

Calendar No. 352

112TH CONGRESS }
2d Session }

SENATE

{ REPORT
112-154 }

TO PROMOTE THE DEVELOPMENT OF THE
SOUTHWEST WATERFRONT IN THE DIS-
TRICT OF COLUMBIA, AND FOR OTHER
PURPOSES

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 2297

TO PROMOTE THE DEVELOPMENT OF THE SOUTHWEST WATER-
FRONT IN THE DISTRICT OF COLUMBIA, AND FOR OTHER PUR-
POSES



MARCH 29, 2012.—Ordered to be printed

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Mr. LIEBERMAN, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany H.R. 2297]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 2297) to promote the development of the Southwest waterfront in the District of Columbia, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The Southwest Waterfront is a 27 acre plot of land within the District of Columbia which was transferred from the federal government to the District of Columbia Redevelopment Land Agency in 1960. The legislation which transferred this land delineated the boundaries of the Southwest Waterfront, but those boundaries have since shifted, which means a few parcels of land are not clearly owned by the District in statute. In addition, the legislation restricted D.C.'s ability to use the Southwest Waterfront. The District of Columbia now seeks to develop this property through a new public-private partnership. To facilitate such development, H.R. 2297

clarifies the ownership of those parcels not included in the original legislation and grants D.C. greater flexibility on the disposition of the land.

II. BACKGROUND AND NEED FOR LEGISLATION

In 1956, the National Capital Planning Commission finalized an urban renewal plan for the redevelopment of the Southwest Waterfront in the District of Columbia. In order to execute the plan, in 1960 Congress passed, and President Eisenhower signed into law, a bill to transfer all right, title and interest of the United States with regard to the Southwest Waterfront to the District of Columbia Redevelopment Land Agency. Technically, the land was conveyed from the federal government to the Commissioners of the District of Columbia, the three-person federal board overseeing the District prior to the enactment of the Home Rule Act. The legislation, P.L. 86-736, delineated the boundaries of the transferred land as:

. . . the area bounded by the east line of Fourteenth Street Southwest, the existing southerly (or westerly) building line of Maine Avenue Southwest, the northerly line of Fort Lesley J. McNair at P Street Southwest, and the bulkhead line established pursuant to the Rivers and Harbors Act of 1899 (30 Stat. 1151), as amended, together with any land area extending channelward from said bulkhead line.

The urban renewal plan took nearly ten years to implement. During construction, the streets and bulkhead line which served as the boundary lines of the Southwest Waterfront in P.L. 86-736 changed slightly. For example, by 1966, a straight bulkhead had been built along the Washington Channel, replacing the irregular bulkhead which had been the previous boundary. In the construction of this bulkhead, land was created that did not previously exist, and therefore was not clearly transferred to D.C. in P.L. 86-736. The District has functionally owned the land since its construction. Maine Avenue Southwest, another boundary line, has also shifted. It no longer turns southerly to follow the shoreline, but remains on an east to west course. D.C. has since acquired the land between the previous Maine Avenue Southwest route and the present path, though that is not represented in current statute. The District has also functionally owned this land since its acquisition.

The District government now has new plans to revitalize the Southwest Waterfront. In December 2008, the District entered into a public-private partnership with Hoffman-Struever Waterfront L.L.C. (now Hoffman-Madison Waterfront L.L.C.) to develop the land.¹ D.C. also passed legislation in 2008 to provide \$198 million in public financing for the project.² The planned development would create approximately 3 million square feet of mixed use facilities along the Washington Channel.³ Once complete, the project

¹“Southwest Waterfront Disposition Third Revised Emergency Approval Resolution of 2008” (D.C. Resolution 17-955).

²“Southwest Waterfront Bond Financing Act of 2008” (DC Law 17-252; DC Official Code § 2-1217.131 through § 2-1217.143).

