COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON ECONOMIC DEVELOPMENT
COMMITTEE REPORT

1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

To: All Councilmembers

From: Kwame R. Brown, Chair, Committee on Economic Development

Date: June 24, 2010

Subject: Report on B18-0806, the “Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010”.

The Committee on Economic Development reports favorably on the same and recommends its adoption by the Council of the District of Columbia.

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I. BACKGROUND, PURPOSE AND EFFECT

This legislation was introduced on Tuesday, May 18, 2010, by Councilmembers Tommy Wells and Jack Evans. B18-0806, the “Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010” amends Title 47 of the D.C. Official Code to authorize the Center Leg Freeway (Interstate 395) special PILOT. It also authorizes the disposition of the parcel of land and air rights above and adjacent to the Center Leg Freeway (Interstate 395) to the Louis Dreyfus Property Group, Inc. to procure studies and construct improvements on behalf of the District of Columbia.

The Center Leg air rights will be a sole source disposition to the Louis Dreyfus Property Group and CBE partners including The Jarvis Company, Spectrum Management and RJB Consulting Group. The development team will build a 2.1 M square foot mixed use development, with 180,000 square feet of residential, 60,000 square feet of retail, and the
remainder as trophy office space. There will be at least 50 units of affordable housing. Development of this project requires that a very large and expensive platform be built over the Center Leg Freeway upon which the buildings will be constructed.

The purchase price of the Center Leg air rights will be based on the fair market value of the land. The PILOT payments will be based on an amount equivalent to the real property taxes that would otherwise be paid to the District. Once each building is complete, the PILOT will end, and the building will be assessed under the normal District of Columbia real property assessment structure.

At the hearing, the Office of the Chief Financial Officer (OCFO) testified that the current structure of this transaction would have a negative fiscal impact. Since the hearing, the OCFO and the Office of the Deputy Mayor for Planning and Economic Development have worked to develop a structure that does not create a fiscal impact in the financial planning period. The resulting structure has two main changes:

- First, the PILOT payments from the developer are frontloaded in the initial years, and;
- Two, a new credit has been granted to the developer in the out years to compensate for site preparation activities. The credit for affordable housing has remained the same.

The nominal value of both payment structures is the same—approximately $8.5 million, however the present value of the new PILOT structure is $5.9 million, $1.5 million more than the previous structure.

II. LEGISLATIVE HISTORY

May 18, 2010

B18-0806 was introduced by Councilmembers Tommy Wells and Jack Evans at the Committee of the Whole and sequentially referred to the Committee on Finance and Revenue and the Committee on Economic Development.

May 28, 2010

Notice of Intent to Act on B18-0806 is published in the D.C. Register.¹

June 4, 2010

Notice of Public Hearing on B18-0806 is published in the D.C. Register²

June 4, 2010

The Committee on Finance and Revenue and the Committee on Economic Development hold a joint public hearing on B18-0806.

¹ Page 004552 of the May 28, 2010 D.C. Register.

² Page 004815 of the June 4, 2008 2010 D.C. Register.
June 24, 2010

The Committee on Economic Development marks up B18-0806.

III. SUMMARY OF TESTIMONY

The Committee on Economic Development held a joint public hearing with the Committee on Finance and Revenue on B18-0806, the “Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010” on Friday, June 4, 2010. The hearing commenced at 11:40 a.m. and was chaired by Councilmember Evans.

Councilmember Jack Evans, Ward 2 and Chair of the Committee on Finance and Revenue made opening remarks in support of the legislation he co-introduced with Councilmember Tommy Wells.

Councilmember Tommy Wells, Ward 6 also spoke in favor of the legislation he co-introduced with Councilmember Jack Evans.

Councilmember Kwame R. Brown, At Large and Chair of the Committee on Economic Development was not in attendance, but submits the following testimony for the record.

Good morning. I am Kwame R. Brown, At-Large Councilmember and Chair of the Committee on Economic Development.

Today is Friday, June 4, 2010. It is approximately 11:30 AM. We are located in Room 500 of the John A Wilson building, 1350 Pennsylvania Avenue, NW. I am calling to order a public hearing on the following legislation:

Bill 18-0806 the “Center Leg Freeway (Interstate 395) Pilot and Air Rights Disposition Act of 2010”

1) authorizes the disposition and development of the air rights above the Center Leg I-395 Freeway, and

2) imposes an inventive PILOT – otherwise known as a “payment in lieu of taxes” – so that the District can capture deferred taxes from the air rights parcel during the construction of the platform, roads and improvements.

I want to take a moment to explain the complicated structure of this transaction so the people at home can understand what we are discussing here today.

The Center Leg air rights will be a sole source disposition to the Louis Dreyfus Property Group and CBE partners including The Jarvis Company, Spectrum Management and RJB Consulting Group. The development team will build a 2.1 M square foot mixed use development, with 180,000 square feet of residential, 60,000 square feet of retail, and the remainder as trophy office space. There will be at least 50 units of affordable housing. Development of this project requires that a very large and expensive platform be built over the Center Leg Freeway upon which the buildings will be constructed.

The purchase price of the Center Leg air rights will be based on the fair market value of the land. The PILOT payments will be based on an amount equivalent to the real property taxes that would otherwise be paid to the District. However, in this case,
the payments will be deferred for up to 10 years during the construction of the platform, roads and other improvements. Once each building is complete, the PILOT will end, the developer will pay the District the accrued “taxes” and the building will be assessed under the normal District of Columbia real property assessment structure.

The Center Leg Freeway is currently a huge canyon between Judiciary Square and Union Station and connecting the streets in this area will be great for the city. I would like to congratulate the Deputy Mayor and her team for coming up with an innovative structure that accomplishes many goals, which at first glance may seem contradictory.

First, this structure provides an incentive to the development team to invest a tremendous amount of money to put a platform over the center leg freeway by deferring taxes for up to 10 years.

Second, this structure protects the District’s ability to generate revenue from its real estate assets by deferring and not abating the real property taxes by imposing the PILOT on the development. In addition, the developer will be paying a fair market price for the air rights.

Finally, this deal requires the development of 50 units of affordable housing in the middle of an employment center, so that the residents of those units will have easy access to work. The $2.4 million subsidy paid to the developer to construct these units is a reasonable subsidy per affordable unit – approximately $50,000 per unit.

Testimony by public witnesses is summarized below:

Robert Braunohler, Regional Vice President of the Louis Dreyfus Property Group. Mr. Braunohler described the work that has been done on this project since Council first approved this transaction in 2007. The development team has been working with DMPED, DDOT and the Federal Highway Administration to get the approvals required to develop the air rights over the center leg freeway. Mr. Braunohler also summarized the contents of the bill.

N. William Jarvis, Principal of the Jarvis Company. Mr. Jarvis associated himself with the remarks from Mr. Braunohler and make himself available for questions. The Jarvis Company is the development partner with the Louis Dreyfus Property Group.

Testimony by government witness is summarized below:

Matthew Troy, Project Manager, Office of the Deputy Mayor for Planning and Economic Development. Mr. Troy testified on behalf of the administration in favor of the bill, and summarized the contents of the bill. He also stated that if the bill were to pass prior to recess, the developer and the District will be able to get FHWA approval this summer and begin the environmental assessment process shortly afterward.

John Ross, Senior Advisor and Director of Economic Development Finance, Office of the Chief Financial Officer. Dr Ross testified that the proposed PILOT structure would have a fiscal impact of $5.1 million during the financial plan period, but that his office was working with DMPED to create a structure that would eliminate the fiscal impact of the proposed legislation.
IV. FISCAL IMPACT

Attached is the June 21, 2010 Fiscal Impact Statement from the District’s Chief Financial Officer. Funds are sufficient in the FY 2010 and the proposed FY 2011 through FY 2014 budget and financial plan to implement the proposed legislation.

However, the Office of the Chief Financial Officer has concerns about the precedent this PILOT structure may have for future development projects.

First, the District is providing a significant subsidy to this project, but in order for this subsidy to have no fiscal impact, the legislation is granting this subsidy through reduced PILOT made subsequent to the financial plan period.

Second, the PILOT includes a requirement that the Louis Dreyfus Property Group, during the financial plan period, make a PILOT equal to the lesser of what would otherwise be owed in taxes or what the OCFO today projects in the Fiscal Impact Statement would be owed in taxes.

V. SECTION-BY-SECTION ANALYSIS

Section 1 Provides the long and short titles of the Bill.

Section 2 This section describes the PILOT and provides applicable definitions for the Bill. It provides the following:

Section 2(a) amends Title 47, Section 1002 of the D.C. Official Code by adding a new paragraph that establishes the Center Leg Freeway (Interstate 395) PILOT Area for development for a specific period.

Section 2(b) amends Title 47 of the D.C. Official Code by adding a new Section 4618. It provides definitions for the Center Leg Freeway (Interstate 395) PILOT Area.

Section 2(b)(1)(i) provides that owners of each tax lot within the PILOT area and for the PILOT period shall pay a PILOT in the amount equivalent to the real property taxes otherwise levied and at the same time and manner in which the real property taxes would be due.

Section 2(b)(1)(ii) states that the PILOT will be allocated among lots for each fiscal year according to the relative assessed value of each lot. Existing real property tax exemptions will still be recognized.

Section 2(b)(1)(iii) describes the accrual and due date of PILOT payments.
Section 2(b)(1)(iv) states that tax lots will no longer be included in the PILOT area once a Certificate of Completion of Core and Shell of Building has been issued.

Section 2(b)(2) provides the value of the real property within the PILOT area for purposes of calculating the PILOT as follows:

Section 2(b)(2)(i) provides the calculation of the PILOT payment for FY 2011 through FY 2014.

Section 2(b)(2)(ii) states that the value of the real property shall be the purchase price paid by the Owner to the District at the closing on the transfer of the PILOT area.

Section 2(b)(2)(iii) provides that the Mayor shall certify to the Council the adjusted purchase price for the real property from January 1st of the PILOT period until the January 1st following substantial completion of the entire Deck.

Section 2(b)(2)(iv) provides that on each one year anniversary after the final adjustment of the purchase price for the transfer of the PILOT area, the value of such real property shall increase by the average percentage increase of the assessed value of land in the District in the immediately preceding fiscal year.

Section 2(c) states that the PILOT is subject to the same penalties and interest provision as that of unpaid real property taxes.

Section 2(d) provides that as of October 1, 2014, PILOT payments certified by the Mayor and deferred shall be reduced by $2,400,000 in consideration for the Owner agreeing to provide no less than 50 affordable housing units and up to $3,000,000 for Owner’s conducting certain site preparation activities, including demolition of existing structures on the Property and within F Street, N.W.

Section 2(e) provides lien provisions for unpaid PILOT payments.

Section 2(f) states that owners within the PILOT area have the right to challenge any assessment and the PILOT shall reflect the result of such challenge.

Section 2(g) states that nothing in this section shall affect the calculation or payment of real property taxes on any buildings constructed on the Deck.
Section 3

Disposition Authority. This section amends D.C. Official Code § 10-801 by adding two new subsections.

New section (n-1) authorizes the Mayor to dispose of parcels of land and airspace for the PILOT area upon the following conditions:

- Purchaser is responsible for the construction of the Deck and reconstruction of streets and ramps in accordance with the planned unit development.

- Purchaser shall construct and develop at its sole expense no less than 50 affordable residential units on the property to be let to households that meet the established criteria.

- Property’s purchase price shall equal the fair market value of the property but not less than $8.4 million plus statutory interest owed to the Washington Development Group (WDG), which shall be paid to WDG at the property’s closing.

- Provides the applicable accounts in the District to which the proceeds shall be distributed.

- Purchaser shall provide District assurances that the Deck will be constructed in a timely manner and that the Mayor shall reserve a right of reverter if construction is not completed in a commercially reasonable timeframe.

- Mayor reserves rights to operate certain streets within the area for vehicular and pedestrian traffic.

- Purchaser shall be responsible for costs of assessments, analyses, and studies as may be required for the disposition, development and construction of the property.

- Disposition and resolution provisions regarding Case No. 04-CV-1425 or Case No. 04-CV-1464.

- Purchaser shall enter and comply with the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 and Sec. 4 of the First Source Employment Agreement Act of 1984.

- The purchaser shall enter contract with CBEs for at least 35% of the contract dollar volume of the project, at least 20% equity and development participation of LSDB
companies, and establish a “Quick Pay Program” for CBES including:

- Holding meetings with CBE contractors regarding disputed items.
- CBE contractor will be paid in full on undisputed amount of invoice within 30 days.
- Late fee provisions for Purchaser’s delay in payment to CBES.
- Changes to the CBE requirements may be made if Mayor agrees.

New section (n-2) authorizes the Mayor to convey improvements owned by District and the Jewish Historical Society Synagogue to the Purchaser if the Mayor conveys to the Purchase the real property known for real property taxation and assessment purposes for the Lot 0058 in Square 0564.

Section 4 Exempts reviews, studies, impact statements, development, and construction of outlined streets and ramps from the Districts’ Procurement Practices Act of 1985, as amended, and Council approves of the sole source award of one or more contracts with Louis Dreyfus Property Group, Inc or its affiliate or assignee.

Section 5 Repeals DC Code §2-1225.21(b)(1)(C-i) and (d-1), and also deletes “except, the monies” from the last sentence of D.C. Official Code § 2-1225.21(c).

Section 6 Adopts the Fiscal Impact Statement in the Committee Report.

Section 7 Provides the Bill shall take effect following the approval by the Mayor (or action by the Council in the event of a veto by the Mayor), a 30-day period of Congressional review, and publication in the District of Columbia Register.

VII. IMPACT ON EXISTING LAW

See Section by Section Analysis.

VIII. COMMITTEE ACTION

The Committee on Economic Development convened at 1:15 p.m. on June 24, 2010 to consider and vote on B18-0806. Chairperson Brown recognized the presence of a quorum, consisting of himself and Councilmembers Yvette Alexander and Jack Evans.
Chairperson Brown made brief opening remarks regarding the bill.

Chairperson Brown then moved B18-0806, with leave for the Committee staff to make technical and conforming amendments.

The members voted as follows:

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Accordingly, the committee print and accompanying report were approved with a majority of Members present voting in the affirmative at three votes in support, zero votes against, and two Members absent.

The committee meeting adjourned at 1:25 p.m.

IX. ATTACHMENTS

A. B18-0806 as introduced
B. Fiscal Impact Statement
C. Committee Print of B18-0806
D. Notice of Intent to Act published in D.C. Register on May 28, 2010
E. Notice and Agenda of Public Roundtable held on June 4, 2010
F. Testimony of Witnesses
G. Overview: I-395 Agreement for Purchase of Air Rights and Land
A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmembers Tommy Wells and Jack Evans introduced the following bill which was referred to the Committee on ____________________.

To amend Title 47 of the D.C. Official Code, D.C. Official Code § 10-801 and D.C. Official Code §2-305.05, authorize the Center Leg Freeway (Interstate 395) special PILOT, authorize the disposition of parcel of land and air rights above and adjacent to the Center Leg Freeway (Interstate 395) to Louis Dreyfus Property Group, Inc. and allow Louis Dreyfus Property Group, Inc. to procure studies and construct improvements on behalf of the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010”.

[PILOT]

Sec. 2. Definitions.

Title 47 of the D.C. Official Code is amended as follows:

(a) Section 47-1002 is amended by adding new paragraph (30) as follows;
(30) Land and improvements that are located in the Center Leg Freeway (Interstate 395) PILOT Area established pursuant to Section 47-4618 and not otherwise exempt pursuant to Section 47-1002, for the PILOT period specified in D.C. Code § 47-4618(a)(6), but excluding any improvements constructed upon the deck described in D.C. Code § 47-4618(a)(2) and any lots that are removed from the Center Leg Freeway (Interstate 395) PILOT Area pursuant to D.C. Code § 47-4618(b)(1)(iv). The exemption provided by this paragraph shall terminate at the end of the PILOT Period defined in § 47-4618(a)(6).

(b) Chapter 10 of Title 47 of the D.C. Official Code is amended by adding new Section 4618 to read as follows:

"Section 47-4618 Payments in lieu of taxes, Center Leg Freeway (Interstate 395) PILOT Area

(a) For purposes of this section, the term:

(1) "Center Leg Freeway (Interstate 395) PILOT Area" means the real property conveyed to the Owner under D.C. Code § 10-801(n-1).

(2) "Deck" means the platform to be constructed by Owner above the Center Leg Freeway (Interstate 395), upon which will be constructed improvements, including but not limited to commercial and residential buildings.

(3) "District" means the District of Columbia.

(4) "Owner" means Louis Dreyfus Property Group, LLC, and/or one of its affiliates or assigns approved by the Mayor and who may, from time to time, own all or a part of the Center Leg Freeway (Interstate 395) PILOT Area.

(5) "PILOT" means the semi-annual payments made in lieu of real property taxes pursuant to this section.
(6) "PILOT Period" means the period commencing on the date that the District conveys to
Owner fee simple title to the Center Leg Freeway (Interstate 395) PILOT Area and ending on the one
year anniversary of the tenth value adjustment required under subsection (b)(2)(iii) below.
(b)(1)(i) During the PILOT Period, the owner of each tax lot within the Center Leg Freeway
(Interstate 395) PILOT Area shall pay a PILOT with respect to such lot and any improvements thereon
in an amount equivalent to the real property taxes that would be otherwise levied on Class 1 Properties
or Class 2 Properties (as applicable) pursuant to DC Code § 47-812, based upon the value determined
pursuant to subsection (b)(2) below. Except as otherwise provided in this section, the PILOT shall be
paid at the same time and in the same manner as real property taxes under Chapter 8 of Title 47.
(ii) If the Center Leg Freeway (Interstate 395) PILOT Area is comprised of more than
one tax lot, the PILOT shall be allocated among such lots for each fiscal year according to the relative
assessed value of each such lot as of the January 1st immediately preceding the fiscal year with respect
to which payment of the PILOT accrues (including for purposes of this determination any lot that is no
longer included in the Center Leg Freeway (Interstate 392) PILOT Area pursuant to subsection
(b)(1)(iv) below). If any tax lot included in the Center Leg Freeway (Interstate 395) PILOT Area is
exempt from real property taxes pursuant to any provision of this Chapter, other than this Section 47-
1002(30), such lot shall be exempt from payment of the portion of the PILOT that is allocated to it
pursuant to this subsection (b)(1)(ii).
(iii) Notwithstanding any other provision of this subsection (b)(1), the PILOT payments
shall not be due or payable currently but shall accrue and payment thereof shall be deferred until the
date on which a building permit is issued for the first building to be constructed upon the Deck, other
than buildings for the use of the Archdiocese of Washington and/or the Jewish Historical Society of
Greater Washington, Inc. Within thirty (30) days after the date of issuance of such building permit, all
PILOT payments that accrued but were not paid prior to the date of such issuance shall be due and payable in full.

