

# ENROLLMENT(S)

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# COUNCIL OF THE DISTRICT OF COLUMBIA

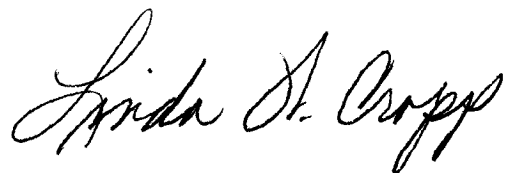
## NOTICE

### D.C. LAW 12-104

#### "Procurement Reform Amendment Act of 1998"

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. 12-363, on first and second readings, December 4, 1997 and January 6, 1998, respectively. Following the signature of the Mayor on February 3, 1998, pursuant to Section 404(e) of "the Act", and was assigned Act No. 12-280, and published in the March 27, 1998, edition of the D.C. Register (Vol. 45 page1687) and transmitted to Congress on March 10, 1998 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 12-104, effective May 8, 1998.



LINDA W. CROPP  
Chairman of the Council

#### Dates Counted During the 30-day Congressional Review Period:

|      |   |
|------|---|
| Mar. | 10,11,12,13,16,17,18,19,20,23,24,25,26,27,30,31 |
| Apr. | 1,21,22,23,24,27,28,29,30                       |
| May  | 1,4,5,6,7                                       |

AN ACT  
D.C. ACT 12-280

*Codification  
District of  
Columbia  
Code  
1998 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 3, 1998

To amend the District of Columbia Procurement Practices Act of 1985 to increase the penalties of the civil false claims and qui tam provisions and to change the title of the head of the Office of Contracting and Procurement; and the District of Columbia Revenue Act of 1970 to allow the District to renegotiate existing leases to lower rental rates and increase tenant allowances.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Procurement Reform Amendment Act of 1998".

Sec. 2. The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Code § 1-1181.1 *et seq.*), is amended as follows:

(a) Section 104(c) (D.C. Code § 1-1181.4(c)) is amended by striking the phrase "Director of the Office of Contracting and Procurement" and inserting the phrase "CPO" in its place.

Section  
1-1181.4

(b) Section 105 (D.C. Code § 1181.5) is amended as follows:

(1) Subsection (a) is amended to read as follows:

Section  
1-1181.5

"(a) There is established a service agency to be called the Office of Contracting and Procurement ("OCP"), which shall be administered by the Chief Procurement Officer. By delegation from the Mayor pursuant to section 422(6) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 802; D.C. Code § 1-242(6)), the CPO shall be the exclusive contracting authority for all procurements covered by this act. Except as otherwise provided in this act, no other department, agency, instrumentality, or employee subject to the provisions of this act shall exercise procurement or contracting authority, except authority otherwise provided for receiving or making grants-in-aid or for federal financial assistance. Departments, agencies, and entities subject to this act shall be responsible for determining their requirements for goods and services and for technical direction of awarded contracts. The CPO may, by regulation, delegate contracting authority to employees of a department, agency, or

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other entity commensurate with the CPO's judgment of each employee's ability to meet the objective of this act."

(2) Subsections (b), (c), and (e) are amended by striking the word "Director" wherever it appears and inserting the acronym "CPO" in its place.

(c) Section 105e (D.C. Code § 1-1181.5e) is amended to read as follows:

Section  
1-1181.5e

"Sec. 105e. Director of the Office of Contracting and Procurement.

"(a) The head of the OCP shall have the title of Chief Procurement Officer ("CPO").

"(b) The CPO shall be appointed by the Mayor with the advice and consent of the Council. The CPO's nomination and confirmation shall be consistent with the provisions of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Code § 1-633.7).

"(c) The Mayor shall appoint the CPO as soon as practicable, but not less than 180 days after the effective date of the Procurement Reform Amendment Act of 1996. Upon appointment, the CPO will immediately assume the responsibilities as the head of the OCP pending review and action on the appointment by the Council. Until the CPO is appointed by the Mayor, the highest ranking employee of the OCP shall serve as Acting CPO.

"(d) The CPO shall have not less than 7 years of procurement experience in federal, state, or local procurement, and shall have demonstrated management skills.

"(e) The CPO shall serve for one 5-year term.

"(f) The CPO shall not be removed from office before expiration of the 5-year term except for cause, subject to the right of appeal."

(d) Section 107 (D.C. Code § 1-1181.7) is amended as follows:

Section  
1-1181.7

(1) Paragraph (9) is repealed.