³D.C. Zoning Commission Order No. 11-03; <http://dcoz.dc.gov/orders/11-03.pdf>, p. 33.

is estimated to generate \$32 million in annual taxes for D.C. and bring 1,800 permanent new jobs based on conservative estimates.⁴ The planning behind this project is well underway and construction is estimated to begin in the first quarter of 2013.⁵

To facilitate this planned development, the District seeks to clarify its ownership of the parcels in question. As explained above, due to the changes in the boundary lines of the Southwest Waterfront since the passage of P.L. 86–736 in 1960, a few parcels of land lack clear ownership in statute even though they have always been used by the District and are commonly understood to be part of its Southwest Waterfront holdings.

Therefore, Section 1 of H.R. 2297 would change the legal description of the area consistent with the description of the Southwest Waterfront Project Site as filed with the District of Columbia Recorder of Deeds on October 27, 2009, as Instrument Number 2009116776. The bill would also permit D.C. to relinquish all right, title and interest of the United States of America (including any federal agency or department) in the Southwest Waterfront as described by the Recorder of Deeds in Instrument Number 2009116776. Section 1 of the bill also removes certain provisions of the original transfer legislation that are no longer applicable, and it replaces the outdated “urban renewal plan” with the term “master plan.” The bill also allows D.C. to sell parts of the Southwest Waterfront, which will allow the public-private partnership to sell the relevant air rights related to certain planned condominium developments.

Although the original transfer statute was incorporated as part of the D.C. Code, the city is not free to amend it without Congressional approval due to the restrictions in the original legislation.

III. LEGISLATIVE HISTORY

H.R. 2297 was introduced by D.C. Delegate Eleanor Holmes Norton on June 22, 2011. Versions of this bill had been introduced previously as parts of larger bills in the 111th Congress. Both H.R. 4207, the 2009 District of Columbia Omnibus Authorization Act, and H.R. 5103, the 2010 District of Columbia Omnibus Authorization Act, contained sections with similar intent and language to H.R. 2297. In addition, on June 16, 2010, Delegate Norton introduced a freestanding bill, H.R. 5544, that closely resembles H.R. 2297. It was referred to the House Committee on Oversight and Government Reform’s Subcommittee on Federal Workforce, Post Office and the District of Columbia, but did not advance.

This Congress, H.R. 2297 was also referred to the House Committee on Oversight and Government Reform. The Committee subsequently referred the bill to the Subcommittee on Health Care, District of Columbia, Census and the National Archives. On November 3, 2011, the Subcommittee discharged the bill and the full House Committee on Oversight and Government Reform adopted H.R. 2297 by voice vote with a substitute amendment offered by Delegate Norton. The amendment added Section 3 to the bill and made technical corrections. On December 6, 2011, H.R. 2297 as

⁴ <http://dclims1.dccouncil.us/images/00001/20090807122433.pdf>, p. 5.

⁵ <http://www.bizjournals.com/washington/blog/2011/02/dcs-sw-waterfront-application-filed.html?page=all>.

amended by the Committee passed the House of Representatives under suspension of the rules.

On December 7, 2011, H.R. 2297 was referred to the Senate Homeland Security and Governmental Affairs Committee. The Committee considered the bill on December 14, 2011, and ordered the bill favorably reported to the full Senate by voice vote. The Senators present were Senators Lieberman, Levin, Akaka, Begich, Collins, Coburn, Brown, Johnson and Portman.

IV. SECTION-BY-SECTION ANALYSIS

Section 1: Promoting development of the Southwest Waterfront

Subsection (a) of Section 1 would update the description of the property by striking part of D.C. Code Section 6–321.01 and inserting language to define the Southwest Waterfront as described in Instrument Number 2009116776 as filed with the District of Columbia Recorder of Deeds on October 27, 2009.

Subsection (b) of Section 1 would also amend D.C. Code Section 6–321.01 and transfer the land by one or more quitclaim deed, ensuring that all parcels—including those that did not exist at the time of the original transfer legislation—are clearly transferred to the District of Columbia.

Subsection (c) of Section 1 updates D.C. Code Section 6–321.02 to reference a “master plan” instead of an urban renewal plan for the Southwest Waterfront that has expired.

Subsection (d) of Section 1 would expand permissible disposition and uses of the property and strikes the existing D.C. Code Section 6–321.04, which contains provisions from the expired urban renewal plan.

