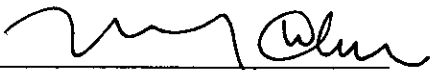
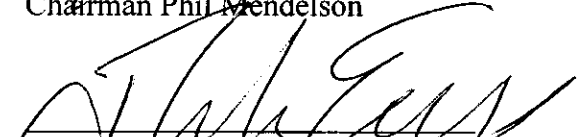
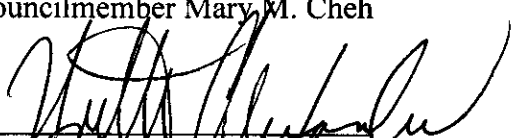



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Chairman Phil Mendelson

  
Councilmember Mary M. Cheh

  
Councilmember Jack Evans

  
Councilmember Yvette Alexander

  
Councilmember Jim Graham

A BILL

\_\_\_\_\_

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

\_\_\_\_\_

Councilmembers Mary M. Cheh, Yvette Alexander, Jack Evans, Jim Graham, and Chairman Phil Mendelson introduced the following bill, which was referred to the Committee on \_\_\_\_\_.

To establish an Underground Conversion Assessment Commission to propose designation of areas in the District as Underground Utility Districts, to prohibit construction and maintenance of overhead facilities in Underground Utility Districts, and to create the Underground Utility District Trust Fund.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Underground Utility Act of 2013".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Assessment Commission" means the Underground Conversion Assessment

Commission established by section 3.

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

1 (3) "DDOE" means the District Department of the Environment.

2 (4) "DDOT" means the District Department of Transportation.

3 (5) "Overhead facilities" means any poles, towers, supports, wires, cables, lines, fiber  
4 optics, conduits, conductors, guys, stubs, platforms, crossarms, braces, transformers, capacitors,  
5 insulators, cutouts, switches, communication circuits, appliances, apparatus, appurtenances and  
6 other equipment and structures located above ground and used in delivering, supplying,  
7 transmitting, distributing, transporting, conducting, or conveying electricity, communications, or  
8 similar emissions or service to the District, in the District, or through the District.

9 (6) "Underground Utility District" means an area of the District within which overhead  
10 facilities are required to be removed and installed underground due to a designation  
11 accomplished pursuant to section 4.

12 (7) "Utility" means all persons or entities supplying, delivering, transmitting,  
13 distributing, transporting, conducting or otherwise conveying electricity, communications or  
14 similar or associated emissions or service to the City, in the City, or through the City by means  
15 of electrical apparatus, fiber optic apparatus, or similar apparatus.

16 (8) "UUDTF" means the Underground Utility District Trust Fund established by section  
17 12.

18 Sec. 3. Establishment of the Underground Conversion Assessment Commission.

19 (a) There is hereby established an Underground Conversion Assessment Commission,  
20 which proposes areas of the city to be designated as Underground Utility Districts pursuant to  
21 section 4.

22 (b) The Assessment Commission shall include five members:

23 (1) Two members selected by the Mayor;

1           (2) One member selected by the Member of the Council who chairs the  
2 Committee with oversight of the District Department of Transportation;

3           (3) One member selected by the Chair of the District of Columbia Public Service  
4 Commission; and

5           (4) One member, who shall chair the Assessment Commission, selected by the  
6 Chairman of the Council.

7           Sec. 4. Underground Utility Districts.

8           (a) The Assessment Commission shall, on a rolling basis, transmit to the Mayor proposed  
9 areas of the District to be designated as Underground Utility Districts based on a positive  
10 assessment of the following criteria:

11           (1) Whether resources can be maximized by coordinating the undergrounding of  
12 overhead facilities with other construction projects;

13           (2) Whether undergrounding of wires in the area in question is likely to  
14 substantially reduce weather-related or vehicular-related electrical outages;

15           (3) Whether the undergrounding of overhead facilities represents the most  
16 efficient use of available resources; and

17           (4) Whether the undergrounding of overhead facilities offers the potential to  
18 improve neighborhood aesthetics.

19           (b) Within 60 days of the Assessment Commission's transmission of a proposed  
20 designation of an Underground Utility District, the Mayor shall approve or disapprove of the  
21 proposed designations.