(2) Paragraph (15) is amended to read as follows:

"(15) "Contracting officer" means the Mayor or the CPO or the CPO's designee vested with the authority to execute contracts on behalf of the District in compliance with the provisions of this act."

(e) Section 804 (D.C. Code § 1-1188.4) is amended by striking the word "Director" wherever it appears and inserting the acronym "CPO" in its place.

Section  
1-1188.4

(f) Section 908(c) (D.C. Code § 1-1189.8(c)) is amended by striking the word "Director" wherever it appears and inserting the acronym "CPO" in its place.

Section  
1-1189.8

(g) Title VIII (D.C. Code § 1-1188.1 *et seq.*), is amended by adding a new Part C to read as follows:

"Part C.

"Sec. 813. Definitions.

New Section  
1-1188.13

"For the purposes of this part, the term:

"(1) "Claim" means any request or demand for money, property, or services made to any employee, officer, or agent of the District, or to any contractor, grantee, or other

recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the District, or if the District will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"(2) "Fixed obligation" means an amount due the District by contract or by law. The term "fixed obligation" does not include a fine to be imposed by law until the fine has been assessed.

"(3)(A) "Knowing" or "knowingly" means that a person, with respect to information, does any of the following:

"(i) Has actual knowledge of the falsity of the information;

"(ii) Acts in deliberate ignorance of the truth or falsity of the information; or

"(iii) Acts in reckless disregard of the truth or falsity of the information.

"(B) Proof of specific intent to defraud is not required for an act to be knowing.

"(4) "Person" includes any natural person, corporation, firm, association, organization, partnership, business, or trust.

"(5) "Proceeds" means civil penalties as well as double or treble damages as provided in section 808, and criminal fines pursuant to section 103.

"Sec. 814. False claims liability, treble damages, costs, and civil penalties; exceptions.

New Section  
1-1188.14

"(a) Any person who commits any of the following acts shall be liable to the District for 3 times the amount of damages which the District sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the District for the costs of a civil action brought to recover penalties or damages, and may be liable to the District for a civil penalty of not less than \$5,000, and not more than \$10,000, for each false claim for which the person:

"(1) Knowingly presents, or causes to be presented, to an officer or employee of the District a false claim for payment or approval;

"(2) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false claim paid or approved by the District;

"(3) Conspires to defraud the District by getting a false claim allowed or paid by the District;

"(4) Has possession, custody, or control of public property or money used, or to be used, by the District and knowingly delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

"(5) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the District and knowingly makes or delivers a document that falsely

represents the property used or to be used;

"(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;

"(7) Knowingly makes or uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the District;

"(8) Is a beneficiary of an inadvertent submission of a false claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the District; or

"(9) Is the beneficiary of an inadvertent payment or overpayment by the District of monies not due and knowingly fails to repay the inadvertent payment or overpayment to the District.

"(b) Notwithstanding subsection (a) of this section, the court may assess not more than two times the amount of damages which the District sustains because of the act of the person, and there shall be no civil penalty, if the court finds all of the following:

"(1) The person committing the violation furnished officials of the District responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information;

"(2) The person fully cooperated with any investigation by the District; and

"(3) At the time the person furnished the District with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

"(c) Liability pursuant to this section shall be joint and several for any act committed by 2 or more persons.

"(d) This section shall not apply to the following:

"(1) Workers' compensation claims filed pursuant to the District of Columbia Workers' Compensation Act, effective July 1, 1980 (D.C. Law 3-77; D.C. Code § 36-301 *et seq.*);

"(2) Unemployment compensation claims filed pursuant to the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 946; D.C. Code § 46-101 *et seq.*); and

"(3) Claims, records, or statements made pursuant to those portions of Title 47 of the District of Columbia Code that refer or relate to taxation.

"Sec. 815. Corporation Counsel investigations and prosecutions; powers of prosecuting authority; civil actions by individuals as *qui tam* plaintiffs; jurisdiction of courts.

"(a) The Corporation Counsel shall investigate, with such assistance from other District

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agencies as may be required, violations pursuant to section 808 involving District funds. If the Corporation Counsel finds that a person has violated or is violating the provisions of section 808, the Corporation Counsel may bring a civil action against that person in the Superior Court of the District of Columbia.

"(b)(1) A person may bring a civil action for a violation of section 808 for the person and either for the District or in the name of the District. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action brought by the qui tam plaintiff may be dismissed only with the written consent of the court, taking into account the best interest of the parties involved and the public disclosure purposes of this act. The Corporation Counsel shall be served with the notice of proposed dismissal and shall have the opportunity to be heard.