(iv) Upon issuance of a Certificate of Completion of Core and Shell of Building with respect to any building that is built upon the Deck, the tax lot upon which such building is situated shall thereupon no longer be included in the Center Leg Freeway (Interstate 395) PILOT Area.

(2) The value of the real property within the Center Leg Freeway (Interstate 395) PILOT Area (excluding the value of improvements constructed upon the Deck) for purposes of calculating the PILOT pursuant to the foregoing subsection (b)(1) shall be as follows:

(i) Upon the commencement of the PILOT Period, the value of the real property shall be the purchase price paid by Owner to the District at closing on the transfer of the Center Leg Freeway (Interstate 395) PILOT Area pursuant to 10-801(n-1)(3).

(ii) As of each January 1st during the PILOT Period until the January 1st immediately following substantial completion of the entire Deck, the Mayor shall certify to the Council and the Office of Tax and Revenue the adjusted purchase price for such real property as determined in accordance with the procedures contained in the documents governing the transfer of the real property to the Owner. The last such certification shall further certify that substantial completion of the entire Deck has occurred and that the adjusted purchase price set forth therein is final for purposes of this subsection (b)(2). The value of such real property shall be reset annually during the PILOT Period at the adjusted purchase price.

(iii) On each one (1) year anniversary after the final adjustment of the purchase price for the transfer of the Center Leg Freeway (Interstate 395) PILOT Area by the District to Owner under 10-801(n-1), the value of such real property shall increase by the average percentage increase in the assessed value of land in the District in the immediately preceding fiscal year.
(c) The PILOT shall be subject to the same penalty and interest provisions as unpaid real
property taxes under Chapter 8 of Title 47.

(d) The first $2,401,627 of PILOT payments due and payable shall not be paid to the District
but shall be credited to Owner's account as and when due and payable. Thereafter, all PILOT
payments shall be made to the District.

(e) A lien for unpaid PILOT payments, including penalties and interest, shall attach to each tax
lot in the Center Leg Freeway (Interstate 395) PILOT Area in the same manner and with the same
priority as a lien for delinquent real property tax under Chapter 13A of Title 47. If the Center Leg
Freeway (Interstate 395) PILOT Area is comprised of more than one tax lot, the lien on each such lot
shall secure only the portion of the PILOT that is allocable to such lot (and any penalty and interest
relating to such portion of the PILOT). Unpaid PILOT payments may be collected in accordance with
Chapter 13A of said Title 47.

(f) The owner of a tax lot within the Center Leg Freeway (Interstate 395) PILOT Area shall
have the right to challenge any assessment or reassessment of such lot in accordance with the
provisions of Chapter 8 of Title 47 and the applicable PILOT shall reflect the result of such challenge.

(g) Nothing set forth in this section shall affect the calculation or payment of real property taxes
with respect to any buildings constructed upon the Deck.

[Disposition Authority]

Sec. 3. D.C. Official Code § 10-801 is amended by adding new subsections (n-1) and (n-2) to
read as follows:
Notwithstanding the requirements of this Section, the Council authorizes the Mayor to
dispose of the parcels of land and airspace currently owned by the District, including without limitation
the lot known for real property taxation and assessment purposes as Lot 0058 in Square 0564 (the
"Property") within the boundaries of south side of Massachusetts Avenue, N.W., west side of 2nd Street,
N.W., north side of E Street, N.W., and east side of 3rd Street, N.W. in Washington, D.C. determined by
the District Department of Transportation (DDOT), with Federal Highway Administration (FHWA)
concurrence, to be excess of transportation needs and authorized to be disposed of under Title 23 of the
Federal Code of Regulations to Louis Dreyfus Property Group, LLC, and/or one of its affiliates or
assigns approved by the Mayor (the "Purchaser"). The disposition of the foregoing Property shall be
upon the following terms and conditions:

(1) The Purchaser shall be responsible for construction of the Deck and reconstruction of F
Street, N.W. and G Street, N.W. between 3rd Street, N.W., and 2nd Streets and any ramps to Interstate
395 (I-395) authorized to be relocated, in accordance with the planned unit development (PUD)
approved by the Zoning Commission of the District of Columbia and DDOT, with FHWA concurrence;

(2) The Purchaser shall construct and develop, at its sole cost and expense, no less than 50
affordable residential units on the Property that shall be sold or rented to households earning 80% of
the area median income (as defined in the DC Official Code § 42-2801(1) (AMI)) or less, with the unit
mix and specific AMI levels set forth in the PUD;

(3) The purchase price for the Property shall equal the fair market value of the Property;
provided, however, in no event shall the purchase price be less than $8.4 million plus statutory interest
owed to the The Washington Development Group, Inc. (WDG), which shall be paid to WDG at closing
on the Property if such payment to WDG is authorized by FHWA;
(4) Except the proceeds that may be disbursed to WDG in accordance with Section (n-1)(3), the proceeds of the sale of the Property shall be deposited in the following accounts and in amounts determined by the Mayor and approved by FHWA: (i) account designated by District Department of Transportation for receipt of funds under Title 23 and (ii) the revolving fund created under D.C. Code § 1-204.50 for the costs of relocating the Office of the Chief Technology Officer's shared computer center;

(5) The Purchaser shall provide the District assurances that the deck over I-395 will be constructed in a timely manner, including adequate guaranties, and the Mayor shall reserve a right of reverter in the deed of conveyance in the event that the Purchaser does not complete construction within time frames determined by the Mayor to be commercially reasonable;

(6) The Mayor shall reserve rights necessary to operate F Street, N.W. and G Street, N.W. between 2nd and 3rd Street, N.W. for vehicular and/or pedestrian use (as determined under the PUD) and any rights necessary for the continued operation of I395 and its ramps, as determined necessary by the DDOT, with FHWA concurrence;

(7) Purchaser shall be responsible for costs associated with the environmental reviews, assessments, impact statements, transit and traffic studies, security and engineering analyses, and the technical feasibility studies as may be required under District of Columbia and federal laws and regulations to obtain FHWA approval of the disposition, development and construction on the Property;

(8) Unless the Court of Appeals for the District of Columbia issues an opinion in Case No 04-CV-1425 or Case No. 04-CV-1464 that does not require the District of Columbia to pay the WDG (or its successors(s) in interest) more than the judgment issued by Superior Court of the District of Columbia (inclusive of statutory interest accrued), the Purchaser shall, prior to conveyance, obtain
WDG's consent to the dismissal of the litigation prior to the Mayor's conveyance of the Property to the Purchaser;

(9) The Purchaser shall enter into and comply with agreements required under the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 (D.C. Official Code 2-218.01 et seq.) and section 4 of the First Source Employment Agreement Act of 1984 (D.C. Official Code § 219.03 et seq.); and

(10) The agreement enter into under D.C. Code § 2-218.01 et seq. shall require (i) the Purchaser to contract with Certified Business Enterprises (as defined in DC Official Code § 2-218.02(1B) (CBE Contractors) for at least 35% of the contract dollar volume of the project; (ii) at least 20% equity and development participation of local, small, and disadvantaged business enterprises, including The Jarvis Company, LLC, Spectrum Management and RJB Consulting Group, Inc.; and (iii) the Purchaser to establish a “Quick Pay Program” for the CBE Contractors requiring the following:

A. The Purchaser or developer shall hold a meeting with the CBE Contractor within 10 calendar days after receiving an invoice from the CBE Contractor to discuss any disputed items and to agree on a final invoice;

B. Within 30 days after the meeting, the CBE Contractor shall be paid the full amount of the undisputed portion of the invoice; and

C. If the Purchaser or developer does not pay the undisputed portion of the invoice within the 30-day period, the unpaid, undisputed portion shall be subject to a late fee of 1% interest per month, calculated on a daily basis, for every day over 30 days that the CBE Contractor is not paid the unpaid, undisputed amount.

D. Changes to the requirements set forth in this paragraph (10) may be made if agreed upon by the Mayor.
In addition to the Property listed above, the Mayor is authorized to convey the
improvements owned by the District and commonly known as the Jewish Historical Society
Synagogue, currently located at 701 Third Street, N.W., Washington, D.C to the Purchaser if the Mayor
conveys to the Purchaser the real property known for real property taxation and assessment purposes as
Lot 0058 in Square 0564.

[F& G Street Construction -- FHWA Studies, Exemption from the PPA]

Sec. 4. Notwithstanding the requirements of D.C. Official Code §2-305.05, the District’s (i)
environmental reviews, assessments, impact statements, transit and traffic studies, security and engineering
analyses, and the technical feasibility studies and other actions required by applicable federal and District
law or the Mayor for the District’s potential disposition, development and construction on the parcels of
land and airspace disposed of by the Mayor under D.C. Official Code § 10-801(n-1) (2010); and (ii)
development and construction of F Street, N.W. and G Street, N.W. between 2nd Street, N.W. and 3rd
Street, N.W., and any ramps to Interstate 395 are hereby exempt from the District of Columbia
Procurement Practices Act of 1985, as amended, effective February 21, 1986 (D.C. Law 6-85; D.C.
Official Code §2-302.02(a)), and in exchange for the benefit conferred through the redevelopment of land
and airspace above I-395, creation of a new mixed use development within a currently under-utilized
portion of the Old City of Washington, and the construction and reconnection of F and G Streets, N.W. in
furtherance of the original L’Enfant plan, the Council approves of the sole source, in exchange for the
benefit conferred through the redevelopment of land and airspace above I-395, creation of a new mixed use
development within a currently under-utilized portion of the Old City of Washington, and the construction
and reconnection of F and G Streets, N.W. in furtherance of the original L’Enfant plan, award of one or
more contracts, with Louis Dreyfus Property Group, Inc., or affiliate or assignee of such company as
approved by the Mayor is authorized.

Sec. 5. D.C. Official Code § 2-1225.21
(1) DC Code § 2-1225.21 (b)(1)(C-i) and (d-1) are repealed.
(2) The parenthetical beginning with “except, the monies” in the last sentence of D.C. Official
Code § 2-1225.21(c) is deleted.

Sec. 6. Fiscal impact statement.
The Council adopts the fiscal impact statement in the committee report as the fiscal impact
statement required by § 602(c)(3) of the District of Columbia Home Rule Act, approved December 24,
1973 (87 Stat. 813; D.C. Official Code § 1-206(c)(3)).

Sec. 7. 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), a 30-day period of Congressional review as provided in
§ 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

MEMORANDUM

TO: The Honorable Vincent C. Gray
    Chair, Council of the District of Columbia

FROM: Natwar M. Gandhi
    Chief Financial Officer

DATE: June 21, 2010


REFERENCE: Bill 18-806

Conclusion

Funds are sufficient in the FY 2010 budget and the proposed FY 2011 through FY 2014 financial plan to implement the proposed legislation. However, as described below, the Office of the Chief Financial Officer has concerns about the precedent this PILOT structure may set for future development projects.

Background

Long-standing litigation regarding the District property and air rights adjacent to and above the I-395 depressed artery between Massachusetts Avenue and E Street, NW, the I-395 Air Rights, has delayed the sale and development of the site. In 2004, a court ruled that the District must pay Washington Development Group (WDG) $8.4 million (plus interest) in reference to a previous disposition agreement. Both WDG and the District have appealed that decision.

The proposed legislation would give authority to the Mayor to move forward on the development of the site by authorizing a disposition to Louis Dreyfus Property Group (Dreyfus), who will be responsible for settling the litigation as a condition of disposition. Without a resolution of the litigation, it is unclear how long the current appeals process would take, what the cost of the final outcome of the litigation would be, or when the property would become available for development.

The proposed legislation approves the final disposition of District property and air rights adjacent to and above the I-395 depressed artery between Massachusetts Avenue and E Street, NW, including the disposition of Square 564, Lot 58 which houses an Office of the Chief
Technology Officer (OCTO) Shared Computer Center, and the property known as the Jewish Historical Society Synagogue located at 701 3rd Street, NW. Dreyfus would construct a deck over I-395, upon which a mixed-use development could be built.

The proposed legislation also approves the terms of the disposition, including the method for calculating the sales price payments from Dreyfus, which are based on a negotiated Development and Disposition Agreement, and the responsibility of Dreyfus to meet certain requirements including:

- complying with Federal Highway Administration (FHWA) requirements;
- paying for all costs associated with FHWA or District required environmental reviews, impact statements, traffic studies, security and engineering analyses;
- complying with the Small and Local Disadvantaged Business Enterprise Development and Assistance Act and First Source Agreements;
- entering into contracts with certain Certified Business Enterprises including: The Jarvis Company, LLC, Spectrum Management, and RJB Consulting Group;
- completing the deck over I-395 in a timely manner;
- developing 50 units of affordable housing; and
- obtaining the consent of WDG to dismiss the litigation currently associated with the I-395 Air Rights.

In addition, the proposed legislation approves a tax exemption and payment-in-lieu-of-taxes (PILOT) for Dreyfus. The PILOT period would begin as early as FY 2012 when the District transfers the air rights to Dreyfus, and would end the earlier of 10 years after the deck over I-395 is completed, or (on a parcel by parcel basis) upon issuance of a Certificate of Completion of Core and Shell of any building on the newly-created deck.

Finally, the legislation exempts all agreements resulting from this transaction, including those related to the disposition, contracting and construction, from the District of Columbia Procurement Practices Act.

**Disposition Price**

The draft Development and Disposition Agreement describes the process for determining the total sales price payments to the District as well as the timing of those payments. The payments are intended to create a fair market value, based on actual costs of construction of the deck, shared savings, and financial calculations and valuations that are made during the construction period. According to the draft Development and Disposition Agreement, the purchase price will be determined at a later date based on an appraisal adjustment model and actual costs. The price would never be lower than the District's current liability to WDG.

Because the purchase price is not yet determined, the OCFO cannot complete an analysis of whether actual payments to the District from Dreyfus will be greater or less than the value of the assets of which the District is disposing. However, because District assets are not part of the
District's operating budget, if the transaction results in a disposition price lower than the value of the property, there is no impact on the budget and financial plan.

The sale proceeds resulting from the disposition, after payments associated with settling the lawsuit with WDG, will be allocated between (i) an account designated by the District Department of Transportation (DDOT) for DDOT capital infrastructure expenses, and (ii) a reimbursement to OCTO for the costs of relocating the Shared Computer Center on the site. The OCFO previously identified the OCTO relocation as a cost of this transaction; however, the relocation has been funded within OCTO's budget. Through the transaction outlined in the proposed legislation, OCTO expects to be reimbursed for some or all of their relocation costs.

This disposition is not subject to the requirements of the District Land Disposition Amendment Act of 2009.

PILOT Payments

The legislation describes the PILOT as an amount equivalent to the real property taxes that would be otherwise levied on Class 1 Properties or Class 2 Properties (as applicable), based upon values described in the legislation and determined in accordance with the procedures contained in the documents governing the transfer of the real property, rather than on values assessed by the Office of Tax and Revenue.

The value of the I-395 Air Rights at the time of disposition is estimated to be approximately $60 million\(^1\). The legislation states that the disposition cannot occur prior to October 1, 2011 (FY 2012). Any PILOT made during FY 2012, FY 2013 and FY 2014, would be equal to the lesser of property taxes that would be owed based upon the assessed value of the site or property taxes that are projected to be owed based on OCFO projections in this fiscal impact statement.

Based on the project schedule, air rights appraisal, and estimated real property growth rates, the OCFO projects the following PILOT would be owed during the financial plan period.

<table>
<thead>
<tr>
<th>Estimated Real Property Assessments and Real Property Tax for the I-395 Project</th>
<th>FY 2011</th>
<th>FY 2012</th>
<th>FY 2013</th>
<th>FY 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Projected Assessed Value</td>
<td>$ 59,101,675</td>
<td>$ 59,101,675</td>
<td>$ 64,467,369</td>
<td>$ 70,173,665</td>
</tr>
<tr>
<td>Projected Real Property Tax</td>
<td>$0</td>
<td>$1,087,381</td>
<td>$1,186,646</td>
<td>$1,292,213</td>
</tr>
</tbody>
</table>

After October 1, 2014 (beginning in FY 2015), Dreyfus would make PILOT based on a separate calculation of value made by the Mayor. These payments are expected to be significantly lower than what would otherwise be collected in property taxes for the site. Beginning in FY 2015, Dreyfus would receive a credit of up to $5.4 million on its PILOT. Further, any PILOT due in FY 2015 and beyond, would accrue until the time a building permit is issued for the first vertical building above the I-395 deck.

\(^1\) OTR estimate based on review of developer appraisals.
The timing of the completion of the deck and subsequent construction of buildings cannot be accurately projected. However, the District is unlikely to receive any PILOT payments between FY 2015 and FY 2020, a period during which the District would have expected over $12 million in real property tax from the site. Because the deck is expected to be completed in phases, some buildings on the deck could reach Core and Shell Completion during this time and become taxable.

