



COUNCIL OF THE DISTRICT OF COLUMBIA
THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20004

CHRISTINA HENDERSON
Councilmember, At-Large
Chairperson, Committee on Health

Committee Member
Hospital and Health Equity
Judiciary and Public Safety
Transportation and the Environment

Statement of Introduction
Public Incentive Transparency and Accountability Act of 2024
January 8, 2024

Today, along with Councilmembers Brianne K. Nadeau, Charles Allen, Kenyan R. McDuffie, Anita Bonds, Zachary Parker, and Robert C. White, Jr., I am introducing the Public Incentive Transparency and Accountability Act of 2024. This legislation would give the District tools to recapture public funds that are awarded to a non-governmental entity that violates the terms of a contract, grant, incentive, subsidy, or tax relief agreement with the District.

Each year, the District pays millions of dollars of taxpayer monies to contractors, grantees, organizations, and individuals with the expectation that the services and goods that these entities agreed to provide to the District will be delivered according to the terms of the agreement. However, the District government does not holistically review recipients' compliance with the terms of an agreement. Currently, when recipients fail to satisfy the terms or goals of an incentive agreement, the District may bar that entity from being awarded additional District contracts in the future, but the squandered public funds cannot be recovered easily. There is not a universally applicable mechanism by which the District can claw back the misspent taxpayer dollars from the recipient.

In addition to rectifying these gaps by establishing recapture criteria for public incentives and requiring the Mayor to collect publicly funded incentives eligible for recapture, this bill would establish a reporting requirement that will include recaptured amounts organized by awarding body, amount recaptured, and recipient information. It also establishes a timeline for the Mayor to submit a report to Council outlining all recaptures in process. This bill would require the District government to closely review repeat recipients' records and institute accountability tools for new potential recipients.

An Office of the Inspector General evaluation noted that inadequate monitoring of contracts and deliverables increases the likelihood that services are inefficiently administered, may require rework, and lead to program delays. Furthermore, a review of the DC Main Streets program also found that a lack of internal controls made the program more exposed to fraud, waste, or abuse.

It is a basic good government practice to hold individuals paid with public funds accountable to the agreements that they made. This protects residents and can lead to better service delivery for the District. North Carolina passed a law that requires the state's Department of Commerce to reclaim mismanaged public incentives that impact services to residents and its program has been quite successful at recapturing public funds. Such programs recognize that public fund recapture

provisions contribute to the overall stability of government services, protect residents, and promote a culture of responsibility within organizations.

When a government awards public funds to non-governmental entities with the intent of stimulating economic development, building infrastructure or community amenities, or providing services to residents, it must monitor the recipient's use of those public funds. This is important not only for building residents' trust in their government, but also for building trust with the private and non-profit partners that the District partners with. I look forward to working with my Council colleagues and the public to refine and advance this legislation during this Council Period.

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Brianne K. Nadeau

Councilmember Brianne K. Nadeau

Charles Allen

Councilmember Charles Allen

Anita Bonds

Councilmember Anita Bonds

Robert C. White, Jr.

Councilmember Robert C. White, Jr.

Christina Henderson

Councilmember Christina Henderson

Kenyan R. McDuffie

Councilmember Kenyan R. McDuffie

Zachary Parker

Councilmember Zachary Parker

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To require awarding bodies to review public incentive requirements and recipient compliance, provide a mechanism for recapture when public incentive recipients do not meet the goals outlined, and establish reporting requirements for all recaptured subsidies.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Public Incentive Transparency and Accountability Act of 2024”.

Sec. 2. Definitions.

For the purposes of this act, the term:

- (1) “Awarding body” means a District agency, board, commission, instrumentality, or program designated to award and authorize a public incentive.

39 (2) “Public incentive” means a payment made by an awarding body to a recipient
40 for purposes of economic development, the provision of community services, financial relief, or
41 payment for services rendered, including:

- 42 (A) Contracts;
- 43 (B) Grants;
- 44 (C) Incentives;
- 45 (D) Payments in lieu of taxes;
- 46 (E) Subsidies;
- 47 (F) Tax abatements;
- 48 (G) Tax credits; and
- 49 (H) Tax exemptions.

50 (3) “Recapture” means the process by which all or part of a public incentive is
51 returned to the awarding body if the recipient does not fulfill its responsibilities under the terms
52 of the public incentive.

53 (4) “Recipient” means a non-governmental entity or person that receives a public
54 incentive.

55 Sec. 3. Determination of public incentive subject to recapture.

56 (a) An awarding body shall maintain all documentation submitted by a recipient,
57 including application materials, documentation of the terms and conditions related to the
58 public incentive, and any reports submitted by the recipient as a condition of receiving a
59 public incentive.

60 (b) Recipients shall maintain copies of the documents outlined in subsection (a) of this
61 section, and documents demonstrating its actions that satisfy the terms and conditions of the

62 public incentive throughout the term of the public incentive and for 5 years following the
63 conclusion of the term of the public incentive.

64 (c) An awarding body shall require recipients to submit documentation demonstrating
65 their satisfaction of the terms and conditions of the public incentive as a condition of receiving
66 the public incentive and shall conduct periodic audits of recipient submissions to ensure that
67 the recipient met or is meeting the objectives of the public incentive.

68 (d) A public incentive is subject to recapture if the awarding body determines that:

69 (1) The recipient has failed to achieve the requirements outlined in the contract,
70 agreement, grant, subgrant, or guidelines of the public incentive, or

71 (2) The recipient fails to achieve requirements while the public incentive is in
72 effect.

73 Sec. 4 Incentive recapture.

74 (a) If an awarding body determines that a public incentive is subject to recapture, it
75 shall provide written notification within 30 days of its determination to the recipient stating
76 the amount of the public incentive that is subject to recapture with the reasons for recapture.
77 An awarding body shall provide the recipient with the specific facts and documents used in
78 making the awarding body's determination.

79 (b)(1) A recipient may appeal a recapture notice by filing a notice of appeal to the
80 Office of Administrative Hearings ("OAH") within 10 days of receiving the notice. The notice
81 of appeal shall include the documentation outlined in subsection (b) of section 3 and any other
82 information required by the awarding body.

83 (2) OAH shall conduct a hearing on the appeal pursuant to the procedures
84 outlined in section 109 of the District of Columbia Administrative Procedure Act, approved

85 October 21, 1968 (82 Stat. 1208; D.C. Official Code § 2-509), and pursuant to the rules of
86 OAH.

87 (c) Any recaptured amount that is deemed final shall be due and payable to the
88 awarding body and shall be collected from the grantee by the Mayor in any manner authorized
89 by law.

90 (d) Amounts identified for recapture shall accrue interest.

91 (e) Awarding bodies shall notify all current public incentive recipients of the
92 provisions of this act within 30 days of the applicability date of this act.

93 Sec. 5. Reporting.

94 (a) The Mayor shall maintain publicly accessible records of all recaptured amounts,
95 organized by awarding body, including the amount recaptured, the type of public incentive
96 recaptured, and recipient information.

97 (b) By September 30 of each year after the year this act is applicable, the Mayor shall
98 submit a report to the Council describing all recaptures in the previous Fiscal Year and all
99 recaptures in progress, which shall be organized by awarding body and include the amount of
100 public incentive sought for recapture, the type of public incentive sought for recapture, recipient
101 information, and the event that triggered the recapture.

102 Sec. 6. Fiscal impact statement.

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

106 Sec. 7. Effective date.

107 This act shall take effect after approval by the Mayor (or in the event of veto by the
108 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
109 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
110 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
111 Columbia Register.