"(2) A complaint filed by a qui tam plaintiff pursuant to this subsection shall be filed in the Superior Court in camera and may remain under seal for up to 180 days, unless the seal is extended by the court. No service shall be made on the defendant until after the complaint is unsealed.

"(3) On the same day as the complaint is filed pursuant to paragraph (2) of this subsection, the qui tam plaintiff shall serve the Corporation Counsel by mail, return receipt requested, with a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses.

"(4) Within 180 days after receiving a complaint alleging violations involving District funds, the Corporation Counsel shall do either of the following:

"(A) Notify the court that he or she intends to proceed with the action, in which case the seal may be lifted unless, for good cause shown, the court continues the seal; or

"(B) Notify the court that he or she declines to take over the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

"(5) Upon a showing of good cause, the Corporation Counsel may move the court for extensions of the time during which the complaint remains under seal.

"(6) When a qui tam plaintiff brings an action pursuant to this subsection, no other person may bring an action pursuant to this section based on the facts underlying the pending action.

"(c)(1) No person may bring an action pursuant to subsection (b) of this section against a member of the Council of the District of Columbia ("Council"), a member of the District judiciary, or an elected official in the executive branch of the District, if the action is based on any official act occurring during his or her term of office.

"(2)(A) No person may bring an action pursuant to subsection (b) of this section based upon allegations or transactions in a criminal, civil, or administrative proceeding, investigation, or report, or audit conducted by or at the request of the Council, the Auditor, the Inspector General, or other District or federal agency; or upon allegations or transactions disclosed by the news media, unless the person bringing the action is an original source of the

information.

"(B) For purposes of subparagraph (A) of this paragraph, the term "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based, who voluntarily provided the information to the District before filing an action based on that information, and whose information provided the basis or catalyst for the investigation, report, hearing, audit, or media disclosure which led to the public disclosure as described in subparagraph (A) of this paragraph.

"(3) No person may bring an action pursuant to subsection (b) of this section based upon information learned by the person in the course of an internal investigation in preparation for, or in conjunction with, a voluntary disclosure to the District or federal government.

"(4) No present or former employee of the District, or any person who is acting on behalf of or relying on information provided by that employee, may bring an action pursuant to subsection (b) of this section if the employee discovered or obtained the information on which the action is based during the course of his or her employment, unless that employee first in good faith exhausted internal procedures for reporting and seeking recovery of such falsely claimed sums through official channels, including notice to the Corporation Counsel, and unless the District failed to act on the information provided within a reasonable time.

"(5) No member or employee of the Council of the District of Columbia, the Corporation Counsel's Office, the Office of the Inspector General, the Office of the Auditor, the Office of the Chief Financial Officer, or the Metropolitan Police Department may bring an action pursuant to subsection (b) of this section based upon information discovered during the term of his or her employment.

"(6) No person may bring an action pursuant to this section if the person has been convicted of a criminal offense in connection with any false claim that is the subject of the action.

"(7) No person may sell or otherwise transfer any cause of action, or interest in any present or future benefit provided, pursuant to this section.

"(d)(1) If the District proceeds with the action, it shall have the primary responsibility for prosecuting the action. The qui tam plaintiff shall have the right to continue as a party to the action and to participate in the action to the extent that the qui tam plaintiff is able to demonstrate to the court that such participation would neither be duplicative of nor interfere with the prosecution of the action by the Corporation Counsel; provided, that the qui tam action was proper pursuant to subsection (c) of this section.

"(2)(A) The District may dismiss the action for good cause shown.

"(B) The District may settle the action with the defendant, notwithstanding the objections of the qui tam plaintiff, if the court determines, after a hearing providing the qui tam plaintiff an opportunity to be heard, that the proposed settlement fairly, adequately, and reasonably protects the interests of the District under all of the circumstances.



"(e)(1) If the District elects not to proceed and the qui tam action was proper pursuant to subsection (c) of this section, the qui tam plaintiff shall have the same right to conduct the action as the Corporation Counsel would have had if he or she had chosen to proceed pursuant to subsection (b) of this section. If the District so requests, the District shall be served with copies of all pleadings filed in the action.

"(2) Upon timely application, the court shall permit the District to intervene in an action with which it had initially declined to proceed. In the event that the District is permitted to intervene, it shall have the primary responsibility for prosecuting the action as provided in subsection (d)(1) of this section.