Concerns of the OCFO

The OCFO has two concerns about this PILOT structure, both of which appear to circumvent the fiscal impact process.

First, the District is giving significant subsidy to this project, but in order for this subsidy to have no fiscal impact, the legislation is granting this subsidy through reduced PILOT made subsequent to the financial plan period. An ongoing strategy to include subsidy in out-year budget periods will have a negative impact on the District’s financial strength into the future.

Second, the PILOT includes a requirement that Dreyfus, during the financial plan period, make a PILOT equal to the lesser of what would otherwise be owed in taxes or what the OCFO today projects in the Fiscal Impact Statement would be owed in taxes. While this structure creates an agreement with no fiscal impact, it removes any possibility of the District benefiting from future economic conditions that are better than what is currently projected.

Financial Plan Impact

Funds are sufficient in the FY 2010 budget and the proposed FY 2011 through FY 2014 budget and financial plan to implement this legislation.
A BILL

18-0806

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Title 47 of the District of Columbia Official Code; section 1 of An Act Authorizing the sale of certain real estate property in the District of Columbia no longer required for public purposes and the District of Columbia Procurement Practices Act of 1985 to authorize the Center Leg Freeway (Interstate 395) special PILOT; to authorize the disposition of parcel of land and air rights above and adjacent to the Center Leg Freeway (Interstate 395) to Louis Dreyfus Property Group, Inc.; and to allow Louis Dreyfus Property Group, Inc. to procure studies and construct improvements on behalf of the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Redevelopment of the Center Leg Freeway (Interstate 395) Act of 2010".

Sec. 2. Chapter 46 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents for Chapter 46 is amended by adding a new section designation to read as follows:

"47-4640. Payments in lieu of taxes, Center Leg Freeway (Interstate 395) PILOT Area."

(b) A new section 47-4640 is added to read as follows:

"47-4640. Payments in lieu of taxes, Center Leg Freeway (Interstate 395) PILOT Area."
“(a) For purposes of this section, the term:

“(1) "Center Leg Freeway (Interstate 395) PILOT Area" means the real property
conveyed to the Owner under section 3 of the Redevelopment of the Center Leg Freeway

“(2) "Deck" means the platform to be constructed by the Owner above the Center
Leg Freeway (Interstate 395), upon which will be constructed improvements, including
commercial and residential buildings.

“(3) "Owner" means Louis Dreyfus Property Group, LLC, or one of its affiliates
or assigns approved by the Mayor, who may, from time to time, own all or a part of the Center
Leg Freeway (Interstate 395) PILOT Area.

“(4) "PILOT" means the semiannual payments made in lieu of real property taxes
pursuant to this section.

“(5) "PILOT Period" means the period commencing on the date that the District
conveys to the Owner fee simple title to the Center Leg Freeway (Interstate 395) PILOT Area
(but not earlier than October 1, 2011), and ending on the 1st anniversary of the 10th value
adjustment required under subsection (b)(2)(E) of this section.

“(b)(1)(i) Notwithstanding part E of subchapter IV of Chapter 3 of Title 1, during the
PILOT Period, the owner of each tax lot within the Center Leg Freeway (Interstate 395) PILOT
Area shall pay a PILOT with respect to such lot, and any improvements thereon, in an amount
equivalent to the real property taxes that would be otherwise levied on Class 1 Properties or
Class 2 Properties (as applicable based on the use of the real property) pursuant to § 47-812,
based upon the value of the real property in the Center Leg Freeway (Interstate 395) PILOT Area
as determined pursuant to subsection (b)(2) of this section. Except as otherwise provided in this
section, the PILOT shall be paid at the same time and in the same manner as real property taxes
under Chapter 8 of this title.

“(ii) If any tax lot included in the Center Leg Freeway (Interstate
395) PILOT Area is exempt from real property taxes pursuant to any provision of this title, other
than subsection (h) of this section, the tax lot shall be exempt from payment of the PILOT.

“(iii) Notwithstanding any other provision of this paragraph,
commencing on October 1, 2014, the PILOT shall not be due until 30 days after the date on
which a building permit is issued for the 1st building to be constructed upon the deck, other than
buildings for the use of the Archdiocese of Washington or the Jewish Historical Society of
Greater Washington, Inc.

“(iv) Upon issuance of a Certificate of Completion of Core and
Shell of Building with respect to any building that is built upon the deck, the tax lot upon which
any such building is situated shall no longer be included in the Center Leg Freeway (Interstate
395) PILOT Area. The tax on any such lot shall be paid in accordance with Chapter 8 of this title
commencing on the beginning of the next half tax year.

“(2)(A) For the purposes of calculating the PILOT pursuant to paragraph (1) of
this subsection (but not for the purpose of calculating the assessed value), the value of the real
property within the Center Leg Freeway (Interstate 395) PILOT Area (excluding the value of
improvements constructed upon the deck) shall be computed as provided in this paragraph.

“(B) For Fiscal Years 2011 through 2014, the value of the real property
shall be the lesser of:

“(i) The assessed value of the real property as determined under Chapter 8 of this title; or

“(ii) The assessed value of the real property for the applicable fiscal year projected in the fiscal impact statement adopted by the Council in the Redevelopment of the Center Leg Freeway (Interstate 395) Act of 2010, passed on 2nd reading on , 2010 (Enrolled version of Bill 18-806).

“(C) Commencing on October 1, 2014, the value of the real property shall be the purchase price paid by Owner to the District at closing on the transfer of the Center Leg Freeway (Interstate 395) PILOT Area pursuant to section 3 of the Redevelopment of the Center Leg Freeway (Interstate 395) Act of 2010, passed on 2nd reading on , 2010 (Enrolled version of Bill 18-806).

“(D)(i) Commencing on October 1, 2015, and on each October 1st thereafter, the value of the real property shall be the adjusted purchase price, as determined under sub-subparagraph (ii) of this subparagraph, as of the immediately preceding January 1st.

“(ii) As of January 1, 2014 and as of each January 1st during the PILOT Period thereafter until the January 1st immediately following substantial completion of the entire deck, the Mayor shall certify to the Council and the Office of Tax and Revenue the adjusted purchase price for such real property as determined in accordance with the procedures contained in the documents governing the transfer of the Center Leg Freeway (Interstate 395) PILOT Area to the Owner pursuant to section 3 of the Redevelopment of the Center Leg Freeway (Interstate 395) Act of 2010, passed on 2nd reading on , 2010 (Enrolled version of Bill 18-806).
The last such certification shall further certify that substantial completion of the entire deck has occurred and that the adjusted purchase price set forth therein is final for purposes of this paragraph.

“(E) On each anniversary after the final adjustment of the purchase price as provided in subparagraph (E) of this paragraph, the value of such real property shall increase by the average percentage increase in the assessed value of land in the District in the immediately preceding fiscal year.

“(F) For the purposes of calculating the PILOT for each tax lot, the value of the real property determined under this paragraph shall be allocated among all the tax lots in the Center Leg Freeway (Interstate 395) PILOT Area for each fiscal year according to the relative assessed value of each such lot as of the January 1st immediately preceding the fiscal year with respect to which payment of the PILOT accrues (including, for purposes of this determination, any tax lot that is no longer included in the Center Leg Freeway (Interstate 395) PILOT Area pursuant to paragraph (1)(iv) of this subsection).

“(c) The PILOT shall be subject to the same penalty and interest provisions as unpaid real property taxes under Chapter 8 of Title 47.

“(d) Beginning on October 1, 2014, the PILOT deferred under subsection (b)(1)(iii) of this section shall be reduced by up to $2.4 million in consideration for the Owner agreeing to provide no less than 50 affordable housing units and up to $3.0 million for Owner’s conducting certain site preparation activities, including demolition of existing structures on the Property and within F Street N.W.

“(e) A lien for unpaid PILOT payments, including penalties and interest, shall attach to
each tax lot in the Center Leg Freeway (Interstate 395) PILOT Area in the same manner and with the same priority as a lien for delinquent real property tax under Chapter 13A of this title. Unpaid PILOT payments may be collected in accordance with Chapter 13A of this title.

“(f) The owner of a tax lot within the Center Leg Freeway (Interstate 395) PILOT Area shall not have the right to challenge the Mayor’s determination of the purchase price or adjusted purchase price under subsection (b)(2) of this section. The owner of a tax lot within the Center Leg Freeway (Interstate 395) PILOT Area shall have the right to challenge the assessed value of its tax lot in accordance with the provisions of Chapter 8 of this title.

“(g) This section shall not affect the calculation of the assessed value or payment of real property taxes with respect to any buildings or improvements constructed upon the deck upon the receipt of Certificate of Completion of Core and Shell of Building for such building or improvement.

“(h) Land and improvements that are located in the Center Leg Freeway (Interstate 395) PILOT Area, and not otherwise exempt pursuant to § 47-1002, shall be exempt from the tax imposed by Chapter 8 of this title for the PILOT period; provided, that this exemption shall not apply to any improvements constructed upon the deck and the land and improvements on any lots that are removed from the Center Leg Freeway (Interstate 395) PILOT Area pursuant to subsection(b)(1)(iv) of this section.”.

Sec. 3. Section 1 of An Act Authorizing the sale of certain real estate property in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat 1211; D.C. Official Code § 10-801) is amended by adding a new subsection (n) to read as follows:
“(n)(1) Notwithstanding the requirements of this section, the Council authorizes the Mayor to dispose of the parcels of land and airspace currently owned by the District, including without limitation the lot known for real property taxation and assessment purposes as Lot 0058 in Square 0564 ("Property"), within the boundaries of south side of Massachusetts Avenue, N.W., west side of 2nd Street, N.W., north side of E Street, N.W., and east side of 3rd Street, N.W., in Washington, D.C. determined by the District Department of Transportation ("DDOT"), with Federal Highway Administration ("FHWA") concurrence, to be excess of transportation needs and authorized to be disposed of under Title 23 of the United States Code and the regulations thereunder, to Louis Dreyfus Property Group, LLC, and one of its affiliates or assigns approved by the Mayor ("Purchaser"). The disposition of the foregoing Property shall be upon the following terms and conditions:

“(A) The Purchaser shall be responsible for construction of the Deck and reconstruction of F Street, N.W., and G Street, N.W., between 3rd Street, N.W., and 2nd Streets and any ramps to Interstate 395 ("I-395") authorized to be relocated, in accordance with the planned unit development ("PUD") approved by the Zoning Commission of the District of Columbia and DDOT, with FHWA concurrence;

“(B) The Purchaser shall construct and develop, at its sole cost and expense, no less than 50 affordable residential units on the Property that shall be sold or rented to households earning 80% of the area median income as defined in the section 2(1) of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801(1) ("AMI")) or less, with the unit mix and specific AMI levels set forth in the PUD;

“(C) The purchase price for the Property shall equal the fair market value of the
Property; provided that in no event shall the purchase price be less than $8.4 million plus  
statutory interest owed to the Washington Development Group, Inc. ("WDG"), which shall be  
paid to WDG at closing on the Property if such payment to WDG is authorized by FHWA;  

"(D) Except the proceeds that may be disbursed to WDG in accordance with  
paragraph (1)(c) of this section, the proceeds of the sale of the Property shall be deposited and  
disbursed, in amounts determined by the Mayor and approved by FHWA, as follows:  

"(i) In the account designated by DDOT for receipt of funds received for  
programs authorized under Title 23 of the United States Code and the regulations thereunder; and  

"(ii) To reimburse the Office of the Chief Technology Officer for the costs  
of relocating the Office of the Chief Technology Officer's shared computer center from the  
Property;  

"(E) The Purchaser shall provide the District assurances that the deck over I-395  
will be constructed in a timely manner, including adequate guaranties, and the Mayor shall  
reserve a right of reverter in the deed of conveyance in the event that the Purchaser does not  
complete construction within time frames determined by the Mayor to be commercially  
reasonable;  

"(F) The Mayor shall reserve rights necessary to operate F Street, N.W. and G  
Street, N.W., between 2nd and 3rd Street, N.W., for vehicular and pedestrian use, as determined  
under the PUD, and any rights necessary for the continued operation of I-395 and its ramps, as  
determined necessary by the DDOT, with FHWA concurrence;  

"(G) Purchaser shall be responsible for costs associated with the environmental  
reviews, assessments, impact statements, transit and traffic studies, security and engineering
analyses, and the technical feasibility studies as may be required under District and federal laws and regulations to obtain FHWA approval of the disposition, development and construction on the Property;

"(H) Unless the Court of Appeals for the District of Columbia issues an opinion in Case No 04-CV-1425 or Case No. 04-CV-1464 that does not require the District of Columbia to pay the WDG, or its successors(s) in interest, more than the judgment issued by Superior Court of the District of Columbia (inclusive of statutory interest accrued), the Purchaser shall, prior to conveyance, obtain WDG’s consent to the dismissal of the litigation prior to the Mayor’s conveyance of the Property to the Purchaser;


"(J) The agreement entered into under Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective September 18, 2007 (D.C. Law 16-33; D.C. Official Code § 2-218.01 et seq.) shall require:

"(i) The Purchaser to contract with Certified Business Enterprises (as defined in section 2302(1B) of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective September 18, 2007 (D.C. Law 16-33; D.C. Official Code § 2-218.01 (1B)) ("CBE Contractors") for at least 35% of the contract dollar volume of the project;
“(ii) At least 20% equity and development participation of local, small, and disadvantaged business enterprises, including The Jarvis Company, LLC, Spectrum Management and RJB Consulting Group, Inc.; and

“(iii) The Purchaser to establish a “Quick Pay Program” for the CBE Contractors requiring the following:

“(I) The Purchaser or developer shall hold a meeting with the CBE Contractor within 10 calendar days after receiving an invoice from the CBE Contractor to discuss any disputed items and to agree on a final invoice;

“(II) Within 30 days after the meeting, the CBE Contractor shall be paid the full amount of the undisputed portion of the invoice; and

“(III) If the Purchaser or developer does not pay the undisputed portion of the invoice within the 30-day period, the unpaid, undisputed portion shall be subject to a late fee of 1% interest per month, calculated on a daily basis, for every day over 30 days that the CBE Contractor is not paid the unpaid, undisputed amount.

“(2) In addition to the Property listed in this subsection, the Mayor is authorized to convey the improvements owned by the District and commonly known as the Jewish Historical Society Synagogue, currently located at 701 Third Street, N.W., to the Purchaser if the Mayor conveys to the Purchaser the real property known for real property taxation and assessment purposes as Lot 0058 in Square 0564.”.

Sec. 4. Exemptions.

Notwithstanding the requirements of section 505 of the District of Columbia Procurement Practices Act of 1985, February 21, 1986(D.C. law 6-85; D.C. Official Code §2-305.05) the
following documents, contracts, and instruments as referenced in section 1(n) of an Act

Authorizing the sale of certain real property in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat 1211; D.C. Official Code § 10-801(n)) are exempt from section 202(a) of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code §2-302.02(a)):

(1) Environmental reviews;

(2) Assessments;

(3) Impact statements;

(4) Transit and traffic studies;

(5) Security and engineering analyses;

(6) The technical feasibility studies and other actions required by applicable federal and District law or the Mayor for the District’s potential disposition;

(7) Development and construction on the parcels of land and airspace disposed of by the Mayor under section 1(n) of an Act Authorizing the sale of certain real property in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat 1211; D.C. Official Code § 10-801(n); and

(8) Development and construction of F Street, N.W., and G Street, N.W., between 2nd Street, N.W., and 3rd Street, N.W., and any ramps to Interstate 395.

Sec. 5. Conforming amendments.

Section 301 of the National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganization Act of 2008, effective March 26, 2008(D.C. Law 17-138; D.C. Official Code § 2-1225.21) is amended as follows:
(a) Subsection (b)(1)(C-i) is repealed.

(b) Subsection (d-1) is repealed.

(c) Subsection (c) is amended by striking the phrase “is made; except, the monies deposited into the Account pursuant to subsection (b)(1)(C-i) of this section shall be allocated as set forth in subsection (d-1) of this section.” and insert the phrase “is made.” in its place.

Sec. 6. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by § 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206(c)(3)).

Sec. 7. 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), a 30-day period of Congressional review as provided in § 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.
COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF INTENT TO ACT ON NEW LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to consider the following legislative matters for final Council action in not less than 15 days. Referrals of legislation to various committees of the Council are listed below and are subject to change at the legislative meeting immediately following or coinciding with the date of introduction. It is also noted that legislation may be co-sponsored by other Councilmembers after its introduction.

Interested persons wishing to comment may do so in writing addressed to Cynthia Brock-Smith, Secretary to the Council, 1350 Pennsylvania Avenue, NW, Room 5, Washington, D.C. 20004. Copies of bills and proposed resolutions are available in the Legislative Services Division, 1350 Pennsylvania Avenue, NW, Room 10, Washington, D.C. 20004 Telephone: 724-8050 or online at www.dccouncil.us.

COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

BILLS

B18-805 PeterBug Way Designation Act of 2010
Intro. 05-18-10 by Councilmember Wells and Chairman Gray and referred to the Committee of the Whole

B18-806 Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010
Intro. 05-18-10 by Councilmembers Wells and Evans and sequentially referred to the Committee on Finance and Revenue and the Committee on Economic Development

B18-807 Procurement Practices Authority Amendment Act of 2010
Intro. 5-18-10 by Councilmember Barry and referred to the Committee on Government Operations and the Environment

B18-808 Dorothy Irene Height Memorial Library Designation Act of 2010
Intro. 5-18-10 by Chairman Gray and Councilmembers Alexander, Barry, Bowser, K. Brown, Catania, Cheh, Evans, Graham, M. Brown, Mendelson, Thomas and Wells and referred to the Committee of the Whole with comments from the Committee on Libraries, Parks and Recreation
Council of the District of Columbia
Committee on Finance and Revenue
Notice of Joint Public Hearing
John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

ABBREVIATED

COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE

COUNCILMEMBER KWAME BROWN, CHAIR
COMMITTEE ON ECONOMIC DEVELOPMENT

ANNOUNCE A JOINT PUBLIC HEARING ON

B 18-806, the “Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010”

June 4, 2010 – 11:30 a.m.
Room 500 - John A. Wilson Building
1350 Pennsylvania Avenue, NW; Washington, D.C. 20004

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, and
Councilmember Kwame Brown, Chairman of the Committee on Economic Development announce
a joint public hearing to be held on Friday, June 4, 2010, at 11:30 a.m., in Room 500 of the John A.

