

# ENROLLMENT(S)



(5)


**COUNCIL OF THE DISTRICT OF COLUMBIA**

**D.C. LAW 11-134**

**"Business Improvement Districts Act of 1996".**

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198 "the Act", the Council of the District of Columbia adopted Bill No. 11-464 on first and second readings, February 6, 1996 and March 5, 1996 respectively. Following the signature of the Mayor on March 25, 1996, pursuant to Section 404(e) of "the Act", and was assigned Act No. 11-242 and published in the April 5, 1996, edition of the D.C. Register (Vol. 43 page 1684) and transmitted to Congress on April 16, 1996 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 11-134, effective May 29, 1996.

  
DAVID A. CLARKE  
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

April 16,17,18,19,22,23,24,25,26,29,30

May 1,2,3,6,7,8,9,10,13,14,15,16,17,20,21,22,23,24,28

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AN ACT  
D.C. ACT 11-242

*Codification  
District of  
Columbia  
Code  
1997 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 25, 1996

To authorize the establishment and administration of business improvement districts in the District of Columbia and the assessment and collection of fees for the improvement of business improvement districts.

*New  
Subchapter  
VI,  
Chapter 22,  
Title 1*

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Business Improvement Districts Act of 1996".

Sec. 2. Definitions.

*New Section  
1-2271*

For the purposes of this act, the term:

- (1) "Adjoining residential neighborhood" means any property zoned for residential use within a BID or within 800 feet of the perimeter of a BID.
- (2) "Adverse impact on adjoining residential neighborhoods" means adverse impact on traffic, on-street parking, litter, trash collection, crime, noise, lighting levels, or other such factors affecting the quality of residential life.
- (3) "Assessed value" means the value of real property for tax assessment purposes pursuant to the District of Columbia Real Property Tax Revision Act of 1974, approved September 3, 1974 (88 Stat. 1051; D.C. Code § 47-1801 *et seq.*).
- (4) "BID corporation" means a nonprofit corporation that is organized pursuant to the terms of this act and the District law for nonprofit corporations.
- (5) "Block" means the properties fronting on both sides of a street that are located between 2 intersecting streets.
- (6) "Business Improvement District Activity" or "BID activity" means a special service or activity conducted in a Business Improvement District designed to improve the economic development climate in the area pursuant to this act, and which is designed and conducted so as to avoid any material adverse impact on adjoining residential neighborhoods and is otherwise in accordance with all applicable laws, regulations, and requirements of the District of Columbia and the United States, which services and activities may augment, but which may

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not replace, governmental services customarily provided in the regular course of the District's operations. This term shall include the following:

(A) The planning, administration, and management of activities designed to provide economic stimulus, stability, or benefit to the BID, including, but not limited to, seasonal promotions such as festivals and special displays;

(B) Enhanced maintenance and improvements to public space, including sidewalks, parks, and plazas;

(C) Marketing activities in support of tourism, job creation, business attraction, and retention;

(D) Retail, restaurant, and arts promotions;

(E) Services to improve public safety and transportation, such as providing shuttle buses, community service representatives acting as goodwill ambassadors, and private security services;

(F) Development of special signage and storefront and commercial building facade improvement programs; and

(G) Any other service or activity consistent with the BID's business plan, as amended from time to time and as submitted to the Mayor in accordance with this act.

(7) "Business Improvement District" or "BID" means a self-defined geographic area in the District in which the preponderance of activity carried out is commercial or industrial in nature, which does not include any part of an existing BID previously established pursuant to this act, and which area consists of not less than 5 contiguous blocks (or the maximum number of contiguous blocks in cases where there are fewer than 5 contiguous blocks), or noncontiguous commercial blocks within a generally recognized single neighborhood, provided that noncontiguous blocks are not wholly located in an area that is not part of the general BID area.

(8) "Charge" or "BID charge" means an assessment levied on, and payable by, the owners who are members of a BID corporation pursuant to sections 3 and 5.

(9) "Commercial tenant" means a lessee, or other lawful occupant, of nonexempt real property within a BID who is not an owner and who conducts a lawful commercial use as defined in the Zoning Regulations of the District.

(10) "Council" means the Council of the District of Columbia.

(11) "District" means the District of Columbia.

(12) "Mayor" means the Mayor of the District of Columbia or such administrative agency of the District that is designated by the Mayor to administer the provisions of this act.

(13) "Member" means a member of the BID Corporation, the membership of which shall be comprised of each owner and each commercial tenant in the BID area, and each person who becomes a member pursuant to section 21.

(14) "Owner" means an owner of nonexempt real property.

(15) "Owner's property" means an owner's nonexempt real property located within a BID.

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(16) "Nonexempt real property" means real property that is not exempt from paying real property tax pursuant to An Act To define the real property exempt from taxation in the District of Columbia, approved December 24, 1942 (56 Stat. 1060; D.C. Code § 47-1001 *et seq.*), is not residential property, and is not the residential portion of a property used for both residential and nonresidential purposes.

(17) "Person" means any individual, sole proprietorship, partnership, society, association, joint venture, stock company, corporation, limited liability company, estate, receiver, trustee, assignee, fiduciary, or any combination of any of the foregoing.

### Sec. 3. BID formation.

Each BID shall be organized as a nonprofit corporation under the laws of the District and shall be subject to all applicable District and federal laws and regulations. Each owner and each commercial tenant within a BID, whether such owner or commercial tenant is an owner or commercial tenant at the time the BID is established or at any time thereafter when the BID is in existence, shall be a member of the BID corporation until such time as the ownership or tenancy within the BID area is terminated.