"(f)(1) If the District proceeds with an action brought by a qui tam plaintiff pursuant to subsection (b) of this section, and the qui tam action was proper pursuant to subsection (c) of this section, the qui tam plaintiff, subject to paragraphs (3) and (4) of this subsection, shall receive at least 10%, but not more than 20%, of the proceeds of the judgment or settlement of the claim, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the litigation, the qui tam plaintiff's attempts to avoid or resist such activity, and all other circumstances surrounding the activity, except, that if the qui tam plaintiff was substantially involved in the fraudulent activity on which the action is based, the court may direct that the plaintiff receive less than 10%. When the Corporation Counsel conducts the action, 25% of the proceeds of the judgment or settlement of the claim shall be paid into the Antifraud Fund established by section 814.

"(2) If the District does not proceed with the action, the court may award the qui tam plaintiff those sums from the proceeds it considers appropriate, which shall be at least 25% but not more than 40%, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, and the scope of, and response to, the employee's attempts to report and gain recovery of such falsely claimed funds through official channels; provided, that if the qui tam plaintiff was substantially involved in the fraudulent activity on which the action is based, the court may award the qui tam plaintiff less than 25%.

"(3) The portion of the recovery not distributed pursuant to paragraphs (1) and (2) of this subsection shall be paid to the District treasury.

"(4) If the District or the qui tam plaintiff prevails in or settles any action pursuant to subsection (c) of this section, the qui tam plaintiff shall receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable costs and attorneys fees. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the District.

"(5) If the District does not proceed with the action and the qui tam plaintiff conducts the action, the court may award to the defendant reasonable attorneys fees and expenses necessarily incurred if the defendant prevails in the action and the court finds that the claim of the qui tam plaintiff was frivolous, vexatious, or brought solely for purposes of harassment.

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"(g) In any action brought pursuant to section 809, the court may stay discovery if the Corporation Counsel or the United States Attorney's Office shows that discovery would interfere with an investigation or a prosecution of a criminal matter arising out of the same facts, regardless of whether the Corporation Counsel or the United States Attorney's Office has pursued the criminal or civil investigation or proceedings with reasonable diligence, and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

New Section  
1-1188.16

"Sec. 816. Employer interference with employee disclosures; liability of employer; remedies of employee.

"(a) No employer, including the District of Columbia, shall make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency concerning, or from acting in furtherance of, a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed pursuant to section 808.

"(b) No employer, including the District of Columbia, shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency relating to, or in furtherance of, a false claims action, including investigation of, initiation of, or testimony or assistance in, an action filed or to be filed pursuant to section 809.

"(c) Any employer, including the District of Columbia, who violates subsection (b) of this section shall be liable for the relief necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate (except in the case of the District), punitive damages. In addition, the defendant shall be required to pay litigation costs and reasonable attorneys fees, necessarily incurred. An employee may bring an action in the Superior Court for the relief provided in this subsection.

"(d) An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in the terms and conditions of employment by his or her employer, including the District of Columbia, because of participation in conduct which directly or indirectly results in submission of a false claim being submitted to the District shall be entitled to the remedies pursuant to subsection (c) of this section, only if the following is true:

"(1) The employee voluntarily disclosed all relevant information to a government or law enforcement agency; and

"(2) The employee had been harassed, threatened with termination or demotion, or otherwise coerced by the employer or its management into engaging in the activity giving rise to the false claim.

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"Sec. 817. Limitation of actions; burden of proof.

New Section  
1-1188.17

"(a) A civil action brought pursuant to section 809 may not be filed more than 6 years after the date on which the violation of section 808 is committed or more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by an official of the Office of Corporation Counsel, but in no event more than 9 years after the date on which the violation is committed, whichever occurs last.

"(b) A civil action brought pursuant to section 809 may not be brought for activity prior to April 12, 1997.

"(c) In any action brought pursuant to section 809, the District or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

"(d) Notwithstanding any other provision of law, a judgment of guilt in a criminal proceeding charging false statements or fraud, upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action brought pursuant to section 809 which involves the same transaction as in the criminal proceeding.

"Sec. 818. Remedies pursuant to other laws; severability of provisions; liberality of article construction.

New Section  
1-1188.18

"The provisions of this act are not exclusive, and the remedies provided for shall be in addition to any other remedies provided for in any other law or available pursuant to common law.

"Sec. 819. Civil investigative demands.