Bill 18-806, the “Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition
Act of 2010” was introduced by Councilmembers Tommy Wells and Jack Evans and was
sequentially referred to the Committee on Economic Development and the Committee on
Finance and Revenue. The legislation authorizes the Center Leg Freeway (Interstate 395) special
PILOT, authorizes the disposition of a parcel of land and air rights above and adjacent to the
Center Leg Freeway (Interstate 395) to Louis Dreyfus Property Group, Inc, and allow Louis
Dreyfus Property Group, Inc. to procure studies and construct improvements on behalf of the
District of Columbia.

The Committee invites the public to testify at the public hearing. Those who wish to
testify should contact Sarina Loy, Committee Assistant at (202) 724-8058 or sloy@dccouncil.us,
and provide your name, organizational affiliation (if any), and title with the organization by the
close of business on Thursday, June 3, 2010. Witnesses should bring 15 copies of their written
testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony
in order to permit each witness an opportunity to be heard. Additional written statements are
encouraged and will be made part of the official record. Written statements may be submitted by
COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE

COUNCILMEMBER KWAME BROWN, CHAIR
COMMITTEE ON ECONOMIC DEVELOPMENT

JOINT PUBLIC HEARING ON

B18-806, the “Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010”

June 4, 2010 – 11:30 a.m.
Room 500 - John A. Wilson Building
1350 Pennsylvania Avenue, NW; Washington, D.C. 20004

I. Opening Remarks

II. Witness List
   • B18-806, the “Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010”

   1. Robert H. Braunholer, Regional Vice President, Louis Dreyfus Property Group
   2. N. William Jarvis, Principal, The Jarvis Company, LLC
   3. Matt Troy, Project Manager Office of the Deputy Mayor for Planning and Economic Development
   4. John Ross, Senior Advisor and Director, Economic Development Finance, Office of the Chief Financial Officer

III. Announcements

IV. Adjournment
Testimony of Robert H. Braunohler
of Louis Dreyfus Property Group

Before the Council of the District of Columbia
Committee on Finance and Revenue and
Committee on Economic Development

Joint Public Hearing on Bill 18-806, the "Center Leg Freeway
(Interstate 395) PILOT and Air Rights Disposition Act of 2010"
Room 500 of the John A. Wilson Building
at 11:30 AM on June 4, 2010

Good morning Committee Chairperson Evans, Committee Chairperson
Brown, and other members of the Council. I am Robert H. Braunohler, Regional
Vice President of Louis Dreyfus Property Group. With me today is N. William
Jarvis, principal of The Jarvis Company, which is our development partner on
this project.

We are pleased to be here today to describe the extensive work and
milestone accomplishments on this project that have occurred since this
Council's approval of the first disposition resolution for this transaction in 2007.
Louis Dreyfus Property Group, The Jarvis Company, the Office of the Deputy
Mayor for Planning and Economic Development ("DMPED"), and the District
Department of Transportation ("DDOT") have been working steadily and
cooperatively to finalize all preliminary matters, including laying the
groundwork to obtain the required approvals from the Federal Highway
Administration ("FHWA"), in order to convert this development opportunity
into a reality.
Our development team has been working on this project for five years. Louis Dreyfus, which has been active in the District of Columbia since 1974, recently completed the LEED Platinum office building at 801 17th Street NW, and we are not at all put off by very complex and challenging projects, such as the I-395 Air Rights project. The Jarvis Company, our equity and development partner, brings expertise in dealing with community issues on development projects, and has experience with public-private partnerships, such as the old Convention Center development. Along with The Jarvis Company, we also have RJB Consulting Group, Inc. and Spectrum Management, LLC on our team as CBE equity and development partners. At present, we have finalized a workable deal structure with the city, we have intently studied the engineering challenges we must overcome in order to safely and securely span the highway with a constructed deck, and we have developed all of the preliminary materials and documentation needed to begin the FHWA review process.

Because this Council has already (twice) reviewed and provided its approval for this development project, my testimony today will not focus on the tremendous value of this project – that is, the “knitting the city back together” and recovering the L’Enfant Plan street grid at F and G Streets (as had always been contemplated by city planners), the resolution of the contentious litigation that has stymied all progress on this site for years, and the ultimate creation of jobs and tax revenues for the city. Instead, my testimony today will focus on the specifics of Bill 18-806 and the rationale for this latest legislative initiative.

Bill 18-806 establishes a payment in lieu of taxes (a “PILOT”) for this project to address the difficulty of accurately assessing this asset for real estate tax purposes. The site is a combination of a sliver of land and a lot of airspace,
and it will take us approximately three years to transform the site into the equivalent of buildable land. The use of a PILOT during this period eliminates the possibility that the Office of Tax and Revenue ("OTR") might either over-assess or under-assess the asset. Under the terms of Bill 18-806's proposed PILOT, the developer will pay the District real estate taxes on the asset from the date of acquisition, using the amount paid at closing as the initial assessed value. The PILOT structure then allows for the re-calculation of the assessed value at various intervals as the construction of the deck is completed. The PILOT is designed to terminate after we have had sufficient time to complete the deck and begin the vertical development. Once the PILOT terminates, or as soon as vertical development occurs on any portion of the deck, the relevant portion of the property will be assessed for taxation in accordance with OTR’s normal tax assessment processes. We believe that the use of a PILOT is a creative way to assure a fair taxation of this real estate asset during construction.

Bill 18-806 also restates the Council’s disposition and the terms of the transaction between the city and Louis Dreyfus. We thought that this restatement was necessary for two primary reasons. First, although, as I stated earlier, we have been diligently working with DMPED and DDOT, the deal and the development plan must still be approved by FHWA. Bill 18-806 restates the deal terms in order to provide the level of flexibility needed to navigate the FHWA approval process. Second, there have been some structural changes to the Council’s previously-approved dispositions – for example, the city now has greater flexibility with how it might utilize the proceeds from this disposition – and the restatement of the transaction in Bill 18-806 eliminates all of the outdated references.
Lastly, as we build the structure that spans the highway, we will also construct bridges that will become F and G Streets. While constructing public right-of-ways is normally a function handled by the District of Columbia, in this instance, the streets and the deck structure are so intertwined that it would not make sense to insert any other builder into this construction process. As a result, Bill 18-806 exempts the developer from the Procurement Practices Act so that we may legally handle this aspect of the project.

As we have asserted to this Council in the past, I would like to reiterate that have put together a world-class development and design team for this project. We have the financial resources (even in the current, difficult economic environment) to complete this project. We have already expended significant funds, and we are prepared to make further substantial expenditures to complete the pre-development analyses, assessments, and planning. The city has been fully cooperative and engaged in rigorously conducting the pre-development reviews and the finalization of the parameters of the transaction. We continue to believe that this development project is an important one for the city, and we remain committed to starting construction as soon as we receive all of the required governmental approvals.

I would be pleased now to answer any questions you may have.
Government of the District of Columbia

Office of the Deputy Mayor for Planning and Economic Development

Public Hearing on
Bill 18-806, “Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010”

Testimony of
Matthew J. Troy IV, Project Manager
Office of the Deputy Mayor for Planning and Economic Development

Before the
Committee on Economic Development
Councilmember Kwame R. Brown, Chair

Committee on Finance and Revenue
Councilmember Jack Evans, Chair

June 4, 2010
11:30 a.m.

John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, NW
Washington, DC 20004
Good morning, Chairman Brown, Chairman Evans and members of the Committees on Economic Development and Finance and Revenue. For the record, my name is Matthew Troy, and I am a Project Manager in the Office of the Deputy Mayor for Planning and Economic Development (DMPED). I am here to testify on behalf of the Administration in support of Bill 18-806, the “Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010” (the “Bill”).

The District of Columbia (the “District”) in partnership with the Center Place Holdings, LLC (the “Developer”) plan to redevelop the land and air rights above and adjacent to the Center Leg Freeway (Interstate 395). The project will be a mixed use development of approximately 2.1M GSF; with approximately 180K GSF planned for residential, approximately 60K GSF of retail, and the remainder slated for trophy, Class-A office space. The entire project, including the platform, will be a national leader in sustainability design. The project site is bounded horizontally by Massachusetts Avenue, N.W., 2nd Street, N.W., E Street, N.W., and 3rd Street, N.W. This Bill addresses certain key points of the project that will ensure a timely and successful development for the District in the future.

The Bill would establish a true payment in lieu of taxes (“PILOT”) to address the difficulty associated with assessing this particular asset for real estate tax purposes. The PILOT period would begin when the site is conveyed to the Developer through substantial completion of the platform and then for a period of ten years afterwards. PILOT payments would initially be based on the amount paid by Developer to the District at Closing, with the structure of the PILOT
Agreement allowing for recalculation at multiple points during construction of the deck. PILOT payments would accrue until the Developer requests a vertical building permit for the first private vertical improvement on the site, at which point all accrued PILOT payments will be paid to the District less an approximate $2.4M credit to offset a small portion of the costs associated with the fifty affordable residential units at or below 80% area median income ("AMI") that the Developer will build on the site. If at any point during the PILOT period, the Developer receives a Certificate of Completion of Core and Shell of Building on any private improvement built on the deck, that building and tax lot will be removed from the PILOT area and taxes will begin to be paid on it in customary fashion. This structure would provide the Developer with the certainty of knowing exactly what they will be liable for in taxes over the course of construction which will help facilitate the financing of the costly platform.

The Bill also restates the majority of the basic terms and conditions of the agreement that Council had previously approved, such as the affordable housing and CBE requirements, while slightly modifying certain terms and conditions to provide the District with the flexibility that will be necessary to gain Federal Highways ("FHWA") approval of the disposition of the project site. For example, this Bill authorizes the conveyance of the Jewish Historical Society's ("JHS") improvements, which are owned by the District, to the Developer upon conveyance of the site. This was not contemplated in earlier legislation, but it is an important piece of the project that needed to be addressed prior to closing. Also, it should be noted that the Developer, who has been in negotiations with JHS for the past two years, recently entered into an agreement with them that outlines JHS' understanding and support of the project and their role in the future development. Additionally, the Bill allows the District to slightly modify certain aspects of the deal (i.e. timing of payments) as may be necessary to gain FHWA approval. This was not afforded under previous legislation.
Finally, the Bill provides a limited exemption from the District's Procurement Practices Act ("PPA") of 1985. Because the Developer is performing the necessary studies for review and approval by FHwA and DDOT to navigate the project through the environmental assessment process and also constructing F and G Streets as part of the overall platform development, an exemption from the PPA is necessary in order for the Developer to be legally able to complete these aspects of the project. DMPED, DDOT, and the Developer all discussed the best approach for the timely completion of the studies and development of the streets, and all parties agreed that it is best left in the hands of the Developer. Now, it is important to note that DMPED did work with the Office of the Attorney General ("OAG") to determine whether or not an exemption from the PPA was even necessary. After internal deliberation OAG determined that the Developer actually did not need to be exempt from the PPA in order to complete the necessary tasks. However, for the sake of transparency and for the sake of the project we are requesting it anyway. The limited exemption ensures that the expectation of all parties will be met and guarantees that the project will not be exposed to any undue delay in the future, from the beginning of the environmental assessment process through the reintroduction of F and G Streets and completion of the platform.

**Conclusion**

By taking favorable action on this Bill the Council ensures that the progress that has been made on the project over the course of the past eight months is sustained. Favorable action on the Bill will allow both the Developer and the District to seek FHwA approval this summer, with the Developer beginning the environmental assessment process shortly afterward. This would represent an investment by the Developer in the District of tens of millions of dollars and would be demonstrable progress on a development that would not only reinvigorate a currently
underutilized portion of the District's downtown, but would bring fifty affordable residential
units to the area, significantly grow the District's tax base, and help accomplish the District's
goal of making downtown more vibrant by furthering the original L'Enfant Plan, reconnecting F
and G Streets, creating a new national model for sustainable development within a mixed-use
project, and attracting more residents, visitors and shoppers. I urge the Council to take prompt
and favorable action on this measure. I am happy to answer any questions you may have on the
project and the legislation.
PUBLIC HEARING

ON

Bill 18-806, "Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010"

Before the
Committee on Finance and Revenue
The Honorable Jack Evans, Chairman
and
Committee on Economic Development
The Honorable Kwame Brown, Chairman

June 4, 2010, 11:30 a.m.
John A. Wilson Building, Chamber

Testimony of
John P. Ross
Senior Advisor and Director of Economic Development Finance
Office of the Chief Financial Officer

Natwar M. Gandhi
Chief Financial Officer
Government of the District of Columbia
Good morning, Chairman Evans and Chairman Brown. My name is John Ross, Senior Advisor and Director of Economic Development Finance for the Office of the Chief Financial Officer. I am pleased to testify for the Office of the Chief Financial Officer on Bill 18-806, The Center Leg (Interstate 395) PILOT and Air Rights Disposition Act of 2010.

The proposed legislation does three things:

1) It authorizes the disposition of the I-395 Air Rights and certain adjacent District-owned parcels to Louis Dreyfus Property Group, with certain conditions.

2) It authorizes a Payment-in-Lieu-of Taxes, or PILOT.

3) It exempts any contracts related to the procurement of studies, or construction of improvements on behalf of the District from the Procurement Procedures Act.

Disposition

Prior to the Mayor's conveyance of the property, Louis Dreyfus Property Group is required to obtain the consent of Washington Development Group, Inc to dismissal of the litigation currently associated with the I-395 air rights. In addition, the developer must meet other requirements related to:

- Federal Highway Administration and District environmental and development requirements;

- the District’s Small Dis advantaged Business Enterprise Development and Assistance Act and First Source Agreements;
• contracting with certain Certified Business Enterprises including: The Jarvis Company, LLC, Spectrum Management, and RJB Consulting Group, and
• developing 50 units of affordable housing.

The draft Development and Disposition Agreement describes the process for determining the total purchase price payments to the District as well as the timing of those payments. The final purchase price is not yet determined; therefore, the OCFO cannot complete an analysis of whether actual payments to the District from Louis Dreyfus Properties Group will be more or less than the expected value of the assets of which the District is disposing.

**Payment In Lieu of Taxes**

The legislation exempts the air rights, adjacent parcels, and deck over Interstate 395, when completed, from real property taxes. Instead, the legislation creates a PILOT area and stipulates (along with the draft Disposition and Development agreement) the amount and timing of PILOT payments.

Normally, the air rights would be assessed by the Office of Tax and Revenue and the owner would pay taxes based on the assessed value beginning at transfer of air rights. This legislation defers any PILOT payments until the date that a planned building on top of the deck obtains a building permit. This is not expected to occur until after the four-year financial plan period.
Beyond the financial plan period, the PILOT proposed in this legislation will result in payments to the District that are significantly less than what would otherwise be paid in real property taxes, if the air rights were transferred without a PILOT agreement.

Upon issuance of a Certificate of Completion of Core and Shell of Building with respect to any building that is built upon the Deck, that building would be removed from the PILOT area and become subject to the normal OTR assessment process.

**Exemption from the PPA**

The exemption of contracts from the Procurement and Procedures Act is not expected to have any impact on the budget and financial plan.

**Fiscal Impact**

The proposed PILOT structure would have a fiscal impact of approximately $5.1 million during the financial plan period. The Office of the Chief Financial Officer is working closely with the Office of the Deputy Mayor for Planning and Economic Development and the developer to find a PILOT structure that will have no fiscal impact on the budget and financial plan.
OVERVIEW
I-395 AGREEMENT FOR PURCHASE OF AIR RIGHTS AND LAND

Conveyance Structure: District to convey fee simple between E Street, NW; Massachusetts Avenue, NW; 2nd Street, NW; and 3rd Street, NW, (including the parcel occupied by the Jewish Historical Society ("JHS")), reserving easements to the District:

(a) Highway Easement: exclusive easement for highway and approach ramps
   - Highway = current highway facilities, will be further defined before Closing
   - Non-exclusive "support areas" to be carved out of Highway Easement for structures supporting the Deck prior to Closing and finalized after completion of construction of the Deck

(b) "District" Easement: non-exclusive easement for District access to remainder of fee for maintenance and repair of Highway
   - After construction of Deck, non-exclusive easement to be redefined to areas necessary for maintenance of Highway (i.e. carve out unlimited access to improvements)

Financial Terms.

(a) Deposit = $500,000 (delivered at execution of the Purchase Agreement)

(b) Pre-Adjustment Purchase Price = $60,000,000
   - Payment at Closing = Amount of the WDG Judgment (estimated $11 million)
   - Purchase Price deferred at Closing secured by:
     o Deed of Trust/Note until construction financing in place
     o Mayor may withhold building permits for vertical construction until Purchase Price (as adjusted) paid
     o Right of Reverter in Deed

June 3, 2010
Calculation of Post-Adjustment Purchase Price.

1. Recalculation of Purchase Price triggered by two events:
   Developer's request to commence vertical construction on Deck
   prior to Substantial Completion of the Construction of the Deck
   and/or Substantial Completion of Construction of the (entire) Deck.

