



MURIEL BOWSER  
MAYOR

July 23, 2020

The Honorable Phil Mendelson, Chairman  
Council of the District of Columbia  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW, Suite 506  
Washington, DC 20004

Dear Chairman Mendelson:

Enclosed for consideration and enactment by the Council is the "Power Line Undergrounding Program Certified Joint Venture Majority Interest Amendment Act of 2020." This legislation will amend the Electric Company Infrastructure Improvement Financing Act of 2014 by restricting qualifying certified joint ventures to just those in which a certified business enterprise (CBE) holds a *majority* interest.

Under current law, a CBE partner in a certified joint venture could own either a majority or minority interest; this could result in situations where joint ventures with minimal CBE controlling interest] (*e.g.*, 10 percent CBE and 90 percent non-CBE) apply for, and are awarded, DC PLUG construction contracts. This would directly undermine the spirit of the law as it directly relates to CBE participation aims.

This proposed majority interest amendment addresses this issue by maximizing opportunities for qualified District CBEs to perform work on the DDOT Underground Electric Company Infrastructure Improvement Charge and the Underground Project Charge. Moreover, this amendment aligns with the finding of the Council outlined in D.C. Official Code §34-1311.02(7) which articulates that the executive branch and Pepco should make "every practical effort" to award 100 percent of these DDOT construction contracts to District CBEs.


I urge the Council to take prompt and favorable action on the enclosed legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser".

Muriel Bowser

Enclosures



Chairman Phil Mendelson  
At the request of the Mayor

A BILL

---

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

---

To amend the Electric Company Infrastructure Improvement Financing Act of 2014 to further clarify the requirements related to the utilization of certified joint ventures as part of the District's power line undergrounding program.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Power Line Undergrounding Program Certified Joint Venture Majority Interest Amendment Act of 2020".

Sec. 2. Title I of the Electric Company Infrastructure Improvement Financing Act of 2014, effective May 3, 2014 (D.C. Law 20-102; D.C. Official Code § 34-1311.01 *et seq.*) is amended as follows:

(a) Section 101 (D.C. Official Code § 34-1311.01) is amended by adding a new paragraph (4C) to read as follows:

“(4C) “Majority interest” shall have the same meaning as provided in section 2339a(b)(1) of the Small and Certified Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.39a(b)(1)).

(b) Section 102(7) (D.C. Official Code § 34-1311.02(7)) is amended by striking the phrase “100% of the construction contracts are awarded to certified business enterprises or certified joint ventures” and inserting the phrase “100% of the construction contracts are

awarded to certified business enterprises or certified joint ventures in which a certified business enterprise holds a majority interest” in its place.

(c) Section 103(1) (D.C. Official Code § 34-1311.03(1)) is amended by striking the phrase “Set aside contracts for such services for certified business enterprises and certified joint ventures” and inserting the phrase “Set aside contracts for such services for certified business enterprises and certified joint ventures in which a certified business enterprise holds a majority interest” in its place.

### Sec. 3. Fiscal Impact Statement

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

### Sec. 4. Effective Date

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


Government of the District of Columbia  
Office of the Chief Financial Officer



Jeffrey S. DeWitt  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Jeffrey S. DeWitt  
Chief Financial Officer 

**DATE:** July 15, 2020

**SUBJECT:** Fiscal Impact Statement – Power Line Undergrounding Program  
Certified Joint Venture Majority Interest Amendment Act of 2020

**REFERENCE:** Draft Bill as provided to the Office of Revenue Analysis on July 9, 2020

---

**Conclusion**

Funds are sufficient in the fiscal year 2020 budget and the proposed fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill.

**Background**

The DC Powerline Undergrounding (DC PLUG) program is a public-private partnership between the District and Pepco to relocate underground electricity feeder lines that are currently attached to utility poles. The overall goal of the DC PLUG program is to increase the reliability of service for District residents by reducing outages caused by severe weather. In 2019, the Council encouraged the use of, allowed for procurement set-asides for, and authorized preference points for certified business enterprises and certified joint ventures (collectively CBEs)<sup>1</sup> participating in DC PLUG program contracting opportunities.<sup>2</sup>

The bill clarifies that a certified joint venture should be one in which a certified business enterprise has a majority interest.<sup>3</sup>

---

<sup>1</sup> Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.02 (1D) and (1E)).

<sup>2</sup> Power Line Undergrounding Program Certified Business Enterprise Utilization Act of 2019, enacted September 11, 2019 (D.C. Law 23-20; 66 DCR 12635).

<sup>3</sup> Small and Certified Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.39a(b)(1)).

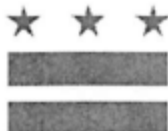
The Honorable Phil Mendelson

FIS: "Power Line Undergrounding Program Certified Joint Venture Majority Interest Amendment Act of 2020," Draft Bill as provided to the Office of Revenue Analysis on July 9, 2020

### **Financial Plan Impact**

Funds are sufficient in the fiscal year 2020 budget and the proposed fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the bill. The District has included approximately \$188 million in the fiscal year 2021 to fiscal year 2026 capital improvements plan to pay for the DC PLUG program. The Department of Small and Local Business Development has approved five certified joint ventures thus far to work on the PLUG program, one of which has a certified business enterprise with majority interest at this time. Clarifying that a certified business enterprise should have a majority interest in any certified joint venture participating in the DC PLUG program does not change the program's budgeted amounts. However, if fewer eligible contractors qualify for procurement set-asides due to the bill's narrower definition of joint venture, the cost or timelines of project components may increase and the budgeted \$188 million could result in fewer miles of power lines relocated underground.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL  
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: Ronan Gulstone  
Executive Director  
Office of Policy and Legislative Affairs

FROM: Brian K. Flowers  
Deputy Attorney General  
Legal Counsel Division

DATE: July 2, 2020

SUBJECT: Legal Sufficiency Review of the Legal Sufficiency Review of the "Power Line  
Undergrounding Program Certified Joint Venture Majority Interest  
Amendment Act of 2020"  
(AE-20-545)

---

**This is to Certify that** this Office has reviewed the above-referenced legislation and that we have found it to be legally sufficient.

If you have any questions in this regard, please do not hesitate to call me at 724-5524.

*Brian K. Flowers*

---

Brian K. Flowers