New Section  
1-1188.19

"(a)(1) Whenever the Corporation Counsel has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Corporation Counsel may, in order to determine whether to commence a civil proceeding pursuant to this act, issue in writing and cause to be served upon such person a civil investigative demand requiring that such person do the following:

"(A) Produce documentary material relevant to the false claims law investigation for inspection and copying;

"(B) Answer in writing written interrogatories with respect to any documentary material or information relevant to the false claims law investigation;

"(C) Provide oral testimony concerning any documentary material or information relevant to the false claims law investigation; or

"(D) Furnish any combination of such material, answers, or testimony.

"(2) The Corporation Counsel may delegate to the Principal Deputy Corporation Counsel the authority, in his or her absence, to issue civil investigative demands pursuant to paragraph (1) of this subsection. The Corporation Counsel may not issue a civil investigative

demand in order to conduct, or assist in the conducting of, a criminal investigation.

"(b)(1) Each civil investigative demand issued pursuant to subsection (a)(1) of this section shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to have been violated.

"(2) If such demand is for the production of documentary material, the demand shall do the following:

"(A) Describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

"(B) Prescribe a return date for each such class that will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

"(C) Identify the false claims law investigator to whom such material shall be made available.

"(3) If such demand is for answers to written interrogatories, the demand shall do the following:

"(A) Set forth with specificity the written interrogatories to be answered;

"(B) Prescribe dates at which time answers to written interrogatories shall be submitted; and

"(C) Identify the false claims law investigator to whom such answers shall be submitted.

"(4) If such demand is for the giving of oral testimony, the demand shall do the following:

"(A) Prescribe the date, time, and place at which oral testimony shall commence;

"(B) Identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

"(C) Specify that such attendance and testimony are necessary to conduct the investigation;

"(D) Notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

"(E) Describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

"(5) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand shall be a date that is not less than 7 days after the date on which the demand is received, unless the Corporation Counsel determines that exceptional circumstances are present that warrant the commencement of such testimony within a shorter period of time.

"(6) The Corporation Counsel shall not authorize, pursuant to subsection (a)(1)

of this section, issuance of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Corporation Counsel, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

"(c) A civil investigative demand may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:

"(1) The standards applicable to subpoenas or subpoenas duces tecum issued by a court of the District of Columbia to aid in a grand jury investigation; or

"(2) The standards applicable to discovery requests pursuant to the Superior Court Civil Rules to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

"(d)(1) Any civil investigative demand issued pursuant to subsection (a) of this section may be served by a false claims law investigator or his or her agent, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States; provided, that the Superior Court of the District of Columbia could exercise jurisdiction over the recipient of the demand consistent with the due process clause of the Constitution of the United States.

"(2) Any such demand or any petition filed pursuant to subsection (a) of this section may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Superior Court Civil Rules prescribe for service in a foreign country; provided, that the Superior Court of the District of Columbia could exercise jurisdiction over the recipient of the demand consistent with the due process clause of the Constitution of the United States.

"(e)(1) Service of any civil investigative demand issued pursuant to subsection (a) of this section, or of any petition filed pursuant to subsection (a) of this section, may be made upon a partnership, corporation, association, or other legal entity by the following methods:

"(A) Delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

"(B) Delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

"(C) Depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

"(2) Service of any such demand or petition may be made upon any natural person by the following methods:

"(A) Delivering an executed copy of such demand or petition to the

person; or

"(B) Depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

"(f) A verified return by the individual serving any civil investigative demand or any petition filed pursuant to subsection (a) of this section setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(g)(1) The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the following:

"(A) In the case of a natural person, by the person to whom the demand is directed; or

"(B) In the case of a person other than a natural person, by a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

"(2) The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

"(3) Any person upon whom any civil investigative demand for the production of documentary material has been served shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct pursuant to subsection (j)(1) of this section. Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

"(h)(1) Each interrogatory in a civil investigative demand shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, as follows:

"(A) In the case of a natural person, by the person to whom the demand is directed, or

"(B) In the case of a person other than a natural person, by the person or persons responsible for answering each interrogatory.

"(2) If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to

whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

"(i)(1) The examination of any person, pursuant to a civil investigative demand for oral testimony, shall be conducted before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is taken shall put the witness under oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken by any means authorized by, and in a manner consistent with, the Superior Court Civil Rules, and shall be transcribed.

"(2) The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney or other representative of the person giving the testimony, the attorney for the District government, any person who may be agreed upon by the attorney for the District government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

"(3) The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

"(4) When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by an attorney, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance that the witness desires shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

"(5) The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness. The officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

"(6) Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Corporation Counsel may, for good cause, limit such witness to inspection of the official transcript of the witness's testimony.