2. Method of Recalculation: Developer submits evidence of actual
   Hard Costs and Soft Costs (as defined in Purchase Agreement) –
   upon agreement as to the actual Hard Costs and Soft Costs
   incurred, then recalculation based upon discounted cash flow
   methodology:

   Gross Fair Market Value of Property
   (minus) 49.6% of change in Hard Costs
   (minus) 60% of change in the Soft Costs
   (equals) Adjusted Value of Property

   - If Adjusted Value is less than $60 million, the Post-
     Adjusted Purchase Price is reduced to the Adjusted
     Value of the Property
   - If the Adjusted Value is more than $60 million, the Post-
     Adjusted Purchase Price equals $60 million and the
     District receives 50% of the value above $60 million (the
     "Cost Savings Amount").
   - The Post-Adjustment Purchase Price cannot be less than
     the amount of the WDG judgment ($11 million).
   - Post-Adjustment Purchase Price + Cost Savings cannot
     be greater than $109 million.

3. True-Up. Upon Final Completion of the Deck, Developer shall
   recalculate Hard Costs and Soft Costs based upon costs incurred
   during construction of the Deck and District will receive any amount
   in excess of $100,000 saved.

Affordable Housing = Developer contribution of an additional $7.5
million towards construction of the 50 affordable housing units (at or
below 80% AMI).

PILOT = assuming enactment of PILOT legislation, Developer to pay
taxes based upon the "Purchase Price" certified by the Mayor,

1. "Purchase Price" is calculated by Mayor as follows (for the
   purposes of the PILOT only):
   - From Closing until Substantial Completion of Construction of
     the Deck, the "Purchase Price" shall be the amount of the
     WDG Judgment (estimated $11 million).
• From the date of the calculation of the Post-Adjustment Purchase Price (and any adjustments in thereof), the “Purchase Price” shall be Post-Adjustment Purchase Price.
• Beginning on date of Substantial Completion of Construction of the Deck, the “Purchase Price” shall increase annually by average percentage increase of assessed value of land in the District in the immediately preceding year.

2. PILOT expires on the 10th anniversary of Substantial Completion of Construction of the Deck (completion date will be established in document recorded among the land records).

3. Vertical improvements constructed on the Deck will be removed from PILOT Area upon completion of the core and shell of such improvements and such improvements will be taxed thereafter in accordance with OTR normal assessment procedures.

Jewish Historical Society:

(a) Developer shall enter into a binding agreement with JHS that requires:
1. JHS to relocate from its current location to the new location on the completed Deck (following one interim relocation);
2. JHS’s consent to the conveyance of the JHS Parcel and the District’s interest in the JHS Ground Lease and improvements to Developer at Closing; and
3. termination of the JHS Ground Lease upon the conveyance to JHS of the JHS relocation parcel.

(b) District will have no responsibilities or liability for relocating JHS except the requirement that the District shall provide JHS a relocation site in the event that the Developer defaults and the Property reverts to the District.

Note: The Developer and JHS entered to a Memorandum of Understanding on May 13, 2010 that includes JHS agreement to relocate and terminate its ground lease with the District.

Holy Rosary Church:

(a) Developer shall enter into a binding agreement with Holy Rosary Church that requires:
1. Holy Rosary to grant easement to District over closed portion of F Street, N.W. to enable District re-open F Street between 2nd and 3rd Street, N.W.;
2. Developer shall construct and convey replacement rectory on platform adjacent to Holy Rosary Church; and
3. Developer solely responsible for costs associated with re-construction of F Street, N.W. between 2nd and 3rd Street, N.W.
(b) District will not have access to the F Street easement until Holy Rosary is given a relocation site.

**DDOT and FHWA Approvals.** Certain approvals of Federal Highway Administration ("FHWA") must be received prior to Closing.

(a) **Approvals:**
   1. Environmental Assessment/Ramp closure assessment.
   2. Excess Property Determination - determination that Property outside of easements is excess of highway needs.
   3. Disposal Determination – determination that Property outside of easement may be disposed of pursuant to Title 23 of the Code of Federal Regulations and NEPA.
   4. Construction Agreement – governing terms and conditions of construction of Deck in accordance with Title 23.
   5. Approval of location of Support Areas (structures within Highway Easement) and Vaults (under F & G Streets).

(b) **Process:**

- Developer to provide DDOT all materials necessary for DDOT to make the Excess Property Determination and Disposal Determination (determination disposal authorized by FHWA Regulations).
- After DDOT receives all materials necessary to make Disposal Determination under FHWA Regulations, DDOT will forward request for FHWA concurrence.
- Receipt of FHWA approvals of Excess Property Determination and Disposal Determination is condition to District’s obligation to proceed to Closing.

**Closing Process:** "Closing" will occur in multiple steps:

(a) All conditions of Closing satisfied (including DDOT/FHWA approvals, relocation of the Shared Computer Center, WDG settlement agreement)

(b) Delivery of funds and all documents for Closing (i.e. "Document Delivery Date") into escrow

(c) Filing of court pleadings dismissing WDG case in lower court and Court of Appeals

(d) Receipt of Court orders in WDG case

(e) Release of Funds and recordation of Deed, covenants, etc. with District of Columbia recorder of deeds

June 3, 2010
Post-Closing Requirements: The Purchase Agreement and other documents recorded among the land records (including the Deed, DDOT Covenants, and Construction and Use Covenant) impose various post-closing requirements on the Developer, including

(a) Restrictions on Developer’s use and access to the Highway (requires written consent of DDOT).
(b) Developer’s obligation to construct the Deck (including construction of F & G Streets) and relocate JHS and Holy Rosary at its sole cost and expense.
(c) Commence Construction no later than 28 months after Closing (however, Developer has option to postpone Commencement of Construction on the Deck under certain limited circumstances).
(d) Substantial Completion of Construction of the entire Deck no later than 60 months after Commencement of Construction.
(e) Requires DDOT oversight over construction.
(f) Requires Developer to construct, use, maintain and operate the Deck (other than surface of F & G Streets, NW) at its sole cost and expense.
(g) Provides DMPED design reviews, inspection, audit rights
(h) Restrictions on Transfer prior to construction of Deck.
(i) Requires construction of 50 affordable units (at 80% AMI or less) and will require recordation of affordable housing covenant on residential parcel.

Specific District Remedies:
(a) Deed contains Right of Reverter in event Dreyfus does not obtain certificate of occupancy by Outside Date for Substantial Completion of the Deck (2019).
(b) DDOT Covenants require provide DDOT authority to inspect and issue stop work orders if Developer interferes with Highway without DDOT consent.
To: All Councilmembers

From: Jack Evans, Chairman Committee on Finance and Revenue

Date: June 24, 2010

Subject: Report on Bill 18-806, the “Center Leg Freeway (Interstate 395) Pilot and Air Rights Disposition Act 2010”.

The Committee on Finance and Revenue reports favorably on Bill 18-806, the “Center Leg Freeway (Interstate 395) Pilot and Air Rights Disposition Act 2010”, and recommends its approval by the Council of the District of Columbia.

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I. BACKGROUND, PURPOSE AND EFFECT

Bill 18-806, the “Center Leg Freeway (Interstate 395) Pilot And Air Rights Disposition Act 2010”, was introduced by Councilmembers Jack Evans and Tommy Wells, and was co-sponsored by Councilmembers Marion Barry, Kwame Brown, Michael Brown, Yvette Alexander, and Jim Graham. Bill 18-806 was sequentially referred to the Committee on Finance and Revenue and Committee on Economic Development.

To amend Title 47 of the D.C. Official Code to authorize the Center Leg Freeway
(Interstate 395) special PILOT; to amend An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes to allow the Mayor to dispose of certain parcels of land as defined in the legislation; to amend the District of Columbia Procurement Practices Act of 1985 to allow Louis Dreyfus Property Group, Inc. to procure studies and construct improvements on behalf of the District of Columbia; and to amend the National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganization Act of 2008 to repeal unneeded provisions.

The Center Leg Freeway project is intended to provide a mixed use development connecting F & G Streets, NW, over the I-395 tunnel and highway connection located in that area. The project will include approximately 2.1 million square feet with about 180,000 square feet planned for residential occupancy (including 50 affordable housing units at 80% Area Median Income), 60,000 square feet of retail, and the remainder serving as trophy Class-A office space. The entire project, including the platform over I-395 is intended to be a national leader in sustainability design. The project represents an investment of tens of millions of dollars to reinvigorate this underutilized portion of the downtown area and to reconnect the east end of downtown with the Union Station and Capitol Hill areas in accordance with the L’Enfant street plan.

II. LEGISLATIVE HISTORY

May 18, 2010 Bill 18-806, the “Center Leg Freeway (Interstate 395) Pilot and Air Rights Disposition Act 2010”, is introduced by Councilmembers Jack Evans and Tommy Wells.

May 20, 2010 Bill 18-806, the “Center Leg Freeway (Interstate 395) Pilot and Air Rights Disposition Act 2010”, is sequentially referred to the Committee on Finance and Revenue and Committee on Economic Development.

May 28, 2010 Notice of Intent to Act on New Legislation for Bill 18-806 is published in the D.C. Register.¹

June 4, 2010 Notice of joint public hearing on Bill 18-806, and other matters, published in D.C. Register.²

June 4, 2010 Public hearing held on Bill 18-806, and other matters.

June 24, 2010 Consideration and vote on Bill 18-806, and other matters, by the Committee on Finance and Revenue.

¹ Page 4552 of the May 28, 2010 D.C. Register.
² Page 4815 of the June 4, 2010 D.C. Register.
III. SUMMARY OF TESTIMONY

The Committee on Finance and Revenue held a joint public hearing with the Committee on Economic Development on Bill 18-806, on Friday, June 4, 2010, starting at 10:45 a.m. The hearing was attended by Committee Chairs Jack Evans and Kwame Brown, and Councilmember Tommy Wells.

Chairman Jack Evans made an opening statement:

This legislation was introduced by myself and Tommy Wells and was sequentially referred to the Committee on Finance and Revenue, and then to the Economic Development. The legislation authorizes the Center Leg Freeway special PILOT, for the disposition of a parcel of land and air rights above and adjacent to the Center Leg Freeway (I-395) to Louis Dreyfus Property Group, Inc, and allows Louis Dreyfus Property Group, Inc. to procure studies and construct improvements on behalf of the District of Columbia. This project has certainly been a long time in the making, and I look forward to passing this legislation and seeing the project finally move forward.

Robert H. Braunohler, Regional Vice President, Louis Dreyfus Property Group, testified in support of the legislation. Mr. Braunohler noted that the original disposition of the center leg freeway was passed by the Council in 2007, but that his organization has been working on the project since 2005. Mr. Braunohler stated a finalized deal structure has been agreed to by the city; and that the group has developed all the preliminary materials and documentation needed to begin the Federal Highway Administration (FWHA) review process.

Mr. Braunohler acknowledged that because the Council has reviewed and provided approval for the development project twice before, he focused his testimony on the specific aspects of the present legislation over the benefits of the project. He noted that Bill 18-806 established a payment in lieu of taxes regime (PILOT), addressing the difficulty of accurately assessing the project as an asset for real estate tax purposes. The PILOT will require the developer to pay the District real estate taxes on the asset from the date of acquisition, using the amount paid at closing as the initial assessed value.

Mr. Braunohler further testified that this legislation restates the Council’s disposition and the terms of the transaction between the city and the Louis Dreyfus group. The restatement is intended to ease the facilitation with the FHWA. He indicated the restatement addresses the fact that the city now has greater flexibility with how it might utilize the proceeds from the disposition -- and the restatement of the transaction updates the outdated provisions.

Matt Troy, Project Manager Office of the Deputy Mayor for Planning and Economic Development, testified in support of the legislation. Mr. Troy noted that the development will be mixed use with approximately 2.1 million square feet of usable space; with about 180,000 planned for residential use, 60,000 for retail, and the remainder as trophy Class-A office space. He stated the entire project including the platform, intended to be a national leader
in sustainability design. He stated the bill addresses certain key points of the project ensuring timely and successful development. In conclusion, Mr. Troy stated that taking favorable action on this bill will ensure that the progress that has already been made on the project is sustained. He further indicated it would also allow both the Developer and the District to seek FWHA approval this summer, with the Developer beginning the environmental assessment process after federal approval. Finally, he noted that the project represents an investment by the Developer of tens of millions of dollars to reinvigorate the underutilized portion of the downtown, would include fifty affordable residential units, expand the District’s tax base, and help accomplish the District’s goal of restoring the original L’Enfant Plan.

John Ross, Senior Advisor and Director, Economic Development Finance, Office of the Chief Financial Officer, testified regarding the legislation. Mr. Ross testified that the legislation would do the following: authorize the disposition of the I-395 Air Rights and certain adjacent District-owned parcel to Louis Dreyfus Property Group, with certain conditions, authorize a PILOT, and exempt a contracts related to the procurement of studies, or construction improvements on behalf of the District from the Procurement Procedures Act.

Mr. Ross further testified that the Office of the Chief Financial Officer is working closely with the Deputy Mayor for Planning and Economic Development and the Developer to find a PILOT structure that will have no fiscal impact on the budget and financial plan.

The public hearing concluded at 11:15 a.m.

IV. FISCAL IMPACT

The Chief Financial Officer’s June 21, 2010 fiscal impact statement indicates that “funds are sufficient in the FY 2010 budget and the proposed FY 2011 through FY 2014 financial plan to implement the proposed legislation.”

V. SECTION-BY-SECTION ANALYSIS

As contained in the proposed committee print of the legislation:

Section 1 states the short title of the legislation.

Section 2 amends Chapters 10 and 46 of Title 47 of the District of Columbia Official Code to authorize a Payment in Lieu of Taxes ("PILOT") mechanism for the Center Leg Freeway project, as defined in the legislation, to be located in Ward 6. It sets various definitions relevant to the legislation, the project, and the proposed PILOT area, as well as setting a basis for the assessment of the PILOT for FY 2011 and onward.

Section 3 provides for the disposition of the land and air rights above the Center Leg
Freeway, disposing the parcels of land and airspace currently owned by the District, Lot 0058 in Square 0564 within the boundaries of south side of Massachusetts Avenue, N.W., west side of 2nd Street, N.W., north side of E Street, N.W., and east side of 3rd Street, N.W. in Washington, D.C. determined by the District Department of Transportation with Federal Highway Administration to Louis Dreyfus Property Group, LLC, and/or one of its affiliates or assigns approved by the Mayor. It further stipulates the project shall enter into CBE and First Source agreements with the District, specifically stipulating the participation of at least 35% CBE contractors on the dollar volume of the project, as well as 20% equity and development participation of CBE’s, including The Jarvis Company, LLC, Spectrum Management and RJB Consulting Group, Inc.

Section 4 contains the connection plan for F and G streets, noting that in exchange for the disposition, the Developer will provide the redevelopment of land and airspace above I-395, creating a new mixed use development within a currently under-utilized portion of the Old City of Washington, and the construction and reconnection of F and G Streets, N.W. in furtherance of the original L’Enfant plan.

Section 5 repeals DC Code § 2-1225.21 (b)(1)(C-i) and (d-1) to delete unneeded provisions related to the Economic Development Special Account.

Section 6 contains the required fiscal impact statement.

Section 7 contains the effective date clause.

VI. IMPACT ON EXISTING LAW

Bill 18-806 amends Chapters 10 and 46 of Title 47 of the District of Columbia Official Code to authorize a Payment in Lieu of Taxes (“PILOT”) mechanism for the Center Leg Freeway project, as defined in the legislation, to be located in Ward 6. It sets various definitions relevant to the legislation, the project, and the proposed PILOT area, as well as setting a basis for the assessment of the PILOT for FY 2011 and onward. Further, it repeals DC Code § 2-1225.21 (b)(1)(C-i) and (d-1) to delete unneeded provisions related to the Economic Development Special Account.

VII. COMMITTEE ACTION

The Committee on Finance and Revenue convened at 1:15 p.m. on Thursday, June 24, 2010 to consider and vote on Bill 18-806, and other matters. Chairman Evans recognized the presence of a quorum, consisting of himself and Councilmembers Kwame Brown and Michael Brown.

Chairman Evans made brief opening remarks regarding the proposed resolution.
Chairman Evans then moved Bill 18-806, with leave for the Committee staff to make technical and conforming amendments.

The members voted as follows:

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<th>Report on Bill 18-806</th>
<th>Committee Print on Bill 18-806</th>
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<tr>
<td>Chairman Evans</td>
<td>Yes</td>
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<td>Councilmember Kwame Brown</td>
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<td>Councilmember Michael Brown</td>
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<td>Councilmember Catania</td>
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<td>Councilmember Thomas</td>
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Thus, the proposed resolution and accompanying report were passed by the Committee with 3 votes in support, 0 votes against, and 2 members absent.

The committee meeting adjourned at 1:20 p.m.

VIII. ATTACHMENTS

A. Bill 18-806 as introduced.
B. Committee Print of Bill 18-806.
D. Public hearing notice for Bill 18-806, and other matters.
E. Witness list and copies of testimony from the June 4, 2010 public hearing on Bill 18-806, and other matters.
Memorandum

To: Members of the Council
From: Cynthia Brock-Smith, Secretary to the Council
Date: May 20, 2010
Subject: Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Committee of the Whole on Tuesday, May 18, 2010. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010", B18-0806

INTRODUCED BY: Councilmembers Wells and Evans
CO-SPONSORED BY: Councilmembers Barry, M. Brown, Alexander, K. Brown and Graham

The Chairman is referring this legislation sequentially to the Committee on Finance and Revenue and the Committee on Economic Development.

Attachment

cc: General Counsel
    Budget Director
    Legislative Services
A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmembers Tommy Wells and Jack Evans introduced the following bill which was referred to the Committee on _____________________.

To amend Title 47 of the D.C. Official Code, D.C. Official Code § 10-801 and D.C. Official Code §2-305.05, authorize the Center Leg Freeway (Interstate 395) special PILOT, authorize the disposition of parcel of land and air rights above and adjacent to the Center Leg Freeway (Interstate 395) to Louis Dreyfus Property Group, Inc, and allow Louis Dreyfus Property Group, Inc. to procure studies and construct improvements on behalf of the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010”.