Subsection (e) of Section 1 would strike D.C. Code Section 6–321.05 which contains provisions from the previous Urban Renewal Plan.

Subsection (f) of Section 1 would update Section 6–321.08 of the D.C. Code, to clarify that the District of Columbia is the successor in interest to the abolished District of Columbia Redevelopment Land Agency.

Section 2: Clarification of permitted activities at Municipal Fish Market

This section amends Section 37–205.01 of the D.C. Code to allow the Mayor to determine the appropriate uses for the Municipal Fish Market.

Section 3: Maine Lobsterman Memorial

This section prohibits the removal, destruction or obstruction of the Maine Lobsterman Memorial, but does allow the memorial to be moved to another location on the Southwest Waterfront if that location meets certain criteria.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirement of paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and has determined that the bill would have no regulatory impact. Moreover, CBO states that the bill contains no intergovernmental or private sector mandates as

defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

VI. ESTIMATED COST OF LEGISLATION

DECEMBER 20, 2011.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2297, an act to promote the development of the Southwest waterfront in the District of Columbia, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 2297—An act to promote the development of the Southwest waterfront in the District of Columbia, and for other purposes

H.R. 2297 would amend the District of Columbia Official Code to transfer all federal right, title, and interest in the Southwest waterfront area to the District of Columbia. The legislation would authorize the District of Columbia to lease or sell the site, expand the District's authority to manage the Maine Avenue Fish Market, and allow the Maine Lobsterman Memorial to be moved to another location.

Information from the National Park Service and the National Capital Planning Commission indicates that the property that would be transferred is not being used by the federal government, and no income is generated from it under current law. Thus, CBO estimates that implementing H.R. 2297 would have no significant effect on the federal budget. Enacting the legislation would not affect revenues or direct spending; therefore, pay-as-you-go procedures do not apply.

H.R. 2297 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

On November 17, 2011, CBO transmitted a cost estimate for H.R. 2297 as ordered reported by the House Committee on Oversight and Government Reform on November 3, 2011. The two versions of the legislation are identical, and the CBO cost estimates are the same.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the following changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

DISTRICT OF COLUMBIA CODE
DIVISION I—GOVERNMENT OF DISTRICT
TITLE 6—HOUSING AND BUILDING
RESTRICTIONS AND REGULATIONS
CHAPTER 3—HOUSING REDEVELOPMENT

**Subchapter III—Transfer to Agency of Certain Property
Near Maine Avenue**

Sec. 6–321.01.

Subject to the provisions of §§ 6–301.20, 6–311.01, and this subchapter, the Council of the District of Columbia is authorized on behalf of the United States to transfer *by one or more quitclaim deeds* to the District of Columbia Redevelopment Land Agency established by § 6–301.03, all right, title, and interest of the United States in and to part or all of certain property in the said District, as follows: [The area bounded by the east line of 14th Street Southwest, the existing southerly (or westerly) building line of Maine Avenue Southwest, the northerly line of Fort Lesley J. McNair at P Street Southwest, and the bulkhead line established pursuant to the Rivers and Harbors Act of 1899 (30 Stat. 1151), as amended, together with any land area extending channelward from said bulkhead line.] *The property located within the bounds of the legal description of which is the Southwest Waterfront Project Site (dated October 8, 2009) under Exhibit A of the document titled “Intent to Clarify the Legal Description in Furtherance of Land Disposition Agreement”, as filed with the District of Columbia Recorder of Deeds on October 27, 2009 as Instrument Number 2009116776.*

Sec. 6–321.02.

The Council of the District of Columbia shall, prior to transferring to the Agency right, title, and interest in and to any of the said property described in § 6–321.01, determine whether such property is necessary to the redevelopment of the southwest section of the District of Columbia in accordance with [an urban renewal plan] *a master plan* approved by it, and, if it so finds, it shall, acting on behalf of the United States, transfer and donate to the Agency all right, title, and interest of the United States in and to so much of said property as it determines is necessary to carry out *such master plan* [such urban renewal plan].

Sec. 6–321.03.