"(7) Any person compelled to appear for oral testimony pursuant to a civil investigative demand may be accompanied, represented, and advised by an attorney. The attorney may advise such person, in confidence, with respect to any question asked of such person. Such person or attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record only when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not, directly or through the person's attorney, otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the Superior Court of the District of Columbia pursuant to subsection (d)(1) of this section for an order compelling such person to answer the question.

"(8) Any person appearing for oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and allowances that are paid to witnesses in the Superior Court of the District of Columbia.

"(j)(1) The Corporation Counsel shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received pursuant to this section, and shall designate such additional false claims law investigators as the Corporation Counsel determines from time to time to be necessary to serve as deputies to the custodian.

"(2)(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony pursuant to this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material pursuant to paragraph (4) of this subsection.

"(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or any other officer or employee of the Office of the Corporation Counsel who is authorized for such use by the Corporation Counsel. Such material, answers, and transcripts may be used by any authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony pursuant to this section.

"(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or officer or employee of the Office of the Corporation Counsel authorized pursuant to subparagraph (B) of this paragraph. The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts. Nothing in this subparagraph



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is intended to prevent disclosure to the District of Columbia Council, including any committee of the Council, to the United States Attorney's Office, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any agency other than the Council or the United States Attorney's Office shall be allowed only upon application, made by the Corporation Counsel to the Superior Court of the District of Columbia, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities and after giving the individuals who provided the information an opportunity to be heard on the release of the information.

"(D) While in the possession of the custodian and under such reasonable terms and conditions as the Corporation Counsel shall prescribe, the following shall apply:

"(i) Documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

"(ii) Transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

"(3) Whenever any attorney of the Office of the Corporation Counsel is conducting any official investigation or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received pursuant to this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such investigation or proceeding as such attorney determines to be required. Upon the completion of any such investigation or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered that have not passed into the control of any court or agency through introduction into the record of any case or proceeding.

"(4) If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand, and any case or proceeding before a court arising out of such investigation, or any proceeding before any District government agency involving such material, has been completed, or no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator pursuant to subsection (f)(2) of this section or made for the Office of the Corporation Counsel pursuant to paragraph (2)(B) of this subsection, which has not passed into the control of any court or agency through introduction into the record of such case or proceeding.

"(5)(A) In the event of the death, disability, or separation from service in the Office of the Corporation Counsel of the custodian of any documentary material, answers to

**ENROLLED ORIGINAL**

interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand issued pursuant to this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Corporation Counsel shall promptly do the following:

"(i) Designate another false claims law investigator to serve as custodian of such material, answers, or transcripts; and

"(ii) Transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

"(B) Any person who is designated to be a successor pursuant to this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction that occurred before that designation.

"(k)(1) Whenever any person fails to comply with any civil investigative demand, or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Corporation Counsel may file in the Superior Court of the District of Columbia and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

"(2)(A) Any person who receives a civil investigative demand may file in the Superior Court of the District of Columbia and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. Any petition issued pursuant to this subparagraph must be filed:

"(i) Within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier; or

"(ii) Within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief pursuant to subparagraph (A) of this paragraph, and may be based upon any failure of the demand, or any particular portion thereof, to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

"(3) At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand, such person may file in the Superior Court of the District of Columbia and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the

custodian by this section.

"(4) Whenever any petition is filed in the Superior Court of the District of Columbia, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal. Any disobedience of any final order entered pursuant to this section by any court shall be punished as contempt of court.

"(5) The Superior Court Civil Rules shall apply to any petition issued pursuant to this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

"(l) Any documentary material, answers to written interrogatories, or oral testimony provided pursuant to any civil investigative demand issued pursuant to subsection (a) of this section shall be exempt from disclosure pursuant to the District of Columbia Freedom of Information Act of 1976, effective March 29, 1977 (D.C. Law 1-96; D.C. Code §§ 1-1521 through 1-1529).

"(m) For purposes of this section, the term:

"(1) "Custodian" means the custodian, or any deputy custodian, designated by the Corporation Counsel pursuant to subsection (i)(1) of this section.

"(2) "Documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery.

"(3) "False claims law" means sections 103 and 807 through 815.

"(4) "False claims law investigation" means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

"(5) "False claims law investigator" means any attorney or investigator employed by the Office of the Corporation Counsel who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the District government acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

"(6) "Person" means any natural person, partnership, corporation, association, or other legal entity, including any state or political subdivision of a state;

"Sec. 820. Antifraud fund.