PILOT

Sec. 2. Definitions.

Title 47 of the D.C. Official Code is amended as follows:

(a) Section 47-1002 is amended by adding new paragraph (30) as follows;

"(30) Land and improvements that are located in the Center Leg Freeway (Interstate 395) PILOT Area established pursuant to Section 47-4618 and not otherwise exempt pursuant to Section 47-
1002, for the PILOT period specified in D.C. Code § 47-4618(a)(6), but excluding any improvements
constructed upon the deck described in D.C. Code § 47-4618(a)(2) and any lots that are removed from
the Center Leg Freeway (Interstate 395) PILOT Area pursuant to D.C. Code § 47-4618(b)(1)(iv). The
exemption provided by this paragraph shall terminate at the end of the PILOT Period defined in § 47-
4618(a)(6)."

(b) Chapter 10 of Title 47 of the D.C. Official Code is amended by adding new Section 4618 to
read as follows:

"Section 47-4618 Payments in lieu of taxes, Center Leg Freeway (Interstate 395) PILOT Area

(a) For purposes of this section, the term:

(1) "Center Leg Freeway (Interstate 395) PILOT Area" means the real property conveyed to
the Owner under D.C. Code § 10-801(n-1).

(2) "Deck" means the platform to be constructed by Owner above the Center Leg Freeway
(Interstate 395), upon which will be constructed improvements, including but not limited to commercial
and residential buildings.

(3) "District" means the District of Columbia.

(4) "Owner" means Louis Dreyfus Property Group, LLC, and/or one of its affiliates or
assigns approved by the Mayor and who may, from time to time, own all or a part of the Center Leg
Freeway (Interstate 395) PILOT Area.

(5) "PILOT" means the semi-annual payments made in lieu of real property taxes pursuant
to this section.
(6) "PILOT Period" means the period commencing on the date that the District conveys to
Owner fee simple title to the Center Leg Freeway (Interstate 395) PILOT Area and ending on the one
year anniversary of the tenth value adjustment required under subsection (b)(2)(iii) below.

(b)(1)(i) During the PILOT Period, the owner of each tax lot within the Center Leg Freeway
(Interstate 395) PILOT Area shall pay a PILOT with respect to such lot and any improvements thereon
in an amount equivalent to the real property taxes that would be otherwise levied on Class 1 Properties
or Class 2 Properties (as applicable) pursuant to DC Code § 47-812, based upon the value determined
pursuant to subsection (b)(2) below. Except as otherwise provided in this section, the PILOT shall be
paid at the same time and in the same manner as real property taxes under Chapter 8 of Title 47.

(ii) If the Center Leg Freeway (Interstate 395) PILOT Area is comprised of more than
one tax lot, the PILOT shall be allocated among such lots for each fiscal year according to the relative
assessed value of each such lot as of the January 1st immediately preceding the fiscal year with respect
to which payment of the PILOT accrues (including for purposes of this determination any lot that is no
longer included in the Center Leg Freeway (Interstate 392) PILOT Area pursuant to subsection
(b)(1)(iv) below). If any tax lot included in the Center Leg Freeway (Interstate 395) PILOT Area is
exempt from real property taxes pursuant to any provision of this Chapter, other than this Section 47-
1002(30), such lot shall be exempt from payment of the portion of the PILOT that is allocated to it
pursuant to this subsection (b)(1)(ii).

(iii) Notwithstanding any other provision of this subsection (b)(1), the PILOT payments
shall not be due or payable currently but shall accrue and payment thereof shall be deferred until the
date on which a building permit is issued for the first building to be constructed upon the Deck, other
than buildings for the use of the Archdiocese of Washington and/or the Jewish Historical Society of
Greater Washington, Inc. Within thirty (30) days after the date of issuance of such building permit, all
PILOT payments that accrued but were not paid prior to the date of such issuance shall be due and payable in full.

(iv) Upon issuance of a Certificate of Completion of Core and Shell of Building with respect to any building that is built upon the Deck, the tax lot upon which such building is situated shall thereupon no longer be included in the Center Leg Freeway (Interstate 395) PILOT Area.

(2) The value of the real property within the Center Leg Freeway (Interstate 395) PILOT Area (excluding the value of improvements constructed upon the Deck) for purposes of calculating the PILOT pursuant to the foregoing subsection (b)(1) shall be as follows:

(i) Upon the commencement of the PILOT Period, the value of the real property shall be the purchase price paid by Owner to the District at closing on the transfer of the Center Leg Freeway (Interstate 395) PILOT Area pursuant to 10-801(n-1)(3).

(ii) As of each January 1st during the PILOT Period until the January 1st immediately following substantial completion of the entire Deck, the Mayor shall certify to the Council and the Office of Tax and Revenue the adjusted purchase price for such real property as determined in accordance with the procedures contained in the documents governing the transfer of the real property to the Owner. The last such certification shall further certify that substantial completion of the entire Deck has occurred and that the adjusted purchase price set forth therein is final for purposes of this subsection (b)(2). The value of such real property shall be reset annually during the PILOT Period at the adjusted purchase price.

(iii) On each one (1) year anniversary after the final adjustment of the purchase price for the transfer of the Center Leg Freeway (Interstate 395) PILOT Area by the District to Owner under 10-801(n-1), the value of such real property shall increase by the average percentage increase in the assessed value of land in the District in the immediately preceding fiscal year.
(c) The PILOT shall be subject to the same penalty and interest provisions as unpaid real property taxes under Chapter 8 of Title 47.

(d) The first $2,401,627 of PILOT payments due and payable shall not be paid to the District but shall be credited to Owner’s account as and when due and payable. Thereafter, all PILOT payments shall be made to the District.

(e) A lien for unpaid PILOT payments, including penalties and interest, shall attach to each tax lot in the Center Leg Freeway (Interstate 395) PILOT Area in the same manner and with the same priority as a lien for delinquent real property tax under Chapter 13A of Title 47. If the Center Leg Freeway (Interstate 395) PILOT Area is comprised of more than one tax lot, the lien on each such lot shall secure only the portion of the PILOT that is allocable to such lot (and any penalty and interest relating to such portion of the PILOT). Unpaid PILOT payments may be collected in accordance with Chapter 13A of said Title 47.

(f) The owner of a tax lot within the Center Leg Freeway (Interstate 395) PILOT Area shall have the right to challenge any assessment or reassessment of such lot in accordance with the provisions of Chapter 8 of Title 47 and the applicable PILOT shall reflect the result of such challenge.

(g) Nothing set forth in this section shall affect the calculation or payment of real property taxes with respect to any buildings constructed upon the Deck.

[Disposition Authority]

Sec. 3. D.C. Official Code § 10-801 is amended by adding new subsections (n-1) and (n-2) to read as follows:
(n-1) Notwithstanding the requirements of this Section, the Council authorizes the Mayor to dispose of the parcels of land and airspace currently owned by the District, including without limitation the lot known for real property taxation and assessment purposes as Lot 0058 in Square 0564 (the “Property”) within the boundaries of south side of Massachusetts Avenue, N.W., west side of 2nd Street, N.W., north side of E Street, N.W., and east side of 3rd Street, N.W. in Washington, D.C. determined by the District Department of Transportation (DDOT), with Federal Highway Administration (FHWA) concurrence, to be excess of transportation needs and authorized to be disposed of under Title 23 of the Federal Code of Regulations to Louis Dreyfus Property Group, LLC, and/or one of its affiliates or assigns approved by the Mayor (the “Purchaser”). The disposition of the foregoing Property shall be upon the following terms and conditions:

(1) The Purchaser shall be responsible for construction of the Deck and reconstruction of F Street, N.W. and G Street, N.W. between 3rd Street, N.W., and 2nd Streets and any ramps to Interstate 395 (I-395) authorized to be relocated, in accordance with the planned unit development (PUD) approved by the Zoning Commission of the District of Columbia and DDOT, with FHWA concurrence;

(2) The Purchaser shall construct and develop, at its sole cost and expense, no less than 50 affordable residential units on the Property that shall be sold or rented to households earning 80% of the area median income (as defined in the DC Official Code § 42-2801(1) (AMI)) or less, with the unit mix and specific AMI levels set forth in the PUD;

(3) The purchase price for the Property shall equal the fair market value of the Property; provided, however, in no event shall the purchase price be less than $8.4 million plus statutory interest owed to the The Washington Development Group, Inc. (WDG), which shall be paid to WDG at closing on the Property if such payment to WDG is authorized by FHWA;
Except the proceeds that may be disbursed to WDG in accordance with Section (n-1)(3), the proceeds of the sale of the Property shall be deposited in the following accounts and in amounts determined by the Mayor and approved by FHWA: (i) account designated by District Department of Transportation for receipt of funds under Title 23 and (ii) the revolving fund created under D.C. Code § 1-204.50 for the costs of relocating the Office of the Chief Technology Officer's shared computer center;

The Purchaser shall provide the District assurances that the deck over I-395 will be constructed in a timely manner, including adequate guaranties, and the Mayor shall reserve a right of reverter in the deed of conveyance in the event that the Purchaser does not complete construction within time frames determined by the Mayor to be commercially reasonable;

The Mayor shall reserve rights necessary to operate F Street, N.W. and G Street, N.W. between 2nd and 3rd Street, N.W. for vehicular and/or pedestrian use (as determined under the PUD) and any rights necessary for the continued operation of I395 and its ramps, as determined necessary by the DDOT, with FHWA concurrence;

Purchaser shall be responsible for costs associated with the environmental reviews, assessments, impact statements, transit and traffic studies, security and engineering analyses, and the technical feasibility studies as may be required under District of Columbia and federal laws and regulations to obtain FHWA approval of the disposition, development and construction on the Property;

Unless the Court of Appeals for the District of Columbia issues an opinion in Case No 04-CV-1425 or Case No. 04-CV-1464 that does not require the District of Columbia to pay the WDG (or its successors(s) in interest) more than the judgment issued by Superior Court of the District of Columbia (inclusive of statutory interest accrued), the Purchaser shall, prior to conveyance, obtain
WDG's consent to the dismissal of the litigation prior to the Mayor's conveyance of the Property to the 
Purchaser;

(9) The Purchaser shall enter into and comply with agreements required under the Small, 
Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 (D.C. Official 
Code 2-218.01 et seq.) and section 4 of the First Source Employment Agreement Act of 1984 (D.C. 
Official Code § 219.03 et seq.); and

(10) The agreement enter into under D.C. Code § 2-218.01 et seq. shall require (i) the 
Purchaser to contract with Certified Business Enterprises (as defined in DC Official Code § 2-
218.02(1B) (CBE Contractors) for at least 35% of the contract dollar volume of the project; (ii) at least 
20% equity and development participation of local, small, and disadvantaged business enterprises, 
including The Jarvis Company, LLC, Spectrum Management and RJB Consulting Group, Inc.; and (iii) 
the Purchaser to establish a "Quick Pay Program" for the CBE Contractors requiring the following:

A. The Purchaser or developer shall hold a meeting with the CBE Contractor within 
10 calendar days after receiving an invoice from the CBE Contractor to discuss any disputed items and 
to agree on a final invoice;

B. Within 30 days after the meeting, the CBE Contractor shall be paid the full 
amount of the undisputed portion of the invoice; and

C. If the Purchaser or developer does not pay the undisputed portion of the invoice 
within the 30-day period, the unpaid, undisputed portion shall be subject to a late fee of 1% interest per 
month, calculated on a daily basis, for every day over 30 days that the CBE Contractor is not paid the 
unpaid, undisputed amount.

D. Changes to the requirements set forth in this paragraph (10) may be made if 
agreed upon by the Mayor.
In addition to the Property listed above, the Mayor is authorized to convey the improvements owned by the District and commonly known as the Jewish Historical Society Synagogue, currently located at 701 Third Street, N.W., Washington, D.C. to the Purchaser if the Mayor conveys to the Purchaser the real property known for real property taxation and assessment purposes as Lot 0058 in Square 0564.

Sec. 4. Notwithstanding the requirements of D.C. Official Code §2-305.05, the District's (i) environmental reviews, assessments, impact statements, transit and traffic studies, security and engineering analyses, and the technical feasibility studies and other actions required by applicable federal and District law or the Mayor for the District's potential disposition, development and construction on the parcels of land and airspace disposed of by the Mayor under D.C. Official Code § 10-801(n-1) (2010); and (ii) development and construction of F Street, N.W. and G Street, N.W. between 2nd Street, N.W. and 3rd Street, N.W., and any ramps to Interstate 395 are hereby exempt from the District of Columbia Procurement Practices Act of 1985, as amended, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code §2-302.02(a)), and in exchange for the benefit conferred through the redevelopment of land and airspace above I-395, creation of a new mixed use development within a currently under-utilized portion of the Old City of Washington, and the construction and reconnection of F and G Streets, N.W. in furtherance of the original L’Enfant plan, the Council approves of the sole source, in exchange for the benefit conferred through the redevelopment of land and airspace above I-395, creation of a new mixed use development within a currently under-utilized portion of the Old City of Washington, and the construction and reconnection of F and G Streets, N.W. in furtherance of the original L’Enfant plan, award of one or
more contracts, with Louis Dreyfus Property Group, Inc., or affiliate or assignee of such company as approved by the Mayor is authorized.

Sec. 5. D.C. Official Code § 2-1225.21

(1) DC Code § 2-1225.21 (b)(1)(C-i) and (d-1) are repealed.

(2) The parenthetical beginning with “except, the monies” in the last sentence of D.C. Official Code § 2-1225.21(c) is deleted.

Sec. 6. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by § 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206(c)(3)).

Sec. 7. 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), a 30-day period of Congressional review as provided in § 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.
BILL 18-806
COMMITTEE PRINT
COMMITTEE ON FINANCE AND REVENUE
JUNE 24, 2010

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Title 47 of the D.C. Official Code to authorize the Center Leg Freeway (Interstate 395) special PILOT; to amend An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes to allow the Mayor to dispose of certain parcels of land as defined in the legislation; to amend the District of Columbia Procurement Practices Act of 1985 to allow Louis Dreyfus Property Group, Inc. to procure studies and construct improvements on behalf of the District of Columbia; and to amend the National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganization Act of 2008 to repeal unneeded provisions.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Redevelopment of the Center Leg Freeway (Interstate 395) Act of 2010”.

Sec. 2. Title 47 of the D.C. Official Code is amended as follows:

(a) Section 47-1002 is amended by adding new paragraph (31) to read as follows;

“(31) Land and improvements that are located in the Center Leg Freeway (Interstate 395) PILOT Area established pursuant to Section 47-4618 and not otherwise exempt pursuant to Section 47-1002, for the PILOT period specified in D.C. Code § 47-4618(a)(6), but excluding any improvements constructed upon the deck described in D.C. Code § 47-4618(a)(2) and any lots that are removed from the Center Leg Freeway (Interstate 395) PILOT Area pursuant to
D.C. Code § 47-4618(b)(1)(iv). The exemption provided by this paragraph shall begin and
terminate in accordance with the definition of PILOT Period set forth in D.C. Code § 47-
4631(a)(6)."
(b) Chapter 46 of Title 47 of the D.C. Official Code is amended as follows:
(1) The table of contents for Chapter 46 is amended by adding a new section designation
to read as follows:
"47-4631. Payments in lieu of taxes, Center Leg Freeway (Interstate 395) PILOT Area.”.
(2) A new section 47-4618 is added to read as follows:
"47-4631. Payments in lieu of taxes, Center Leg Freeway (Interstate 395) PILOT Area.
“(a) Definitions.
“For purposes of this section, the term:
“(1) "Center Leg Freeway (Interstate 395) PILOT Area" means the real property
conveyed to the Owner under D.C. Code § 10-801(n-1).
“(2) "Deck" means the platform to be constructed by Owner above the Center Leg
Freeway (Interstate 395), upon which will be constructed improvements, including but not
limited to commercial and residential buildings.
“(3) "District" means the District of Columbia.
“(4) "Owner" means Louis Dreyfus Property Group, LLC, and/or one of its
affiliates or assigns approved by the Mayor and who may, from time to time, own all or a part of
the Center Leg Freeway (Interstate 395) PILOT Area.
“(5) "PILOT" means the semi-annual payments made in lieu of real property taxes
pursuant to this section.
“(6) "PILOT Period" means the period commencing on the date that the District conveys to Owner fee simple title to the Center Leg Freeway (Interstate 395) PILOT Area (but in no event earlier than October 1, 2011) and ending on the one (1) year anniversary of the tenth value adjustment required under subsection (b)(2)(iv) below.

“(b)(1)(i) During the PILOT Period, the owner of each tax lot within the Center Leg Freeway (Interstate 395) PILOT Area shall pay a PILOT with respect to such lot and any improvements thereon in an amount equivalent to the real property taxes that would be otherwise levied on Class 1 Properties or Class 2 Properties (as applicable) pursuant to DC Code § 47-812, based upon the value determined pursuant to subsection (b)(2) below. Except as otherwise provided in this section, the PILOT shall be paid at the same time and in the same manner as real property taxes under Chapter 8 of Title 47.

“(ii) If the Center Leg Freeway (Interstate 395) PILOT Area is comprised of more than one tax lot, the PILOT shall be allocated among such lots for each fiscal year according to the relative assessed value of each such lot as of the January 1st immediately preceding the fiscal year with respect to which payment of the PILOT accrues (including for purposes of this determination any lot that is no longer included in the Center Leg Freeway (Interstate 395) PILOT Area pursuant to subsection (b)(1)(iv) below). If any tax lot included in the Center Leg Freeway (Interstate 395) PILOT Area is exempt from real property taxes pursuant to any provision of this Chapter, other than Section 47-1002(30), such lot shall be exempt from payment of the portion of the PILOT that is allocated to it pursuant to this subsection (b)(1)(ii).