### Sec. 4. Establishment of Business Improvement District.

(a) To establish a BID with respect to any area, a person shall submit an application to the Mayor for review of compliance with all BID criteria described in this section. Each application shall be duly sworn under oath before a notary public who holds a valid license in the District, and shall contain:

(1) A statement setting forth the names of applicants applying for the proposed BID; a description by lot, square, and street address of the property of each owner; and the most recent assessed value of each nonexempt real property located in the proposed BID. The statement must be signed by the owners (or their authorized representatives) who own at least a 51% interest in the most recent assessed value of the nonexempt real properties in the geographic area of the proposed BID as a whole, and at least 25% in number of the individual properties of record in the BID area as a whole. For the purposes hereof, individual properties shall mean properties identified by separate lot and square numbers according to the Department of Finance and Revenue or Office of Recorder of Deeds, provided that any property subdivided into separate condominium units shall constitute a single property. Changes in the assessed values occurring after submission of a BID application, whether through annual charges, appeals, or otherwise, shall not affect the validity of the BID application to be taken into account in the Mayor's review of the BID application;

(2) A proposed business plan ("BID plan") for at least the first 3 years of the initial 5-year term of the BID. The BID plan shall contain the specific goals and objectives of the BID consistent with the BID activity as defined in this act, anticipated resources to be used to meet such goals and objectives, and projected timetables for undertaking and completing projects in furtherance of the goals and objectives;

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(3) A tax assessor's map of the geographic area comprising the BID clearly designating the BID boundaries and each property by street address, lot, and block number to be included within the BID;

(4) A list of the initial members of the Board of the BID, which must satisfy the criteria in section 7(a);

(5) The proposed articles of incorporation and bylaws of the nonprofit corporation which will govern the BID;

(6) A list, by street address, lot, and square number, of all nonexempt real property within the proposed BID, including the names and mailing addresses of the record owners as disclosed by the records of the Office of Recorder of Deeds or Department of Finance and Revenue;

(7) A list of the names and addresses of all commercial tenants within the BID area, to the extent reasonably ascertainable; and

(8) The annual proposed charges for the first year of the BID's operation and the formula used to determine each owner's share of the charges, which shall be:

(A) Based upon any commonly accepted and lawful means, including, but not limited to, assessed value, square footage occupied, street frontage, location within the BID, business use, or a combination of any such factors; and

(B) Applied fairly and equitably to all owners within the BID, and may not be changed without the affirmative vote of at least 2/3 of the members of the Board, and ratified by at least 51% of the members.

(b) With respect to areas outside the central employment area and Georgetown, a BID may be established if the requirements of subsection (a)(2)-(8) of this section are met, if the statement is signed by at least 51% of the number of commercial tenants occupying nonexempt real properties in the geographic area of the proposed BID, and if owners who own at least 51% of the interest in the assessed value of the commercial properties within the proposed BID area and owners who own at least 51% of the individual properties within the proposed BID area agree to do so.

(c) Nothing in this act shall be construed as modifying or waiving the District's right to enact or adjust any District tax, tax rate, fee, or other assessment applicable to categories of persons or businesses that include persons or businesses subject to a BID charge under this act. Nothing in this act shall be used as a rationale for modifying the District's method of property tax assessment.

**Sec. 5. Review of application.**

(a) The Mayor shall have 15 days (excluding Saturdays, Sundays, and holidays) from the date of the filing of a BID application to conduct a preliminary review of the application to determine if all of the filing criteria set forth in section 4 have been met.

(b)(1) If the Mayor determines that any of the BID criteria set forth in section 4(a), except the provisions of section 4(a)(1), have not been met, the Mayor shall specify the particular items

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that need to be corrected and notify the applicant that the application can be corrected and resubmitted within 30 days from the date of this notification. If a corrected BID application is not submitted within the 30-day period, the Mayor shall enter an order rejecting the application. If the Mayor determines that the criteria set forth in section 4(a)(1) have not been met, the Mayor shall notify the applicant that this standard has not been met and the applicant shall not be eligible to resubmit an application for a period of 1 year from the initial date of submission.

(2) Once the Mayor affirmatively determines that the BID application requirements have been met, the Mayor shall issue a notice of preliminary finding to the applicant.

Sec. 6. Hearing.

New Section  
1-2275

(a) The Mayor shall hold a public hearing within 45 days of the issuance of his findings pursuant to section 5(b)(2).

(b) Notice to the public shall be made no less than 21 days prior to the hearing.

(c) The Mayor shall advertise the notice of the public hearing along with the notice of preliminary finding in the District of Columbia Register, and either *The Washington Post* or the *Washington Times*, and at least one monthly, biweekly, or weekly community newspaper serving the BID area.

(d) No less than 21 days prior to the public hearing, the applicant shall send, by first class mail, notice of the Mayor's preliminary determination; notice of the public hearing, including the date, time, and place and availability of the BID application for review; and a summary of the application stating the borders of the proposed BID, the BID plan, and the BID charges, to:

(1) The Council;

(2) Each owner of nonexempt real property within the proposed BID area at the address shown in the most recent real property tax assessment records of the District;

(3) Each commercial tenant, to the extent reasonably ascertainable;

(4) Each advisory neighborhood commission in which the proposed BID is located; and

(5) Each major citizens association covering the area in which the proposed BID is located, to the extent reasonably ascertainable.