22           (c) If the Mayor approves the designation, the proposed designation shall be submitted to  
23 the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and  
24 days of Council recess. If the Council does not approve or disapprove the proposed rules, in

1 whole or in part, by resolution within this 45-day review period, the proposed designation  
2 shall be deemed approved. Nothing in this section shall affect any requirements imposed  
3 upon the Mayor by Title 1 of the District of Columbia Administrative Procedure Act,  
4 approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*)”.

5 (d) Before proposing the designation of an area as an Underground Utility District,  
6 the Assessment Commission shall prepare or commission the preparation of a fiscal impact  
7 statement, which sets forth the projected costs of undergrounding overhead facilities in the  
8 affected area. The Commission shall propose to designate areas as Underground Utility  
9 Districts only if sufficient funds are projected to be available in the UUDTF.

10 Sec. 5. Prohibited Acts.

11 (a) No person or utility shall construct, install, or erect overhead facilities in the District  
12 except as provided in sections 6 and 7.

13 (b) No person or utility shall keep, maintain, continue, or replace overhead facilities in an  
14 Underground Utility District after the later of 360 days after the Council approves the  
15 designation of an area as an Underground Utility District or after a date set forth by the Mayor in  
16 a resolution approved by Council; provided, that the overhead facilities minimally necessary to  
17 furnish service to an owner or occupant prior to and during the process of undergrounding the  
18 overhead facilities are exempt from this requirement until the undergrounding is complete or as  
19 provided in sections 6 and 7.

20 Sec. 6. Exemptions.

21 Section 5 shall not apply to:

22 (1) Poles or electroliers used exclusively for street lighting;

1 (2) Overhead wires attached to the exterior surfaces of a building by means of a  
2 bracket or other fixture and extending on one location of the building to another location on the  
3 same building or to an adjacent building without crossing any public street;

4 (3) Antennae, associated equipment and supporting structures, used by a utility  
5 for furnishing communication services;

6 (4) Equipment appurtenant to underground facilities, such as surface-mounted  
7 transformers or meter cabinets;

8 (5) Temporary poles, overhead wires, and associated overhead structures used or  
9 to be used in conjunction with construction projects;

10 (6) Repair, replacement, improvement, modernization of existing overhead  
11 facilities not within an Underground Utility District and only where such repair, replacement,  
12 improvement, modernization, or upgrading does not change the location of such overhead  
13 facilities;

14 (7) Public transit vehicles and associated catenary systems; or

15 (8) Other circumstances established in regulations promulgated by the Mayor and  
16 approved the Council pursuant to section 5(b).

17 Sec. 7. Waivers.

18 (a) The Mayor may grant a waiver, on such terms as the Mayor may deem appropriate, in  
19 case of emergency or unusual circumstances, to any utility, person, or entity to erect overhead  
20 facilities for a period not exceeding 10 consecutive calendar days. Upon appeal pursuant to  
21 subsection (c) of this section, the Mayor may extend the period to encompass the duration of the  
22 emergency or circumstances including such time thereafter as minimally necessary to allow the  
23 removal of such overhead facilities.

1 (b) Upon written application, the Mayor may grant a waiver from section 5 for specific  
2 overhead facilities at specific locations not otherwise exempted, and may impose reasonable  
3 conditions to further the District's undergrounding policy. The waiver, and any extension  
4 thereof, shall not exceed a total period of five years. The Mayor shall establish rules and  
5 regulations for the processing of the above applications for exceptions.

6 (c) In rendering a decision on a waiver application, the Mayor shall state in writing the  
7 ground for denying, granting, or conditionally granting the application.

8 (d) The applicant may appeal the granting, denial, or conditional approval of a waiver  
9 under this section to the Office of Administrative Hearings.

10 Sec. 8. Responsibilities of utilities.

11 (a) Any utility or person supplying, delivering, transmitting, distributing, transporting,  
12 conducting, or otherwise conveying electricity, communications or similar or associated  
13 emissions or services in or through the District by means of wires, cables, lines, fiber optics,  
14 conduits, and associated or similar overhead facilities whether originating in, terminating in, or  
15 transiting through the District shall:

16 (1) Perform any demolition, alteration, or construction necessary, and supply any  
17 materials and equipment needed to comply with sections 4 and 5;

18 (2) With respect to overhead facilities located on private property within an  
19 Underground Utility District for which the District has issued a discretionary development  
20 permit that is conditioned, among other things, upon removal of such overhead facilities, the  
21 utility and the owner of the private property shall be jointly and severally responsible for the  
22 demolition, alteration, or construction (including the supply of materials and equipment)  
23 necessary to comply with sections 4 and 5; and

1 (3) When undergrounding overhead facilities which connect directly to private  
2 property, construct and provide that portion of the service connection between the public right of  
3 way and the termination facility on private property.