“(iii) Notwithstanding any other provision of this subsection (b)(1), commencing on October 1, 2014, the PILOT payments shall not be due or payable currently but shall accrue and payment thereof shall be deferred until the date on which a building permit is
issued for the first building to be constructed upon the Deck, other than buildings for the use of
the Archdiocese of Washington and/or the Jewish Historical Society of Greater Washington, Inc.
Within thirty (30) days after the date of issuance of such building permit, all PILOT payments
that accrued but were not paid prior to the date of such issuance shall be due and payable in full.

"(iv) Upon issuance of a Certificate of Completion of Core and Shell of
Building with respect to any building that is built upon the Deck, the tax lot upon which such
building is situated shall thereupon no longer be included in the Center Leg Freeway (Interstate
395) PILOT Area.

"(2) The value of the real property within the Center Leg Freeway (Interstate 395)
PILOT Area (excluding the value of improvements constructed upon the Deck) for purposes of
calculating the PILOT pursuant to the foregoing subsection (b)(1) (but not for the purpose of
calculating the assessed value) shall be as follows:

"(i) For the purposes of calculating the PILOT, the PILOT payment for
fiscal years 2011 through 2014 shall be based upon the lesser of: (A) the assessed value of the
Property as determined under Chapter 8 of Title 47 or (B) the assessed value for the applicable
fiscal year projected in the fiscal impact statement adopted by the Council in the enactment of
this act.

"(ii) Commencing on October 1, 2014, the value of the real property for
PILOT purposes shall be the purchase price paid by Owner to the District at closing on the
transfer of the Center Leg Freeway (Interstate 395) PILOT Area pursuant to 10-801(n-1)(3).

"(iii) As of January 1, 2014 and as of each January 1st during the PILOT
Period thereafter until the January 1st immediately following substantial completion of the entire
Deck, for the purposes of calculating the PILOT, the Mayor shall certify to the Council and the
Office of Tax and Revenue the adjusted purchase price for such real property as determined in accordance with the procedures contained in the documents governing the transfer of the real property to the Owner. The last such certification shall further certify that substantial completion of the entire Deck has occurred and that the adjusted purchase price set forth therein is final for purposes of this subsection (b)(2). Commencing on October 1, 2015, and on each October 1st thereafter during the PILOT Period, the value of such real property for purposes of calculating the PILOT shall be reset at the adjusted purchase price as of the immediately preceding January 1st.

“(iv) During the PILOT Period, on each one (1) year anniversary after the final adjustment of the purchase price for the transfer of the Center Leg Freeway (Interstate 395) PILOT Area by the District to Owner under 10-801(n-1), the value of such real property for the purposes of calculating the PILOT shall increase by the average percentage increase in the assessed value of land in the District in the immediately preceding fiscal year.

“(c) The PILOT shall be subject to the same penalty and interest provisions as unpaid real property taxes under Chapter 8 of Title 47.

“(d) Beginning on October 1, 2014, the PILOT payments certified by the Mayor under Section (b)(2) and deferred under Section (b)(1)(iii) shall be reduced by up to $2,400,000 in consideration for the Owner agreeing to provide no less than 50 affordable housing units, and up to $3,000,000 for Owner’s conducting certain site preparation activities, including demolition of existing structures on the Property and within F Street, N.W.

“(e) A lien for unpaid PILOT payments, including penalties and interest, shall attach to each tax lot in the Center Leg Freeway (Interstate 395) PILOT Area in the same manner and with the same priority as a lien for delinquent real property tax under Chapter 13A of Title 47. If the
Center Leg Freeway (Interstate 395) PILOT Area is comprised of more than one tax lot, the lien on each such lot shall secure only the portion of the PILOT that is allocable to such lot (and any penalty and interest relating to such portion of the PILOT). Unpaid PILOT payments may be collected in accordance with Chapter 13A of said Title 47.

“(f) The Owner(s) of a tax lot within the Center Leg Freeway (Interstate 395) PILOT Area shall not have the right to challenge the Mayor’s determination of the Purchase Price pursuant to this act. The Owners of the tax lots within the Center Leg Freeway (Interstate 395) PILOT Area shall have the right to challenge the assessed value of their tax lot(s) in accordance with the provisions of Chapter 8 of Title 47.

“(g) Nothing set forth in this section shall affect the calculation of the assessed value or payment of real property taxes with respect to any buildings or improvements constructed upon the Deck upon the receipt of Certificate of Completion of Core and Shell of Building for such building or improvement.

Sec. 3. Section 1 of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801), is amended by adding new subsections (n-1) and (n-2) to read as follows:

“(n-1) Notwithstanding the requirements of this section, the Council authorizes the Mayor to dispose of the parcels of land and airspace currently owned by the District, including without limitation the lot known for real property taxation and assessment purposes as Lot 0058 in Square 0564 (the “Property”) within the boundaries of south side of Massachusetts Avenue, N.W., west side of 2nd Street, N.W., north side of E Street, N.W., and east side of 3rd Street, N.W. in Washington, D.C. determined by the District Department of Transportation (DDOT),
with Federal Highway Administration (FHWA) concurrence, to be excess of transportation needs and authorized to be disposed of under Title 23 of the Federal Code of Regulations to Louis Dreyfus Property Group, LLC, and/or one of its affiliates or assigns approved by the Mayor (the "Purchaser"). The disposition of the foregoing Property shall be upon the following terms and conditions:

“(1) The Purchaser shall be responsible for construction of the Deck and reconstruction of F Street, N.W. and G Street, N.W. between 3rd Street, N.W., and 2nd Streets and any ramps to Interstate 395 (I-395) authorized to be relocated, in accordance with the planned unit development (PUD) approved by the Zoning Commission of the District of Columbia and DDOT, with FHWA concurrence;

“(2) The Purchaser shall construct and develop, at its sole cost and expense, no less than 50 affordable residential units on the Property that shall be sold or rented to households earning 80% of the area median income (as defined in the DC Official Code § 42-2801(1) (AMI)) or less, with the unit mix and specific AMI levels set forth in the PUD;

“(3) The purchase price for the Property shall equal the fair market value of the Property; provided, however, in no event shall the purchase price be less than $8.4 million plus statutory interest owed to The Washington Development Group, Inc. (WDG), which shall be paid to WDG at closing on the Property if such payment to WDG is authorized by FHWA;

“(4) Except the proceeds that may be disbursed to WDG in accordance with Section (n-1)(3), the proceeds of the sale of the Property shall be deposited and disbursed, in amounts determined by the Mayor and approved by FHWA, as follows:

“(i) in the account designated by District Department of Transportation for receipt of funds under Title 23; and
“(ii) to reimburse the Office of the Chief Technology Officer for the costs of relocating the Office of the Chief Technology Officer’s shared computer center from the Property;

“(5) The Purchaser shall provide the District assurances that the deck over I-395 will be constructed in a timely manner, including adequate guaranties, and the Mayor shall reserve a right of reverter in the deed of conveyance in the event that the Purchaser does not complete construction within time frames determined by the Mayor to be commercially reasonable;

“(6) The Mayor shall reserve rights necessary to operate F Street, N.W. and G Street, N.W. between 2nd and 3rd Street, N.W. for vehicular and/or pedestrian use (as determined under the PUD) and any rights necessary for the continued operation of I-395 and its ramps, as determined necessary by the DDOT, with FHWA concurrence;

“(7) Purchaser shall be responsible for costs associated with the environmental reviews, assessments, impact statements, transit and traffic studies, security and engineering analyses, and the technical feasibility studies as may be required under District of Columbia and federal laws and regulations to obtain FHWA approval of the disposition, development and construction on the Property;

“(8) Unless the Court of Appeals for the District of Columbia issues an opinion in Case No 04-CV-1425 or Case No. 04-CV-1464 that does not require the District of Columbia to pay the WDG (or its successors(s) in interest) more than the judgment issued by Superior Court of the District of Columbia (inclusive of statutory interest accrued), the Purchaser shall, prior to conveyance, obtain WDG’s consent to the dismissal of the litigation prior to the Mayor’s conveyance of the Property to the Purchaser;
“(9) The Purchaser shall enter into and comply with agreements required under the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 (D.C. Official Code 2-218.01 et seq.) and section 4 of the First Source Employment Agreement Act of 1984 (D.C. Official Code § 219.03 et seq.); and

“(10) The agreement entered into under D.C. Code § 2-218.01 et seq. shall require

“(i) the Purchaser to contract with Certified Business Enterprises (as defined in DC Official Code § 2-218.02(1B) (CBE Contractors) for at least 35% of the contract dollar volume of the project;

“(ii) at least 20% equity and development participation of local, small, and disadvantaged business enterprises, including The Jarvis Company, LLC, Spectrum Management and RJB Consulting Group, Inc.; and

“(iii) the Purchaser to establish a “Quick Pay Program” for the CBE Contractors requiring the following:

“(A) The Purchaser or developer shall hold a meeting with the CBE Contractor within 10 calendar days after receiving an invoice from the CBE Contractor to discuss any disputed items and to agree on a final invoice;

“(B) Within 30 days after the meeting, the CBE Contractor shall be paid the full amount of the undisputed portion of the invoice; and

“(C) If the Purchaser or developer does not pay the undisputed portion of the invoice within the 30-day period, the unpaid, undisputed portion shall be subject to a late fee of 1% interest per month, calculated on a daily basis, for every day over 30 days that the CBE Contractor is not paid the unpaid, undisputed amount.
“(D) Changes to the requirements set forth in this paragraph (10)

may be made if agreed upon by the Mayor.

“(n-2) In addition to the Property listed above, the Mayor is authorized to convey the
improvements owned by the District and commonly known as the Jewish Historical Society
Synagogue, currently located at 701 Third Street, N.W., Washington, D.C to the Purchaser if the
Mayor conveys to the Purchaser the real property known for real property taxation and
assessment purposes as Lot 0058 in Square 0564.

Sec. 4. Notwithstanding the requirements of D.C. Official Code § 2-305.05, the
District’s (i) environmental reviews, assessments, impact statements, transit and traffic studies,
security and engineering analyses, and the technical feasibility studies and other actions required
by applicable federal and District law or the Mayor for the District’s potential disposition,
development and construction on the parcels of land and airspace disposed of by the Mayor
under D.C. Official Code § 10-801(n-1) (2010); and (ii) development and construction of F
Street, N.W. and G Street, N.W. between 2nd Street, N.W. and 3rd Street, N.W., and any ramps
to Interstate 395 are hereby exempt from the District of Columbia Procurement Practices Act of
1985, as amended, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code §2-
302.02(a)), and in exchange for the benefit conferred through the redevelopment of land and
airspace above I-395, creation of a new mixed use development within a currently under-utilized
portion of the Old City of Washington, and the construction and reconnection of F and G Streets,
N.W. in furtherance of the original L’Enfant plan, the Council approves of the sole source, in
exchange for the benefit conferred through the redevelopment of land and airspace above I-395,
creation of a new mixed use development within a currently under-utilized portion of the Old
City of Washington, and the construction and reconnection of F and G Streets, N.W. in
furtherance of the original L'Enfant plan, award of one or more contracts, with Louis Dreyfus
Property Group, Inc., or affiliate or assignee of such company as approved by the Mayor is
authorized.

Sec. 5. Section 301 of the National Capital Revitalization Corporation and Anacostia
1225.21) is amended as follows:

(a) Subparagraphs (b)(1)(C-i) and (d-1) are repealed.

(b) Subsection (c) is amended by striking the phrase “; except, the monies deposited into
the Account pursuant to subsection (b)(1)(C-i) of this section shall be allocated as set forth in
subsection (d-1) of this section” at the end of the subsection.

Sec. 6. Fiscal impact statement.

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

Sec. 7. 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), 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.
Conclusion

Funds are sufficient in the FY 2010 budget and the proposed FY 2011 through FY 2014 financial plan to implement the proposed legislation. However, as described below, the Office of the Chief Financial Officer has concerns about the precedent this PILOT structure may set for future development projects.

Background

Long-standing litigation regarding the District property and air rights adjacent to and above the I-395 depressed artery between Massachusetts Avenue and E Street, NW, the I-395 Air Rights, has delayed the sale and development of the site. In 2004, a court ruled that the District must pay Washington Development Group (WDG) $8.4 million (plus interest) in reference to a previous disposition agreement. Both WDG and the District have appealed that decision.

The proposed legislation would give authority to the Mayor to move forward on the development of the site by authorizing a disposition to Louis Dreyfus Property Group (Dreyfus), who will be responsible for settling the litigation as a condition of disposition. Without a resolution of the litigation, it is unclear how long the current appeals process would take, what the cost of the final outcome of the litigation would be, or when the property would become available for development.

The proposed legislation approves the final disposition of District property and air rights adjacent to and above the I-395 depressed artery between Massachusetts Avenue and E Street, NW, including the disposition of Square 564, Lot 58 which houses an Office of the Chief
Technology Officer (OCTO) Shared Computer Center, and the property known as the Jewish
Historical Society Synagogue located at 701 3rd Street, NW. Dreyfus would construct a deck
over I-395, upon which a mixed-use development could be built.

The proposed legislation also approves the terms of the disposition, including the method for
calculating the sales price payments from Dreyfus, which are based on a negotiated Development
and Disposition Agreement, and the responsibility of Dreyfus to meet certain requirements
including:

- complying with Federal Highway Administration (FHWA) requirements;
- paying for all costs associated with FHWA or District required environmental reviews,
  impact statements, traffic studies, security and engineering analyses;
- complying with the Small and Local Disadvantaged Business Enterprise Development
  and Assistance Act and First Source Agreements;
- entering into contracts with certain Certified Business Enterprises including: The Jarvis
  Company, LLC, Spectrum Management, and RJB Consulting Group;
- completing the deck over I-395 in a timely manner;
- developing 50 units of affordable housing; and
- obtaining the consent of WDG to dismiss the litigation currently associated with the I-
  395 Air Rights.

In addition, the proposed legislation approves a tax exemption and payment-in-lieu-of-taxes
(PILOT) for Dreyfus. The PILOT period would begin as early as FY 2012 when the District
transfers the air rights to Dreyfus, and would end the earlier of 10 years after the deck over I-395
is completed, or (on a parcel by parcel basis) upon issuance of a Certificate of Completion of
Core and Shell of any building on the newly-created deck.

Finally, the legislation exempts all agreements resulting from this transaction, including those
related to the disposition, contracting and construction, from the District of Columbia
Procurement Practices Act.

Disposition Price

The draft Development and Disposition Agreement describes the process for determining the
total sales price payments to the District as well as the timing of those payments. The payments
are intended to create a fair market value, based on actual costs of construction of the deck,
shared savings, and financial calculations and valuations that are made during the construction
period. According to the draft Development and Disposition Agreement, the purchase price will
be determined at a later date based on an appraisal adjustment model and actual costs. The price
would never be lower than the District's current liability to WDG.

Because the purchase price is not yet determined, the OCFO cannot complete an analysis of
whether actual payments to the District from Dreyfus will be greater or less than the value of the
assets of which the District is disposing. However, because District assets are not part of the
The Honorable Vincent C. Gray
Fiscal Impact Statement: "Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010"
Page 3 of 4

District’s operating budget, if the transaction results in a disposition price lower than the value of the property, there is no impact on the budget and financial plan.

The sale proceeds resulting from the disposition, after payments associated with settling the lawsuit with WDG, will be allocated between (i) an account designated by the District Department of Transportation (DDOT) for DDOT capital infrastructure expenses, and (ii) a reimbursement to OCTO for the costs of relocating the Shared Computer Center on the site. The OCFO previously identified the OCTO relocation as a cost of this transaction; however, the relocation has been funded within OCTO’s budget. Through the transaction outlined in the proposed legislation, OCTO expects to be reimbursed for some or all of their relocation costs.

This disposition is not subject to the requirements of the District Land Disposition Amendment Act of 2009.

PILOT Payments

The legislation describes the PILOT as an amount equivalent to the real property taxes that would be otherwise levied on Class 1 Properties or Class 2 Properties (as applicable), based upon values described in the legislation and determined in accordance with the procedures contained in the documents governing the transfer of the real property, rather than on values assessed by the Office of Tax and Revenue.

The value of the I-395 Air Rights at the time of disposition is estimated to be approximately $60 million\(^1\). The legislation states that the disposition cannot occur prior to October 1, 2011 (FY 2012). Any PILOT made during FY 2012, FY 2013 and FY 2014, would be equal to the lesser of property taxes that would be owed based upon the assessed value of the site or property taxes that are projected to be owed based on OCFO projections in this fiscal impact statement.

Based on the project schedule, air rights appraisal, and estimated real property growth rates, the OCFO projects the following PILOT would be owed during the financial plan period.

<table>
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<tr>
<th>Estimated Real Property Assessments and Real Property Tax for the I-395 Project</th>
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<tr>
<td>Projected Assessed Value</td>
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<tr>
<td>--------------------------</td>
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<tr>
<td>Projected Real Property Tax</td>
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After October 1, 2014 (beginning in FY 2015), Dreyfus would make PILOT based on a separate calculation of value made by the Mayor. These payments are expected to be significantly lower than what would otherwise be collected in property taxes for the site. Beginning in FY 2015, Dreyfus would receive a credit of up to $5.4 million on its PILOT. Further, any PILOT due in FY 2015 and beyond, would accrue until the time a building permit is issued for the first vertical building above the I-395 deck.

\(^1\) OTR estimate based on review of developer appraisals.
The timing of the completion of the deck and subsequent construction of buildings cannot be accurately projected. However, the District is unlikely to receive any PILOT payments between FY 2015 and FY 2020, a period during which the District would have expected over $12 million in real property tax from the site. Because the deck is expected to be completed in phases, some buildings on the deck could reach Core and Shell Completion during this time and become taxable.