(e) The BID application shall be made available to the public for review during normal business hours on weekdays in at least one location in the proposed BID area designated by the applicant, and at a generally accessible District of Columbia government office designated by the Mayor. The notice of the public hearing shall describe these locations.

(f) The Mayor shall use the public hearing on the proposed BID to determine whether the BID plan meets the purposes of this act and the definition of BID activity in section 2, and all other BID application requirements.

(g) Within 10 days after the public hearing (excluding Saturdays, Sundays, and holidays) the Mayor shall either:

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(1) Register the BID; or  
(2) Determine that the BID application requirements have not been met or that the BID plan does not meet the purposes of this act and the definition of BID activity in section 2. The Mayor shall specify the particular items that need to be corrected and notify the applicant that he will have 45 days from the date of this notification within which to correct the BID application.

(A) If a corrected BID application is submitted within the 45-day period, and the Mayor affirmatively determines that the corrected application adequately addresses the items that were included in the Mayor's notification, the Mayor shall register the BID.

(B) If a corrected BID application is submitted within the 45-day period, and the Mayor affirmatively determines that the corrected application does not adequately address the particular items needing correction that were included in the Mayor's notification, the Mayor shall issue an order rejecting the BID. This order shall include the findings of fact upon which it is based.

(C) If a corrected BID application is not submitted within the 45-day period, the Mayor shall issue an order rejecting the registration. This order shall include findings of fact.

(h) If an order of rejection is not issued within 60 days from the date of the public hearing, the BID application shall be deemed registered; except that, if the corrected application under subsection (g) of this section is determined by the Mayor to contain substantial changes, the Mayor may extend the review period for 5 business days.

**Sec. 7. Board of Directors; officers; qualifications; expenses.**

New Section  
1-2276

(a) The powers of each BID corporation shall be vested in a Board of Directors ("Board"). Board members shall include owners, or principals, agents, partners, managers, trustees, stockholders, officers, or directors of owners, and commercial tenants, and also may include residents, community members, and governmental officials, provided that not less than a majority of all Board members shall represent owners.

(b) The Board and its officers shall have all the power and authority of nonprofit corporations established under District law, except to the extent specifically precluded by this act.

(c) No Board member, officer of the BID corporation, or any member shall be paid any salary or other remuneration for serving as such, but may be reimbursed for actual and reasonable out-of-pocket expenses incurred in the performance of such person's duties in connection with the BID.

(d) Each Board may hire a managing agent to perform any or all of the Board's nonfiduciary duties at a commercially reasonable rate and for such terms as the Board deems advisable. A managing agent shall not be a member or an affiliate of a member, but may be a property manager or asset manager of one or more of the properties located in the BID.



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**Sec. 8. Bylaws; amendments.**

**New Section  
1-2277**

(a) The Board of each BID corporation shall govern the BID corporation in accordance with the bylaws, of which the initial bylaws shall be duly adopted by a majority vote of the members within 120 days of the registration of the BID by the Mayor. Bylaws of the BID corporation shall set forth the powers and duties of the Board and its officers, the procedures for removal and replacement of Board members and officers, the method of determining and assessing BID charges, the calling of meetings and the requirements for a quorum, ethics and conflict of interest standards, and such other information as is deemed advisable. In all cases the bylaws shall be consistent with the requirements imposed on nonprofit corporations under the applicable laws of the District, the provisions of this act, and any regulations adopted pursuant to this act.

(b) The Board, by a 2/3 vote at a meeting called for such purposes, may adopt amendments to the BID bylaws, BID plan, and BID charges to reflect the changing needs of the BID corporation, which shall be duly ratified by a majority vote of the members.

(1) Amendments shall comply with all applicable provisions of this act and any regulation adopted pursuant to this act.

(2) Adopted amendments to the BID plan shall be filed with the Mayor within 15 days of adoption.

(A) The Mayor shall have 30 days after receipt of a revised BID plan to review such revisions and determine if they are consistent with the purposes of this act.

(B) If the Mayor determines that the BID plan revisions are consistent with the purposes of this act, the Mayor shall certify such revisions and notify the BID Board that the BID plan revisions have been certified.

(C) If the Mayor determines that the BID plan revisions are not consistent with the purposes of this act, the Mayor shall not certify such revisions and shall notify the BID Board that the BID plan revisions have not been certified and cannot take effect.

(3) BID charges can only be amended once annually.

**Sec. 9. Expanding the geographic area of a BID.**

An established BID may only expand its geographic area if:

**New Section  
1-2278**

(1)(A) Owners of at least 51% interest in the assessed value of the nonexempt real properties and at least 25% in number of individual properties of record in a geographic area petition the existing BID to join the BID; or

(B) With respect to areas outside the central employment area and Georgetown, owners who own at least 51% of the interest in the assessed value of the commercial properties, owners who own at least 51% of the individual properties, and at least 51% of the number of commercial tenants petition the existing BID to join the BID;

(2) The BID meets the definition set forth in section 2(7) in relation to the existing BID borders; and

(3) Such petition is accepted by a majority vote of the existing BID Board.

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Sec. 10. Meetings of members and the Board.