"(a) There is hereby established an Antifraud Fund ("Fund") to be operated as a proprietary fund with assets not to exceed \$2,000,000 at any time. The Fund shall consist of criminal fines, civil penalties, and damages collected in cases brought pursuant to this act, other than funds awarded to a cooperator or for restitution to a particular agency in the amount of the

New Section

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actual loss to that agency. Such funds (with the exception of amounts for an award to a cooperator or restitution to a program) shall be deposited in the Fund upon receipt. Monies in the Fund shall not revert to the General Fund of the District of Columbia at the end of any fiscal year, but shall remain available for the purposes set forth in this section, subject to authorization and appropriation by Congress. Any balance in excess of that allowed the Fund by this section shall be deposited in the General Fund of the District of Columbia.

1-1188.20

"(b) Amounts in the Fund shall be available for use by the Corporation Counsel to carry out the enforcement of this act, including all costs reasonably related to prosecuting cases and conducting investigations pursuant to this act.

"(c) The Fund shall be audited annually by the Inspector General.

"(d) It is intended that disbursements made from the Fund to the Office of Corporation Counsel or other appropriate agency be used to supplement and not supplant the Corporation Counsel's appropriated operating budget.

"Sec. 821. Penalties for false representations.

"Whoever makes or presents to any officer or employee of the District of Columbia government, or to any department or agency thereof, any claim upon or against the District of Columbia, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than 1 year and assessed a fine of not more than \$100,000 for each violation of this act. The Corporation Counsel shall prosecute violations of this section."

New Section  
1-1188.21

Sec. 3. Part B of title VIII of the District of Columbia Procurement Practices Act of 1985, effective April 12, 1997 (D.C. Law 11-259; D.C. Code §§ 1-1188.8 through 1-1188.12), is repealed.

Sections  
1-1188.8 -  
1-1188.12

Sec. 4. Section 705 of the District of Columbia Revenue Act of 1970, approved January 5, 1971 (84 Stat. 1939; D.C. Code § 1-336), is amended as follows:

Section  
1-336

(a) Subsection (d) is amended by striking the phrase "The Mayor" and inserting the phrase "Except as provided in subsection (d-1) of this section, the Mayor" in its place.

(b) A new subsection (d-1) is added to read as follows:

"(d-1) Notwithstanding subsection (d) of this section, the proposed resolution of approval with respect to any lease which is required to be approved by the Council pursuant to subsection (c) of this section, and which is negotiated on behalf of the District by duly licensed commercial real estate brokers pursuant to tenant representative services contracts then in effect between the District and such brokers, shall be transmitted to the Council for a review period of 15 calendar days. If the Council takes no action to approve or disapprove the proposed resolution within the 15-day period, the proposed resolution shall be deemed approved."

(c) Subsection (h) is amended by designating the existing text as paragraph (1) and by

adding a new paragraph (2) to read as follows:

"(2) Notwithstanding paragraph (1) of this subsection, the Mayor may acquire a new leasehold interest in any building that is proposed to be leased for the predominant use of rentable space by, or constructed for lease to and for predominant use of rentable space by, the District government without regard to sections 303 and 304 of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Code §§ 1-1183.3 and 1-1183.4); provided, that such leasehold interest is acquired pursuant to a lease negotiated on behalf of the District by a duly licensed commercial real estate broker pursuant to a tenant representative services contract then in effect between the District and the broker."

Sec. 5. Fiscal impact statement.

The Council projects a positive fiscal impact for Bill 12-363. Section 2 establishes strong penalties to deter and punish fraudulent claims. It also establishes incentives for District employees to document and report false claims. The dollar value of these incentives cannot be estimated precisely, but it should be substantial in a government that purchases more than \$600 million in goods and services annually.

In addition, the false claims and *qui tam* provisions in Section 2 of Bill 12-363 would be essentially self-funding. In any case successfully prosecuted by the Corporation Counsel, the violator would have to reimburse the District for the legal costs of the case. In addition, violators would be liable for treble damages and civil penalties of \$5,000 to \$10,000 for each false claim. After the payment of any award to a *qui tam* plaintiff and the restitution of the actual loss to the agency subject to the false claim, the District would deposit the proceeds into a Antifraud Fund with assets of up to \$2 million available to pay for the enforcement of the law by the Corporation Counsel. Any additional funds recovered would be deposited in the District's General Fund.