[Subject to the provisions of § 6–321.05,] *The Council of the District of Columbia shall, at the time of transferring to the Agency right, title, and interest in and to any of the property described in § 6–321.01, also transfer to the Agency the Mayor’s jurisdiction as provided by § 10–501.01 over so much of the said property as may be so transferred.*

Sec. 6-321.04.

[(a)] The Agency is hereby authorized, in accordance with [subchapter I of Chapter 1 of this title, to lease to a redevelopment company or other lessee] *the District of Columbia Redevelopment Act of 1945 and section 1, to lease or sell to a redevelopment company or other lessee or purchaser* such real property as may be transferred to the Agency under the authority of this Act. [subchapter but may not otherwise dispose of such property except to the United States or any department or agency thereof, or to the District of Columbia, in accordance with §6-321.05. In the event that real property acquired by the Agency from the United States pursuant to this subchapter is transferred to the District of Columbia or to any department or agency of the United States pursuant to this section, such transfer shall be without reimbursement or transfer of funds.]

[(b)] In connection with the leasing of the real property transferred to the Agency under the authority of this subchapter, together with the leasing of any real property lying between such real property so transferred and the southerly or westerly line of Maine Avenue as the same may be relocated in connection with carrying out an urban renewal plan, the Agency is authorized and directed to provide to the owner or owners of any business concern displaced from the area described in §6-321.01, a priority of opportunity to lease, either individually or as a redevelopment company solely owned by the owner or owners of 1 or more such business concerns, so much of such real property lying channelward of the southerly or westerly line of Maine Avenue as so relocated, at a rental based on the use-value of the real property so leased determined in accordance with the provisions of §6-301.09, and §1460(c)(4) of Title 42, United States Code, as may be required for the construction of commercial facilities at least substantially equal to the facilities from which such business concern was so displaced. The priority of opportunity created by this section is a personal right of the owners of businesses displaced. In the event of the death of any such owner of any such displaced business, the spouse of such owner, or, if there is no spouse, the children of such owner shall be entitled to exercise the priority of such owner in accordance with the provisions of this section, but in no event shall any such priority be otherwise transferable; provided, however, that the spouse or the children, as the case may be, shall have no greater priority than the priority holder would have had if living. For the purposes of exercising such priority, the spouse or children, as the case may be, shall be deemed to be owner of such business concern so displaced. When the real property affected by the provisions of this subsection becomes available for leasing by the Agency, the Agency shall notify, in writing, the owners of the business concerns displaced, as to the availability of such real property for leasing to such owners in accordance with the provisions of this subsection. The Agency shall give such owners so notified a period of 180 days to notify the Agency, in writing, of their intention to proceed in accordance with the general development plan of the Agency for the area lying channelward of Maine Avenue, as so relocated, and to demonstrate to the Agency their ability to carry out so much of such plan as may be embraced within the area which they desire to lease. If at the end of such period of 180 days, such owners have

failed to make a demonstration to that effect which is satisfactory to the Agency, the priority of opportunity provided by this subsection shall no longer continue to be available to such owners, except that if after the end of such 180-day period the Agency shall change the terms under which real property is to be leased, or the redevelopment plan for the area described in § 6-321.01 is changed so as to affect the economic value of the leasehold, the Agency shall in writing notify each such owner of the change or changes so made and give to such owner so notified a period of 60 days within which to advise the Agency in writing of his intention and to demonstrate his ability to proceed as aforesaid.

[(c)(1) Notwithstanding any other provision of law, whenever, pursuant to subsection (b) of this section, the Agency offers leaseholds to persons entitled to a priority of opportunity to lease under the provisions of this section, the annual rent prescribed in such lease shall not exceed an amount which is the greater of:

[(A) An amount equal to 6% of the residual value of the land for the prescribed use to which any owner of a displaced business concern shall put such land under such lease;

[(B) The annual amount which the Agency shall be required to pay in principal and interest on a 40-year loan of an amount equal to the residual value of the land under such lease which value is the residual value of the land which was determined by the Agency, in accordance with this subsection, and on the basis of which such land was initially leased under this section; or

[(C) The sum of: (i) the amount determined under subparagraph (A) or (B) of this paragraph, whichever is greater; and (ii) 50% of the product of the occupancy cost factor for the class and character of the business of such lessee times the amount by which the lessee's actual annual gross sales income exceeds the estimated gross sales income (for the class and character of the displaced business) used by the Agency in determining the residual value of the land leased to such lessee.