New Section  
1-2279

(a) Meetings of the members shall be held in accordance with the provisions of the bylaws but shall occur at least once each year after the formation of the BID. The bylaws shall specify an officer who shall send each member notice of the time, place, and purposes of the meeting. Notice shall be given at least 21 days in advance of any annual or regularly scheduled meeting, and at least 7 days in advance of any other meeting. Notice shall be sent by first class mail to all members of record at the address of their respective properties and to such other address as may have been designated to such officer. Notice may also be hand delivered by the officer, or his or her agent, provided the officer certifies in writing that notice was actually delivered to the member.

(b) All meetings of the Board shall be open to members. Minutes shall be recorded and shall be made reasonably available to all members and the Mayor.

Sec. 11. Voting.

New Section  
1-2280

(a) The articles of incorporation shall provide that each member is entitled to vote. The bylaws may allocate to each BID member a number of votes. The votes may be in proportion to the obligation of property owners to pay BID charges or be based on any other fair and equitable formula that ensures not less than one vote per member.

(b) The bylaws shall determine how members may cast multiple votes, if multiple votes are allocated, and whether and how proxy voting will be recognized.

(c) In no case shall the total number of votes assigned to any one member or to any number of members under common ownership or control exceed 33 1/3% of the total number of votes which may be cast.

Sec. 12. Books, minutes, and records; inspection; accounts; budgets.

New Section  
1-2281

(a) The BID's treasurer shall keep detailed records of the receipts and expenditures affecting the operation and administration of the BID. All such records, minutes of the meetings of the BID's members and Board, and any other records pertaining to the BID, including the names and addresses of the members, shall be available for examination by all of the members, the Mayor, and Council at convenient hours on working days that shall be set and announced for general knowledge. Subject to the provisions of subsection (b) of this section, upon request, any member, the Mayor, or Council shall be provided a copy of the records and minutes.

(b) Books and records kept by or on behalf of a BID may be withheld from examination or copying by members or others to the extent that the records concern:

- (1) Personnel matters;
- (2) Communications with legal counsel or attorney work product;
- (3) Transactions currently in negotiation and agreements containing confidentiality requirements;
- (4) Pending litigation;

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(5) Pending matters involving formal proceedings for enforcement of the BID articles of incorporation, bylaws, or rules and regulations promulgated pursuant thereto; or

(6) Disclosure of information in violation of law.

(c) The BID may only impose and collect a charge, reflecting its actual costs of materials and labor, prior to providing copies of any books and records to members.

(d) The Board of each BID corporation may establish such checking, savings, money market, or other depository accounts as it deems advisable, but only in federally insured financial institutions doing business in the District.

(e) Upon establishment of the BID and no later than December 15 of each succeeding calendar year, the Board of each BID corporation shall deliver to all members by first class mail, or by personal delivery, an operating budget outlining the Board's then current projections of revenues and operating expenses for the forthcoming calendar year or portion thereof. The Board also shall deliver to the members from time to time, as circumstances warrant, a supplement to the then current operating budget outlining any material changes in anticipated expenditures or income during the applicable budget year. The Board shall update each operating budget and supplement from time to time as the Board receives information requiring material changes to such operating budget or supplement. Operating budgets and supplements shall not require the prior approval of the members. Each operating budget and supplement shall be effective upon delivery to the members, or the later effective date set forth in the budget or supplement, and shall form the basis for then current BID charges.

**Sec. 13. Annual report of BID corporation.**

**New Section  
1-2282**

(a) The Board of each BID corporation shall file an annual report with the Mayor in a form and at such time as are prescribed by regulations promulgated under this act. The requirement for filing of an annual report shall commence in the first full calendar year after BID registration.

(b) Each annual report shall include, at a minimum:

(1) A financial statement for the preceding year, including a balance sheet, statement of income and loss, and such other information as is reasonably necessary to reflect the BID's actual financial performance, certified by the treasurer of the BID corporation. Such statements shall be prepared on a cash basis or an accrual basis in accordance with generally accepted accounting principles consistently applied;

(2) A proposed operating budget for the then current fiscal year; and

(3) A narrative statement or chart showing the results of operations in comparison to stated goals and objectives.

(c) A copy of each annual report shall be sent to the Council, to the ANC in which the BID is located, and to all members in the BID, in each case by first class mail or by personal delivery.

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### Sec. 14. Liability.

(a) The District shall not be liable or responsible in any manner for any debts incurred, or for any acts or inactions, by the Board or by any agent, employee, or member of the BID corporation.

(b) Neither a director, officer, or member nor any affiliate of a director, officer, or member, nor any shareholder, officer, director, employee, partner, agent, or advisor of a director, officer, or member nor an affiliate of any director, officer, or member of the BID shall be personally liable to the BID corporation or to any owner or member for loss or damage caused by any act or omission in such capacity, except for losses or damages caused by such party's fraudulent, willful, or wanton conduct or misconduct, breach of the BID instruments, or gross negligence. The BID corporation shall indemnify (only to the extent of BID corporation assets without recourse to any owner or member) any person who was or is a party or threatened to be made a party to any threatened, pending, or completed action, suit or proceeding (other than an action by or on behalf of the BID corporation), which action, suit, or proceeding arises out of or relates to any claim, issue, or matter involving or affecting the BID corporation, by reason of the fact that such party is or was a director, officer, or member, an affiliate of a director, officer, or member, or an officer, shareholder, director, employee, partner, agent, or advisor of a director, officer, or member or an affiliate of any director, officer, or member, or is or was serving at the request of the BID corporation as an officer, shareholder, director, employee, agent, or advisor of another partnership, corporation, joint venture, trust, or other enterprise, against all expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement, actually and reasonably incurred by such party in connection with such action, suit, or proceeding, so long as such party acted in good faith in a manner reasonably believed to be in or not opposed to the best interest of the BID corporation; provided, that no indemnification shall be made in respect of any claim, issue, or matter as to which a party has been adjudged to be liable for fraudulent, willful, or wanton conduct or misconduct, breach of the BID instruments, or gross negligence, or with respect to any criminal action or proceeding.

