measures be agendized for the October 3, 2023 Legislative Meeting. I also request a waiver of Committee of the Whole Rule 403(b) so that these measures may be agendized for an Additional Meeting of the Committee of the Whole should one be scheduled. These measures were approved by the Committee on September 27, 2023 and timely filed with the Secretary on September 28, 2023.

- PR25-279 the “Department of Energy and Environment Richard Jackson Confirmation Resolution of 2023”

Richard Jackson currently serves as the Acting Director of the Department of Energy and Environment (“DOEE”). A long-time DOEE employee, he served as Senior Deputy Director, the second in command at the agency, prior to his current position. Prior to his time with DOEE, Mr. Jackson served in the U.S. Navy for 21 years as a nuclear submariner. In this role, he operated nuclear reactors, power generation and propulsion systems, and weapons systems. Mr. Jackson holds a B.S. in Chemical Engineering from the University of Pittsburgh. At the confirmation hearing, the Committee heard universal support from all public witnesses who testified in person or submitted written testimony for the record. When speaking in support, public witnesses emphasized Acting Director Jackson’s experience with and understanding of many aspects of DOEE’s work, especially his leadership of the Anacostia River Sediments cleanup project, urging him to continue to positive trajectory that DOEE is on, especially in responding to the climate change crisis. Public witnesses praised Acting Director Jackson’s demonstrated willingness to engage personally and closely with all stakeholders.

Acting Director Jackson currently lives in Columbia, Maryland, as noted in the Committee Print included in the attached Report. District law requires that all agency directors establish residency in the District “within 180 days after appointment.” During the hearing, Acting Director Jackson stated that he is on track to move into the District by the end of calendar year 2023. Chairperson Allen emphasized the importance of not missing the 180-day deadline, and the Committee will continue to follow up with DOEE and Acting Director Jackson, but the Committee is confident in Acting Director Jackson’s intent to comply with the residency law.

For the reasons above, the Committee recommends that the Council confirm Mr. Jackson’s appointment as Director of DOEE.

Emergency and Temporary Measures

- “11th Street Bridge Project DOEE Permit Emergency Declaration Resolution of 2023”;
- “11th Street Bridge Project DOEE Permit Emergency Act of 2023”; and
- “11th Street Bridge Project DOEE Permit Temporary Act of 2023”

The 11th Street Bridget Project (“the project”) is nearing completion of its final design and is now seeking final permit approvals from the Department of Energy and the Environment (“DOEE”). Under 21 DCMR § 2605.1, DOEE may issue such a permit or certification for a project only if it is water-dependent, or is not water-dependent and has no practicable alternative. In determining whether the proposed regulated activity has a practicable alternative, under 21 DCMR § 2605.7(a), the Department may consider whether the basic purpose of the project can be reasonably accomplished using one or more other sites in the same general area as the proposed project that would avoid or reduce impacts on wetlands, streams, and other District waters. The Council understands that the project may not strictly comply with 21 DCMR § 2605.7(a), because some of the amenities planned for the project could technically be located on a land-based alternative site. This fact, though, is a feature of the project rather than a failing. Indeed, the project is designed to activate the Anacostia River, connecting the neighborhoods on either side of the river with a broad array of community activities and engagement. As such, the Council views this project as a unique opportunity that necessitates regulatory flexibility to proceed and meet its stated goals. Last year, the Council approved the 11th Street Bridge Project Temporary Act of 2022, effective February 23, 2023 (D. C. Law 24-279; 70 DCR 2951) (“2022 temporary act”) to allow DOEE to issue permits for the project, but the Committee on Transportation and the Environment has learned that DOEE has not yet issued the necessary permits, and the 2022 temporary act will expire on October 6, 2023. This second round of emergency and temporary legislation is necessary so that DOEE can finally issue the necessary permits.

Congressional Review Emergency Measure

- “DC Water Critical Infrastructure Freedom of Information Clarification Congressional Review Emergency Declaration Resolution of 2023”; and
- “DC Water Critical Infrastructure Freedom of Information Clarification Congressional Review Emergency Amendment Act of 2023”

On July 11, 2023, the Council passed the DC Water Critical Infrastructure Freedom of Information Clarification Emergency Amendment Act of 2023, effective July 26, 2023 (D.C. Act 25-201; 70 DCR 10754) (“emergency act”), which will expire on October 24, 2023. On September 19, 2023, the Council passed the DC Water Critical Infrastructure Freedom of Information Clarification Temporary Amendment Act of 2023, approved on final reading on September 19, 2023 (enrolled version of Bill 25-380) (“temporary act”), which was transmitted to the Mayor on July 26, 2023, with a response from the Mayor due on October 11, 2023. The temporary act cannot complete 30 days of congressional review before October 24, 2023, when the emergency act will

expire. This congressional emergency is now necessary to prevent a gap in the law between the expiration of the emergency act and the effective date of the temporary act. The emergency and temporary acts clarified a provision of the District's freedom of information laws that would have required DC Water to provide information about critical infrastructure to the public, which could create serious public safety concerns.

Drafts of these measures are attached. Please contact Chris Laskowski, Committee Director, at claskowski@dccouncil.gov, with any questions.

cc: Members, Council of the District of Columbia
Office of the Budget Director
Office of the General Counsel
Office of the Secretary