[(2) In the case of any land which the Agency leases under this section, the annual rent prescribed by the Agency in the lease of such land shall not, during the 43-year period beginning on the date such land was first leased by the Agency under this section, be less than the amount determined under subparagraph (B) of paragraph (1) of this subsection. In the case of any land which the Agency leases under this section to a displaced business, the residual value of such land:

[(A) May be redetermined by the Agency after the expiration of 25 years from the date such land was first leased by the Agency and at the end of each 10-year period thereafter; or

[(B) Shall be redetermined by the Agency if at the end of the 25-year period from the date such land was first leased by the Agency or at the end of each 10-year period thereafter, the lessee requests the Agency to redetermine such residual value.

[(3) The residual value of such land shall make due allowance for the cost to the owner of the displaced business of all improvements and public charges on such land, and shall not exceed the maximum fair use value economically feasible to permit the reestablishment of a business of the class and character of such displaced business.

[(4) Each business holding a lease under this subchapter shall furnish annually to the Agency (on such date as the Agency may by regulation prescribe) a copy of the sales tax return filed by such business under the District of Columbia Sales Tax Act, which copy was furnished to the business under § 47–2018(a).

[Sec. 6–321.05.

[Notwithstanding §§ 6–321.01 to 6–321.04, if any of the real property transferred to the Agency under the authority of this subchapter is not leased by the Agency in accordance with an urban renewal plan approved by the Council of the District of Columbia or otherwise disposed of, on or before the date the Secretary of Housing and Urban Development makes the final federal capital grant payment to the Agency for the project pursuant to title I of the Housing Act of 1949, as amended, then the right, title, and interest in and to so much of the said real property as is not so leased or otherwise disposed of by such date shall revert to the United States, subject to the exclusive control and jurisdiction of the Mayor of the District of Columbia, and subject to the provisions of §§ 10–111 and 10–112.]

Sec. 6–321.06.

Nothing contained in this subchapter shall be construed as requiring the said Council of the District of Columbia to transfer the right, title, and interest in and to so much of the property described in § 6–321.01 as the Council may determine, in its discretion, is required for municipal purposes or is to continue to be owned by the United States under the jurisdiction of the Mayor, for the benefit of the District of Columbia.

Sec. 6–321.07.

No transfer or donation of any interest in real property under the authority of this subchapter shall constitute a local grant-in-aid in connection with any urban renewal project being undertaken with federal assistance under title I of the Housing Act of 1949, as amended.

Sec. 6–321.08.

As used in this subchapter, *any reference to the “Agency” shall be deemed to be the District of Columbia as the successor interest to the Agency.* [the terms “Agency,” “lessee,” “real property,” “redevelopment,” and “redevelopment company” shall have the respective meanings provided for such terms by § 6–301.02.]

DISTRICT OF COLUMBIA CODE
DIVISION V—LOCAL BUSINESS AFFAIRS
TITLE 37—WEIGHTS, MEASURES, AND
MARKETS
CHAPTER 2—WEIGHTS, MEASURES, AND MARKETS
GENERALLY
Subchapter III—Markets Generally

Section 37-205.01.

The Mayor of the District of Columbia is authorized and directed in the name of the District of Columbia to exclusively control, regulate, and ~~operate as a municipal fish wharf and market~~ *operate as a market and for such other uses as the Mayor determines to be appropriate*, the water frontage on the Potomac River lying south of Water Street, between 11th and 12th Streets, including the buildings and wharves thereon~~], and said wharf shall constitute the sole wharf for the landing of fish and oysters for sale in the District of Columbia];~~ and said Mayor shall have power to make leases, fix and determine rentals, wharfage and dockage fees, and to collect and pay the same into the treasury of the United States to the credit of the General Fund of the District of Columbia; and said Mayor to make and amend, from time to time, all such regulations as it may deem proper for the control, regulation, and ~~operation of said municipal fish wharf and market~~ *operation of said market*.