(c) The BID corporation may maintain insurance on behalf of any person who is or was a director or officer or the shareholder, employee, partner, agent, or advisor of a director or officer for a liability asserted against it and incurred by such party in any such capacity or arising out of such party's status as such, whether or not the BID corporation would have the power to indemnify such party against such liability under this section.

### Sec. 15. Liability for BID charges.

(a) BID charges shall be payable to the BID or its lawfully designated agent as set forth in the bylaws, or if not set forth in the bylaws, as determined by the Board.

(b) If the Board determines that any BID charge benefits less than all of the members, or is or was caused by the conduct of less than all those entitled to occupy any property within the BID or by their agents, employees, licensees, or invitees, then by Board action such BID charge may be specifically assessed against and constitute the personal obligation of the owner of the

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property involved, in accordance with such reasonable provisions as the BID Board may determine.

(c) The amount of all BID charges not specifically assessed pursuant to subsection (b) of this section shall be assessed against and shall constitute the personal obligations of the owners in accordance with the formula set forth in the bylaws as determined in accordance with section 8. Such assessments shall be made annually by the Board. No change in the number of votes of an owner, or status of an owner as a member, shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

(d) The bylaws may provide that any BID charges not paid when due shall bear interest at a rate determined by the Board or as set forth in the bylaws, and that any BID charge not paid within 15 days of its due date, shall be subject to a late charge not to exceed 4% of the amount due.

(e) If any owner is more than 30 days delinquent in the payment of BID charges, and if BID charges are payable in monthly installments, then, at the option of the Board, the entire amount of BID charges due for the annual or other period, including penalties and interest, may be accelerated and become immediately due and payable upon demand.

(f) Any owner who fails to pay BID charges when due shall be liable to the BID corporation for all costs of collection, including court costs and reasonable attorney's fees, whether or not an action is brought to collect the BID charge.

Sec. 16. Lien for BID charges.

New Section  
1-2285

(a) The BID corporation shall have a lien on all nonexempt real property within the BID for unpaid BID charges levied against the owner of that property in accordance with the provisions of this act and all lawful provisions of the BID instruments. The provisions of this section shall not affect the priority of mechanic's and materialmen's liens under applicable law.

(b) The lien for charges, once perfected, shall have priority from the date of filing of the notice of lien. In order to perfect the lien for BID charges, the BID corporation shall file a notice of lien in the Office of Recorder of Deeds for the District of Columbia within one year of the date from which the BID charges became due and owing, and shall mail a copy of the notice of lien, by certified mail, return receipt requested, to the owner of such property. The notice of lien shall contain:

- (1) A description of the property affected by the lien;
- (2) The name of the owner of such property;
- (3) The amount of unpaid assessments currently due or past due and the date each assessment was due; and
- (4) The date of issuance of the notice of lien.

(c) The cost of recording a notice of lien shall be borne by the owner of the property against whom the lien is filed. The lien may be foreclosed in the manner provided for foreclosure of deeds under the applicable laws of the District.

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(d) No lawsuit to enforce a lien perfected under this section shall be brought after 24 months from the time the notice of lien was recorded; provided, that the filing of a petition to enforce any lien in any lawsuit wherein such petition may be properly filed shall be regarded as the institution of a lawsuit hereunder; and provided further, that nothing shall extend the time within which the lien may be perfected.

(e) An owner whose property against which a notice of lien has been properly filed shall be liable for, without limitation, reimbursement for costs and attorneys' fees, and interest at the maximum lawful rate for the sums secured by the lien from the time each sum became due and payable.

(f) When payment or satisfaction is made of a debt secured by a perfected lien, the lien shall be released at the cost of the owner against whose property such lien was filed.

(g) Nothing in this section shall be construed to prohibit actions at law to recover sums for which a lien may be created, and the obligation to pay assessments is and shall remain the personal obligation of each owner.

### Sec. 17. Remedies; enforcement.

(a) In the event an owner fails or refuses to pay a charge or BID charge, late payment penalty, interest, or cost of collection, when due and payable as specified in section 15, a BID corporation shall have the option to collect such amounts through:

(1) Arbitration proceedings, in accordance with the rules of the American Arbitration Association (or such other reputable organization as is generally recognized as providing arbitration services, as determined by the bylaws);

(2) Judicial proceedings to enforce any award or decision made pursuant to arbitration;

(3) Judicial action to recover such sums or;

(4) Action to perfect and enforce the lien established in section 16.