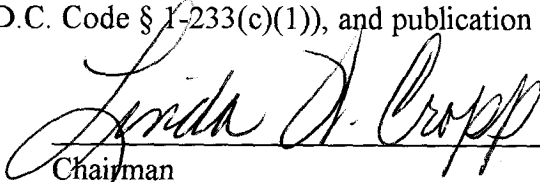
Section 3 of Bill 12-363 makes only technical changes in the procurement code and would not have a fiscal impact.

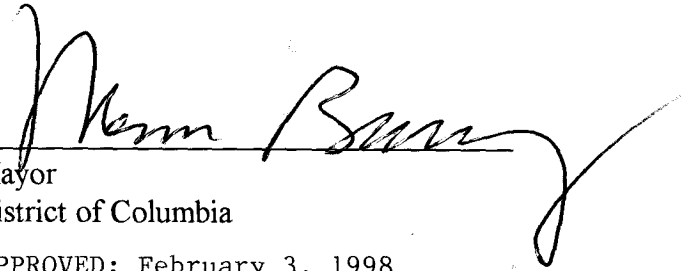
Section 4 of Bill 12-363 would have a strong and positive fiscal impact, because it would allow the District to renegotiate existing leases to lower rental rates and increase tenant allowances; terminate leases for unused or inefficient space; and consolidate underutilized space through space planning and subletting. Based on different assumptions, the Council estimates that the District should be able to reduce its annual rental cost of approximately \$40 million by \$2 million to \$10 million annually. The lower cost saving figure will be achieved if the District reduces its average per square foot rate by 5 percent. The higher estimate will be achieved if the District reduces the average cost per square foot by 5 percent and reduces the amount of space by 21 percent. The report of the District's Real Estate Executive Committee, as well as the studies by Arthur Anderson LLP, the consultant hired by the Financial Responsibility and Management Assistance Authority, indicates that these estimates are reasonable.

**ENROLLED ORIGINAL**

Sec. 6. 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 Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

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

  
\_\_\_\_\_  
Mayor  
District of Columbia  
APPROVED: February 3, 1998



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD TWELVE

RECORD OF OFFICIAL COUNCIL VOTE

B12-363

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

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FIRST READING, 12-4-97

VOICE VOTE  
 RECORDED VOTE ON REQUEST

APPROVED

ABSENT \_\_\_\_\_

ALL PRESENT

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

| Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB |
|---------------|-----|-----|----|----|---------------|-----|-----|----|----|---------------|-----|-----|----|----|
| Chmn. Cropp   |     |     |    |    | Dixon         |     |     |    |    | Schwartz      |     |     |    |    |
| Allen         |     |     |    |    | Evans         |     |     |    |    | Smith, Jr.    |     |     |    |    |
| Ambrose       |     |     |    |    | Jarvis        |     |     |    |    | Thomas, Sr.   |     |     |    |    |
| Brazil        |     |     |    |    | Mason         |     |     |    |    |               |     |     |    |    |
| Chavous       |     |     |    |    | Patterson     |     |     |    |    |               |     |     |    |    |

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

*[Signature]*  
Secretary to the Council

*January 16, 1998*  
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FINAL READING, 1-6-98

VOICE VOTE  
 RECORDED VOTE ON REQUEST

APPROVED

ABSENT \_\_\_\_\_

ALL PRESENT

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

| Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB |
|---------------|-----|-----|----|----|---------------|-----|-----|----|----|---------------|-----|-----|----|----|
| Chmn. Cropp   |     |     |    |    | Chavous       |     |     |    |    | Schwartz      |     |     |    |    |
| Allen         |     |     |    |    | Evans         |     |     |    |    | Smith, Jr.    |     |     |    |    |
| Ambrose       |     |     |    |    | Jarvis        |     |     |    |    | Thomas, Sr.   |     |     |    |    |
| Brazil        |     |     |    |    | Mason         |     |     |    |    |               |     |     |    |    |
| Catania       |     |     |    |    | Patterson     |     |     |    |    |               |     |     |    |    |

X - Indicates Vote

AB - Absent

NV - Present not voting

CERTIFICATION RECORD

*[Signature]*  
Secretary to the Council

*January 16, 1998*  
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. Cropp   |     |     |    |    | Chavous       |     |     |    |    | Schwartz      |     |     |    |    |
| Allen         |     |     |    |    | Evans         |     |     |    |    | Smith, Jr.    |     |     |    |    |
| Ambrose       |     |     |    |    | Jarvis        |     |     |    |    | Thomas, Sr.   |     |     |    |    |
| Brazil        |     |     |    |    | Mason         |     |     |    |    |               |     |     |    |    |
| Catania       |     |     |    |    | Patterson     |     |     |    |    |               |     |     |    |    |

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date