4 (b) Underground construction by any utility or entity shall comply with all District and  
5 federal laws and regulations.

6 Sec. 9. Responsibilities of property owners.

7 Private property owners shall:

8 (1) At their own expense, perform any demolition, alteration, or construction  
9 necessary and supply any materials and equipment needed to comply with conditions of any  
10 development permit issued to the property owner by the District for aspects of a project related to  
11 an Underground Utility District; and

12 (2) Conduct all underground construction in accordance with established  
13 construction standards, including those adopted by the District, and in accordance with any  
14 applicable rules and regulations adopted by the Mayor pertaining to underground construction  
15 and installation standards.

16 Sec. 10. Responsibilities of the District

17 The District shall, at its own expense, remove all District-owned equipment from all  
18 poles required to be removed hereunder in ample time to enable the owner or user of such poles  
19 to remove them within the time specified in or required pursuant to District law.

20 Sec. 11. Notification of development projects.

21 (a) Any entity required to submit a two-year plan to DDOT pursuant to 24 DCMR § 3401  
22 shall concurrently submit the plan to the Assessment Commission if:

23 (1) At least 50% of the unit-block length will be excavated; or

24 (2) At least 100 linear feet right-of-way for a unit-block will be excavated.

1 (b) The Assessment Commission shall consider the efficiency of undergrounding  
2 overhead facilities as part of construction projects pursuant to subsection (a) of section 4.

3 Sec. 12. Zoning.

4 (a) The Zoning Commission should adopt regulations that permit bonus density or other  
5 appropriate zoning flexibility for projects in eligible areas with Underground Utility Districts.

6 (b) When considering applications for special exceptions or planned unit developments,  
7 the Zoning Commission and Board of Zoning Adjustment should give favorable weight to  
8 projects burying overhead facilities as part of an Underground Utility District.

9 Sec. 13. Underground Utility District Trust Fund.

10 (a)(1) There is established as a nonlapsing fund the Underground Utility District Trust  
11 Fund, which shall be used solely for the purposes stated in subsection (c) of this section. The  
12 Underground Utility District Trust Fund shall be funded by an assessment on the electric  
13 companies under subsection (b) of this section. All funds collected from these sources shall be  
14 deposited into the UUDTF and shall be disbursed according to subsection (g) of this section.

15 (2) There shall be no fiscal year limitation on the funds in the UUDTF, and any  
16 funds unspent in one fiscal year shall be used toward work authorized under subsection (f) of this  
17 section.

18 (b) There is imposed upon the electric company an assessment calculated on sales of  
19 kilowatt hours in District in the amount of 4%.

20 (c) The assessments shall be paid to the fiscal agent selected pursuant to subsection (g) of  
21 this section before the 21st day of each month, beginning during the first full calendar month to  
22 occur 180 days after the effective date of this act.

23 (d) The assessment shall be applied to the sale of every kilowatt hour in the District,  
24 except to those sold to residents participating in the Residential Essential Service



1 or Residential Aid Discount programs operated by DDOE.

2 (e) Nothing in this title shall be construed to prohibit the electric company from  
3 recovering the assessment imposed under subsection (b) of this section, respectively, in its rates  
4 as a surcharge on customers' bills.

5 (f) The funds in the UUDTF shall be used solely to fund work required by areas  
6 designated as Underground Utility Districts pursuant to section 4.

7 (g) The UUDTF shall be administered by the District of Columbia Public Service  
8 Commission. Any funds necessary to support undergrounding of overhead facilities required by  
9 sections 4 and 5 shall be funded out of the UUDTF, and administered by a UUDTF administrator  
10 named by the Public Service Commission.

11 Sec. 13. Applicability.

12 This act shall apply on October 1, 2013.

13 Sec. 14. Fiscal impact statement.

14 The Council adopts the fiscal impact statement in the committee report as the fiscal  
15 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,  
16 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

17 Sec. 15. Effective date.

18 This act shall take effect following approval by the Mayor (or in the event of veto by the  
19 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as  
20 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
21 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
22 Columbia.