(b) In the event disputes arise with respect to formation, establishment, filing, or registration of a BID or other matters referenced in sections 2 through 6 concerning the establishment or operation of a BID or the BID corporation or with respect to other matters in sections 7 through 12, such disputes shall be resolved through mediation, or, if mediation is unsuccessful, arbitration in accordance with the rules of the American Arbitration Association or such other reputable organization as is generally recognized as providing arbitration services as determined by the BID bylaws. Any party to such arbitration shall have the right to initiate judicial proceedings to enforce any award or decision made pursuant to arbitration, but no person shall be authorized to institute judicial proceedings with respect to the matters referred to in this subsection except to enforce an arbitration award. Residents of a residential neighborhood adjoining a BID and citizens associations covering an area in which a BID is located shall be entitled to seek relief under this section. Notwithstanding the foregoing, in no event shall any dispute pertaining to the amount of, liability for, the enforcement of a lien for, or any other matter which relates to, BID charges be resolved through mediation or arbitration, except for

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those matters determined by the BID corporation, in its sole option, to be pursued through arbitration pursuant to subsection (a)(1) of this section.

(c) In the event disputes arise with respect to matters not set forth in this section, such matters may be resolved through mediation, arbitration, or judicial proceedings, as appropriate.

Sec. 18. Term of BID; extension; termination and dissolution.

New Section  
1-2287

(a) Each BID shall have an initial term of 5 years, and may be extended for successive 5-year terms after the Mayor issues a notice or re-registration after holding a public hearing pursuant to the provisions of section 6. In order to request an extension, the BID shall notify the Mayor at least 180 days prior to the last day of the applicable 5-year term that it desires to extend its life. The Mayor shall hold such public hearing no earlier than 90 days prior to the 5-year anniversary, and no later than the 5-year anniversary, of the last BID registration. If, at the end of any 5-year term, the BID has requested an extension and the Mayor has not issued an order revoking registration or denying an extension, then the BID shall be deemed to be re-registered for a subsequent 5-year term.

(b) The Mayor shall issue an order revoking the registration of a BID at any time:

- (1) If by a 2/3 majority vote of the Board, the Board elects not to seek re-registration of the BID;
- (2) If not more than 1 year and not less than 90 days before the end of each 5-year period, the owners of at least 51% in assessed value and at least 25% in number of nonexempt real properties within the BID elect to dissolve the BID effective as of the last day of the then applicable 5-year term;
- (3) If the Mayor determines that there has been unlawful conduct by the management or Board of the BID, which conduct has not been remedied within 30 days of notice thereof;
- (4) If the Mayor determines that the conduct of the BID has jeopardized the ability of the BID to carry out the purposes of this act, which conduct has not been remedied within 30 days of notice thereof;
- (5) If the BID corporation is voluntarily or involuntarily dissolved in accordance with law;
- (6) If the operations of the BID cease for any reason for at least 60 consecutive days; or
- (7) If a BID corporation voluntarily files for bankruptcy protection, becomes insolvent, or has a receiver appointed for all or substantially all of its assets, or any such proceeding is instituted against the BID corporation and is not discharged within 60 days.

(c) Within 60 days of dissolution, the Board shall adopt a plan to timely distribute funds and dispose of assets to satisfy all creditors in the order of their priority, if any. Any surplus funds will be returned to the owners in proportion to their obligation to pay BID charges within 30 days of adoption of the plan of distribution.

**ENROLLED ORIGINAL**

Sec. 19. Prohibited acts.

New Section  
1-2288

No BID corporation shall engage in the financial support of political activities and candidates, or lobbying on legislative or administrative actions with respect to any property or area, or the promotion of one business to the exclusion of others. Nothing contained within this act shall be construed as modifying the terms of any lease or occupancy agreement between an owner and commercial tenant.

Sec. 20. Maintenance of base level of city services.

New Section  
1-2289

The District government shall not eliminate or reduce the level of any services customarily provided in the District to any similar geographic area because such area is subject to a BID, and shall continue to provide its customary services and levels of each service to such area notwithstanding that such area is or may be encompassed in a BID unless a reduction in service is part of a District-wide pro rata reduction in services necessitated by fiscal considerations or budgetary priorities.

Sec. 21. Exempt property owners; BID membership.

New Section  
1-2290

The District government, the federal government, or any residential property owner owning exempt real property located in the BID may, at their sole discretion, contribute their pro rata share of BID charges to the BID. Such exempt real property owners who voluntarily pay BID charges shall be entitled to full membership in the BID and all services provided to properties in the BID. Nothing in this act shall neither compel nor prohibit such exempt real property owners from contributing BID charges, becoming BID members, or receiving BID services.

Sec. 22. Rulemaking.

New Section  
1-2291

Pursuant to title 1 of the District of Columbia Administrative Procedures Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1501 *et seq.*), the Mayor is authorized to issue any rules that may be necessary to implement the provisions of this act, which shall include a fee to cover the administrative costs of processing a BID application and holding a public hearing. No delay in issuing any rules beyond 120 days after the enactment of this act shall prevent an applicant from filing an application with the Mayor, or prevent the Mayor from registering a BID.

Sec. 23. Fiscal impact.

Nothing in this act shall cause the District government to spend general fund revenues on either administering BIDs or on BID activities. Incidental costs associated with processing BID applications and holding administrative hearings may be incurred; however, the Mayor shall charge the applicant fees to cover these costs. Based on the experiences of Business Improvement Districts in other cities, the creation of BIDs in the District of Columbia is anticipated to have a positive economic impact on those areas. Passage of this act and the



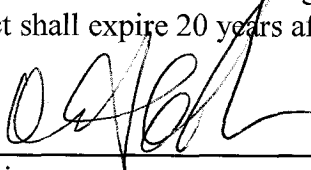
**ENROLLED ORIGINAL**

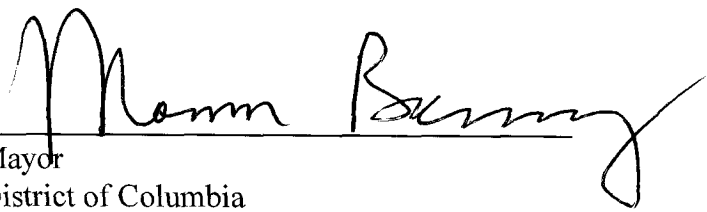
creation of BIDs should increase cleanliness, safety, and marketing in BID areas. Cities with existing BIDs have had positive economic impacts, and consequently, indirect positive fiscal impacts from increased tax revenues, and have experienced increased commercial occupancy rates, increased retail sales, and lower reported crime.

Sec. 24. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(c)), and a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire 20 years after the effective date.

  
\_\_\_\_\_  
Chairman  
Council of the District of Columbia

  
\_\_\_\_\_  
Mayor  
District of Columbia

APPROVED: March 25, 1996



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD ELEVEN

RECORD OF OFFICIAL COUNCIL VOTE

B11-464

Docket No. \_\_\_\_\_

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FIRST READING, 02-06-96

VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT \_\_\_\_\_

ROLL CALL VOTE - Result

PASSED

8311

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke		X			Jarvis	X				Smith, Jr.	X			
Brazil				X	Lightfoot	X				Thomas, Sr.		X		
Chavous	X				Mason	X				Whittington			X	
Cropp	X				Patterson	X								
Evans	X				Ray		X							

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

*[Signature]*  
Secretary to the Council

*March 8, 1996*  
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FINAL READING, 03-05-96

VOICE VOTE

RECORDED VOTE ON REQUEST

APPROVED, WHITTINGTON VOTED NO

LIGHTFOOT AND RAY

ABSENT \_\_\_\_\_

ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X-indicates no

AB-Absent

NV-Present not voting

CERTIFICATION RECORD

*[Signature]*  
Secretary to the Council

*March 8, 1996*  
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT \_\_\_\_\_

ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date

AN ACT

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*Codification  
District of  
Columbia  
Code  
1997 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To establish a mandatory drug and alcohol testing policy for District of Columbia Department of Corrections employees to ensure security and a safe working environment at the District's correctional facilities.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Department of Corrections Employee Mandatory Drug and Alcohol Testing Act of 1996".

Sec. 2. Definitions.

For the purposes of this act, the term:

*New Section  
24-448.1*

- (1) "Applicant" means all persons who have filed any written employment application forms to work at the Department.
- (2) "Council" means the Council of the District of Columbia.
- (3) "Department" means the District of Columbia Department of Corrections.
- (4) "Director" means the Director of the District of Columbia Department of Corrections.
- (5) "High potential risk employee" ("HPR employee") means any Department employee who has inmate care and custody responsibilities or who works within a correctional institution, including any employees and managers who are carried in a law enforcement retirement status.
- (6) "Law enforcement retirement status" means any employee who contributes to the 7.5% retirement status category.
- (7) "Post-accident employee" means any Department employee who, while on duty, is involved in a vehicular or other type of accident resulting in personal injury or property damage, or both.
- (8) "Random testing" means drug or alcohol testing taken by Department employees at an unspecified time for the purposes of determining whether any Department employees have used drugs or alcohol and, as a result, are unable to satisfactorily perform their

employment duties.

(9) "Reasonable suspicion" means a belief by a supervisor that an employee is under the influence of an illegal substance or alcohol to the extent that the employee's ability to perform his or her job is impaired. Supervisors shall be trained in substance abuse recognition and shall receive a second opinion from another supervisor prior to making a reasonable suspicion referral.

Sec. 3. Employee testing.

New Section  
24-448.2

(a) The following Department employees shall be tested for drug and alcohol use:

- (1) Applicants;
- (2) Those employees who have had a reasonable suspicion referral;
- (3) Post-accident employees, as soon as reasonably possible after the accident;

and

(4) HPR employees.

(b) Only HPR employees shall be subject to random testing.

(c) Employees shall be given at least a 30-day written notice from the effective date of this act that the Department is implementing a drug and alcohol testing program and shall be given an opportunity to seek treatment. Following the effective date of this act, the Department shall procure a testing vendor and testing shall be implemented as described herein.

Sec. 4. Testing methodology.

New Section  
24-448.3

(a) Testing shall be performed by an outside contractor. The contractor shall be a laboratory certified by the United States Department of Health and Human Services ("HHS") to perform job related drug and alcohol forensic testing.

(b) For random testing, the contractor shall come on-site to the Department's institutions and shall collect urine specimens and split the samples. The contractor shall perform enzyme-multiplied-immunoassay technique ("EMIT") testing on one sample and store the split sample. Any positive EMIT test shall then be confirmed by the contractor using gas chromatography/mass spectrometry ("GCMS") methodology.

(c) Any Department employee found to have a confirmed positive urinalysis shall be notified of the result. The employee may then authorize that the stored sample be sent to another HHS certified laboratory of his or her choice, at his or her expense, for secondary GCMS confirmation.

(d) Reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in subsections (a) through (c) of this section. In such cases, the employee shall be escorted by a supervisor to the contractor's test site for specimen collection or a breathalyzer.

(e) Any Department employee who operates a motor vehicle in the District of Columbia shall be deemed to have given his or her consent, subject to conditions in this act, to the testing

of the person's urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has reasonable suspicion or a police officer arrests such person for a violation of the law and has reasonable grounds to believe such person was operating or in physical control of a motor vehicle within the District while that person's breath contained .10% or more, by weight, of alcohol, while under the influence of an intoxicating liquor or any drug or any combination thereof, or while the ability to operate a motor vehicle was impaired by the consumption of an intoxicating beverage.

(f) A breathalyzer shall be deemed positive by the Department's testing contractor if the contractor determines that 1 milliliter of the employee's breath (consisting of substantially alveolar air) contains .48 micrograms or more of alcohol. A positive breathalyzer test shall be grounds for termination of employment in accordance with the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-601.1 *et seq.*).

Sec. 5. Procedure and employee impact.

The drug testing policy shall be issued in advance to inform employees and allow them the opportunity to seek treatment. Thereafter, any confirmed positive test results or a refusal to submit to the test shall be grounds for termination of employment in accordance with the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-601.1 *et seq.*). This testing program is for all employees, including management, and shall be implemented as a single Department program. The results of a random test may not be turned over to any law enforcement agency without the employee's written consent.

New Section  
24-448.4

Sec. 6. Fiscal impact.

(a) The Department has evaluated the fiscal impact of this act for the current fiscal year and 5 subsequent fiscal years.

(b) Based on the testing of approximately 2,300 employees annually, the Department estimates that the annual cost of a contract would be approximately \$59,000 and would include the testing of applicants, high potential risk employees, employees who have had a reasonable suspicion referral, and employees involved in a post-accident.

(c) The cost of testing during fiscal year 1996 is estimated to be \$28,750. Given the legislative process, the cost reflects a testing period from April through September 1996 at a per monthly cost of \$4,791. The approximate cost per test is \$25 per person, including initial testing and positive confirmation testing.

(d) For Fiscal Year 1996, the Department estimates there will be approximately 1,200 pre-appointment drug tests. The Department will randomly test all employees defined as high potential risk employees ("HPR employees"). For the pay period that ended November 11, 1995, there were 3,200 Department employees within the HPR employee status. The Department

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estimates that there are 3,695 employees who could be tested upon a reasonable suspicion referral. Further, there are approximately 2,000 employees who possess a valid District government license for which the Department would test in post-accident situations. The Department shall assume all costs associated with the initial drug and alcohol testing for its employees pursuant to this act. However, all subsequent costs for tests, such as positive confirmation tests, shall be assumed by the employee.

(e) Two DS-12 additional staff members will be required to monitor the drug and alcohol testing program. These will be nonunion positions. The DS-12, step 1 salary is \$39,045 per year. The cost of fringe benefits total \$15,618 per year for 2 employees. Thus, the yearly total is \$93,708 for additional staff to implement this act.

(f) For the next 5 fiscal years, the following budgets are estimated:

(1) For fiscal year 1997, 2,300 tests administered at \$25 per test will cost \$57,500.

(2) For fiscal year 1998, 2,323 tests administered at \$25 per test will cost \$58,075.

(3) For fiscal year 1999, 2,346 tests administered at \$25 per test will cost \$58,650.

(4) For fiscal year 2000, 2,369 tests administered at \$25 per test will cost \$59,225; and

(5) For fiscal year 2001, 2,392 tests administered at \$25 per test will cost \$59,800.

(g) The total number of tests administered in the next 5 fiscal years will be approximately 12,800. Using \$25 per test as a constant cost, the testing program will total \$322,000.

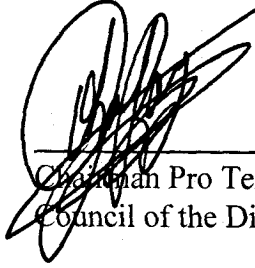
(h) To the extent that costs are incurred during Fiscal Year 1996, they shall be absorbed by the Department of Corrections.

**Sec. 7. Effective date.**

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), and a 60-day period of Congressional review as

**ENROLLED ORIGINAL**

provided in section 602(c)(2) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(2)), and publication in the District of Columbia Register.

A handwritten signature in black ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

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Chairman Pro Tempore  
Council of the District of Columbia

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Mayor  
District of Columbia



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD ELEVEN

RECORD OF OFFICIAL COUNCIL VOTE

B11-463

Docket No. \_\_\_\_\_

[ ] ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FIRST READING, 5-7-96

VOICE VOTE

APPROVED

RECORDED VOTE ON REQUEST

BRAZIL

ABSENT \_\_\_\_\_

[ ] ROLL CALL VOTE - Result \_\_\_\_\_

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

*Angie M.*  
Secretary to the Council

*June 11, 1996*  
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FINAL READING, 6-4-96

VOICE VOTE

APPROVED

RECORDED VOTE ON REQUEST

CHAVOUS AND EVANS

ABSENT \_\_\_\_\_

ROLL CALL VOTE - Result \_\_\_\_\_

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - indicates no

AB - Absent

NV - Present not voting

CERTIFICATION RECORD

*Angie M.*  
Secretary to the Council

*June 11, 1996*  
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE \_\_\_\_\_

VOICE VOTE \_\_\_\_\_

RECORDED VOTE ON REQUEST \_\_\_\_\_

ABSENT \_\_\_\_\_

[ ] ROLL CALL VOTE - Result \_\_\_\_\_

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date