**Concerns of the OCFO**

The OCFO has two concerns about this PILOT structure, both of which appear to circumvent the fiscal impact process.

First, the District is giving significant subsidy to this project, but in order for this subsidy to have no fiscal impact, the legislation is granting this subsidy through reduced PILOT made subsequent to the financial plan period. An ongoing strategy to include subsidy in out-year budget periods will have a negative impact on the District’s financial strength into the future.

Second, the PILOT includes a requirement that Dreyfus, during the financial plan period, make a PILOT equal to the lesser of what would otherwise be owed in taxes or what the OCFO today projects in the Fiscal Impact Statement would be owed in taxes. While this structure creates an agreement with no fiscal impact, it removes any possibility of the District benefiting from future economic conditions that are better than what is currently projected.

**Financial Plan Impact**

Funds are sufficient in the FY 2010 budget and the proposed FY 2011 through FY 2014 budget and financial plan to implement this legislation.
COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE

COUNCILMEMBER KWAME BROWN, CHAIR
COMMITTEE ON ECONOMIC DEVELOPMENT

ANNOUNCE A JOINT PUBLIC HEARING ON

B 18-806, the "Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010"

June 4, 2010 – 11:30 a.m.
Room 500 - John A. Wilson Building
1350 Pennsylvania Avenue, NW; Washington, D.C. 20004

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, and
Councilmember Kwame Brown, Chairman of the Committee on Economic Development announce
a joint public hearing to be held on Friday, June 4, 2010, at 11:30 a.m., in Room 500 of the John A.

Bill 18-806, the "Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition
Act of 2010" was introduced by Councilmembers Tommy Wells and Jack Evans and was
sequentially referred to the Committee on Economic Development and the Committee on
Finance and Revenue. The legislation authorizes the Center Leg Freeway (Interstate 395) special
PILOT, authorizes the disposition of a parcel of land and air rights above and adjacent to the
Center Leg Freeway (Interstate 395) to Louis Dreyfus Property Group, Inc., and allow Louis
Dreyfus Property Group, Inc. to procure studies and construct improvements on behalf of the
District of Columbia.

The Committee invites the public to testify at the public hearing. Those who wish to
testify should contact Sarina Loy, Committee Assistant at (202) 724-8058 or sloy@dccouncil.us,
and provide your name, organizational affiliation (if any), and title with the organization by the
close of business on Thursday, June 3, 2010. Witnesses should bring 15 copies of their written
testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony
in order to permit each witness an opportunity to be heard. Additional written statements are
encouraged and will be made part of the official record. Written statements may be submitted by
ATTACHMENT D

e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia; 1350 Pennsylvania Ave., N.W.; Suite 114; Washington D.C. 20004. This notice is abbreviated to provide the public with timely notice.
COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE

COUNCILMEMBER KWAME BROWN, CHAIR
COMMITTEE ON ECONOMIC DEVELOPMENT

JOINT PUBLIC HEARING ON

B18-806, the “Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010”

June 4, 2010 – 11:30 a.m.
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1350 Pennsylvania Avenue, NW; Washington, D.C. 20004

I. Opening Remarks

II. Witness List

• B18-806, the “Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010”

1. Robert H. Braunohler, Regional Vice President, Louis Dreyfus Property Group
2. N. William Jarvis, Principal, The Jarvis Company, LLC
3. Matt Troy, Project Manager Office of the Deputy Mayor for Planning and Economic Development
4. John Ross, Senior Advisor and Director, Economic Development Finance, Office of the Chief Financial Officer

III. Announcements

IV. Adjournment
Testimony of Robert H. Braunohler of Louis Dreyfus Property Group

Before the Council of the District of Columbia Committee on Finance and Revenue and Committee on Economic Development

Joint Public Hearing on Bill 18-806, the "Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010"
Room 500 of the John A. Wilson Building
at 11:30 AM on June 4, 2010

Good morning Committee Chairperson Evans, Committee Chairperson Brown, and other members of the Council. I am Robert H. Braunohler, Regional Vice President of Louis Dreyfus Property Group. With me today is N. William Jarvis, principal of The Jarvis Company, which is our development partner on this project.

We are pleased to be here today to describe the extensive work and milestone accomplishments on this project that have occurred since this Council’s approval of the first disposition resolution for this transaction in 2007. Louis Dreyfus Property Group, The Jarvis Company, the Office of the Deputy Mayor for Planning and Economic Development ("DMPED"), and the District Department of Transportation ("DDOT") have been working steadily and cooperatively to finalize all preliminary matters, including laying the groundwork to obtain the required approvals from the Federal Highway Administration ("FHWA"), in order to convert this development opportunity into a reality.
Our development team has been working on this project for five years. Louis Dreyfus, which has been active in the District of Columbia since 1974, recently completed the LEED Platinum office building at 801 17th Street NW, and we are not at all put off by very complex and challenging projects, such as the I-395 Air Rights project. The Jarvis Company, our equity and development partner, brings expertise in dealing with community issues on development projects, and has experience with public-private partnerships, such as the old Convention Center development. Along with The Jarvis Company, we also have RJB Consulting Group, Inc. and Spectrum Management, LLC on our team as CBE equity and development partners. At present, we have finalized a workable deal structure with the city, we have intently studied the engineering challenges we must overcome in order to safely and securely span the highway with a constructed deck, and we have developed all of the preliminary materials and documentation needed to begin the FHWA review process.

Because this Council has already (twice) reviewed and provided its approval for this development project, my testimony today will not focus on the tremendous value of this project – that is, the “knitting the city back together” and recovering the L’Enfant Plan street grid at F and G Streets (as had always been contemplated by city planners), the resolution of the contentious litigation that has stymied all progress on this site for years, and the ultimate creation of jobs and tax revenues for the city. Instead, my testimony today will focus on the specifics of Bill 18-806 and the rationale for this latest legislative initiative.

Bill 18-806 establishes a payment in lieu of taxes (a “PILOT”) for this project to address the difficulty of accurately assessing this asset for real estate tax purposes. The site is a combination of a sliver of land and a lot of airspace,
and it will take us approximately three years to transform the site into the equivalent of buildable land. The use of a PILOT during this period eliminates the possibility that the Office of Tax and Revenue ("OTR") might either over-assess or under-assess the asset. Under the terms of Bill 18-806's proposed PILOT, the developer will pay the District real estate taxes on the asset from the date of acquisition, using the amount paid at closing as the initial assessed value. The PILOT structure then allows for the re-calculation of the assessed value at various intervals as the construction of the deck is completed. The PILOT is designed to terminate after we have had sufficient time to complete the deck and begin the vertical development. Once the PILOT terminates, or as soon as vertical development occurs on any portion of the deck, the relevant portion of the property will be assessed for taxation in accordance with OTR's normal tax assessment processes. We believe that the use of a PILOT is a creative way to assure a fair taxation of this real estate asset during construction.

Bill 18-806 also restates the Council’s disposition and the terms of the transaction between the city and Louis Dreyfus. We thought that this restatement was necessary for two primary reasons. First, although, as I stated earlier, we have been diligently working with DMPED and DDOT, the deal and the development plan must still be approved by FHWA. Bill 18-806 restates the deal terms in order to provide the level of flexibility needed to navigate the FHWA approval process. Second, there have been some structural changes to the Council’s previously-approved dispositions – for example, the city now has greater flexibility with how it might utilize the proceeds from this disposition – and the restatement of the transaction in Bill 18-806 eliminates all of the outdated references.
Lastly, as we build the structure that spans the highway, we will also construct bridges that will become F and G Streets. While constructing public right-of-ways is normally a function handled by the District of Columbia, in this instance, the streets and the deck structure are so intertwined that it would not make sense to insert any other builder into this construction process. As a result, Bill 18-806 exempts the developer from the Procurement Practices Act so that we may legally handle this aspect of the project.

As we have asserted to this Council in the past, I would like to reiterate that have put together a world-class development and design team for this project. We have the financial resources (even in the current, difficult economic environment) to complete this project. We have already expended significant funds, and we are prepared to make further substantial expenditures to complete the pre-development analyses, assessments, and planning. The city has been fully cooperative and engaged in rigorously conducting the pre-development reviews and the finalization of the parameters of the transaction. We continue to believe that this development project is an important one for the city, and we remain committed to starting construction as soon as we receive all of the required governmental approvals.

I would be pleased now to answer any questions you may have.
OVERVIEW
I-395 AGREEMENT FOR PURCHASE OF AIR RIGHTS AND LAND

Conveyance Structure: District to convey fee simple between E Street, NW; Massachusetts Avenue, NW; 2nd Street, NW; and 3rd Street, NW, (including the parcel occupied by the Jewish Historical Society ("JHS")), reserving easements to the District:

(a) Highway Easement: exclusive easement for highway and approach ramps
   - Highway = current highway facilities, will be further defined before Closing
   - Non-exclusive "support areas" to be carved out of Highway Easement for structures supporting the Deck prior to Closing and finalized after completion of construction of the Deck

(b) "District" Easement: non-exclusive easement for District access to remainder of fee for maintenance and repair of Highway
   - After construction of Deck, non-exclusive easement to be redefined to areas necessary for maintenance of Highway (i.e. carve out unlimited access to improvements)

Financial Terms.

(a) Deposit = $500,000 (delivered at execution of the Purchase Agreement)

(b) Pre-Adjustment Purchase Price = $60,000,000
   - Payment at Closing = Amount of the WDG Judgment (estimated $11 million)
   - Purchase Price deferred at Closing secured by:
     o Deed of Trust/Note until construction financing in place
     o Mayor may withhold building permits for vertical construction until Purchase Price (as adjusted) paid
     o Right of Reverter in Deed
(c) **Calculation of Post-Adjustment Purchase Price.**

1. **Recalculation of Purchase Price triggered by two events:**
   Developer's request to commence vertical construction on Deck prior to Substantial Completion of the Construction of the Deck and/or Substantial Completion of Construction of the (entire) Deck.

2. **Method of Recalculation:** Developer submits evidence of actual Hard Costs and Soft Costs (as defined in Purchase Agreement) – upon agreement as to the actual Hard Costs and Soft Costs incurred, then recalculation based upon discounted cash flow methodology:

   Gross Fair Market Value of Property
   (minus) 49.6% of change in Hard Costs
   (minus) 60% of change in the Soft Costs
   (equals) Adjusted Value of Property

   - If Adjusted Value is less than $60 million, the Post-Adjusted Purchase Price is reduced to the Adjusted Value of the Property
   - If the Adjusted Value is more than $60 million, the Post-Adjusted Purchase Price equals $60 million and the District receives 50% of the value above $60 million (the "Cost Savings Amount").
   - The Post-Adjustment Purchase Price cannot be less than the amount of the WDG judgment ($11 million).
   - Post-Adjustment Purchase Price + Cost Savings cannot be greater than $109 million.

3. **True-Up.** Upon Final Completion of the Deck, Developer shall recalculate Hard Costs and Soft Costs based upon costs incurred during construction of the Deck and District will receive any amount in excess of $100,000 saved.

(d) **Affordable Housing** = Developer contribution of an additional $7.5 million towards construction of the 50 affordable housing units (at or below 80% AMI).

(e) **PILOT** = assuming enactment of PILOT legislation, Developer to pay taxes based upon the “Purchase Price” certified by the Mayor,

1. "Purchase Price" is calculated by Mayor as follows (for the purposes of the PILOT only):
   - From Closing until Substantial Completion of Construction of the Deck, the "Purchase Price" shall be the amount of the WDG Judgment (estimated $11 million).
- From the date of the calculation of the Post-Adjustment Purchase Price (and any adjustments in thereof), the "Purchase Price" shall be Post-Adjustment Purchase Price.
- Beginning on date of Substantial Completion of Construction of the Deck, the "Purchase Price" shall increase annually by average percentage increase of assessed value of land in the District in the immediately preceding year.

2. PILOT expires on the 10th anniversary of Substantial Completion of Construction of the Deck (completion date will be established in document recorded among the land records).

3. Vertical improvements constructed on the Deck will be removed from PILOT Area upon completion of the core and shell of such improvements and such improvements will be taxed thereafter in accordance with OTR normal assessment procedures.

**Jewish Historical Society:**

(a) Developer shall enter into a binding agreement with JHS that requires:
1. JHS to relocate from its current location to the new location on the completed Deck (following one interim relocation);
2. JHS’s consent to the conveyance of the JHS Parcel and the District's interest in the JHS Ground Lease and improvements to Developer at Closing; and
3. termination of the JHS Ground Lease upon the conveyance to JHS of the JHS relocation parcel.

(b) District will have no responsibilities or liability for relocating JHS except the requirement that the District shall provide JHS a relocation site in the event that the Developer defaults and the Property reverts to the District.

*Note:* The Developer and JHS entered to a Memorandum of Understanding on May 13, 2010 that includes JHS agreement to relocate and terminate its ground lease with the District.

**Holy Rosary Church:**

(a) Developer shall enter into a binding agreement with Holy Rosary Church that requires:
1. Holy Rosary to grant easement to District over closed portion of F Street, N.W. to enable District re-open F Street between 2nd and 3rd Street, N.W.;
2. Developer shall construct and convey replacement rectory on platform adjacent to Holy Rosary Church; and
3. Developer solely responsible for costs associated with reconstruction of F Street, N.W. between 2nd and 3rd Street, N.W.
(b) District will not have access to the F Street easement until Holy Rosary is given a relocation site.

**DDOT and FHWA Approvals.** Certain approvals of Federal Highway Administration ("FHWA") must be received prior to Closing.

(a) **Approvals:**

1. Environmental Assessment/Ramp closure assessment.
2. Excess Property Determination - determination that Property outside of easements is excess of highway needs.
3. Disposal Determination – determination that Property outside of easement may be disposed of pursuant to Title 23 of the Code of Federal Regulations and NEPA.
4. Construction Agreement – governing terms and conditions of construction of Deck in accordance with Title 23.
5. Approval of location of Support Areas (structures within Highway Easement) and Vaults (under F & G Streets).

(b) **Process:**

- Developer to provide DDOT all materials necessary for DDOT to make the Excess Property Determination and Disposal Determination (determination disposal authorized by FHWA Regulations).
- After DDOT receives all materials necessary to make Disposal Determination under FHWA Regulations, DDOT will forward request for FHWA concurrence.
- Receipt of FHWA approvals of Excess Property Determination and Disposal Determination is condition to District’s obligation to proceed to Closing.

**Closing Process:** “Closing” will occur in multiple steps:

(a) All conditions of Closing satisfied (including DDOT/FHWA approvals, relocation of the Shared Computer Center, WDG settlement agreement)
(b) Delivery of funds and all documents for Closing (i.e. “Document Delivery Date”) into escrow
(c) Filing of court pleadings dismissing WDG case in lower court and Court of Appeals
(d) Receipt of Court orders in WDG case
(e) Release of Funds and recordation of Deed, covenants, etc. with District of Columbia recorder of deeds

June 3, 2010 4
Post-Closing Requirements: The Purchase Agreement and other documents recorded among the land records (including the Deed, DDOT Covenants, and Construction and Use Covenant) impose various post-closing requirements on the Developer, including

(a) Restrictions on Developer's use and access to the Highway (requires written consent of DDOT).
(b) Developer's obligation to construct the Deck (including construction of F & G Streets) and relocate JHS and Holy Rosary at its sole cost and expense.
(c) Commence Construction no later than 28 months after Closing (however, Developer has option to postpone Commencement of Construction on the Deck under certain limited circumstances).
(d) Substantial Completion of Construction of the entire Deck no later than 60 months after Commencement of Construction.
(e) Requires DDOT oversight over construction.
(f) Requires Developer to construct, use, maintain and operate the Deck (other than surface of F & G Streets, NW) at its sole cost and expense.
(g) Provides DMPED design reviews, inspection, audit rights
(h) Restrictions on Transfer prior to construction of Deck.
(i) Requires construction of 50 affordable units (at 80% AMI or less) and will require recordation of affordable housing covenant on residential parcel.

Specific District Remedies:
(a) Deed contains Right of Reverter in event Dreyfus does not obtain certificate of occupancy by Outside Date for Substantial Completion of the Deck (2019).
(b) DDOT Covenants require provide DDOT authority to inspect and issue stop work orders if Developer interferes with Highway without DDOT consent.
Public Hearing on
Bill 18-806, “Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010”

Testimony of
Matthew J. Troy IV, Project Manager
Office of the Deputy Mayor for Planning and Economic Development

Before the
Committee on Economic Development
Councilmember Kwame R. Brown, Chair

Committee on Finance and Revenue
Councilmember Jack Evans, Chair

June 4, 2010
11:30 a.m.

John A. Wilson Building, Room 500
1350 Pennsylvania Avenue, NW
Washington, DC 20004
Good morning, Chairman Brown, Chairman Evans and members of the Committees on Economic Development and Finance and Revenue. For the record, my name is Matthew Troy, and I am a Project Manager in the Office of the Deputy Mayor for Planning and Economic Development (DMPED). I am here to testify on behalf of the Administration in support of Bill 18-806, the “Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010” (the “Bill”).

The District of Columbia (the “District”) in partnership with the Center Place Holdings, LLC (the “Developer”) plan to redevelop the land and air rights above and adjacent to the Center Leg Freeway (Interstate 395). The project will be a mixed use development of approximately 2.1M GSF; with approximately 180K GSF planned for residential, approximately 60K GSF of retail, and the remainder slated for trophy, Class-A office space. The entire project, including the platform, will be a national leader in sustainability design. The project site is bounded horizontally by Massachusetts Avenue, N.W., 2nd Street, N.W., E Street, N.W., and 3rd Street, N.W. This Bill addresses certain key points of the project that will ensure a timely and successful development for the District in the future.

The Bill would establish a true payment in lieu of taxes (“PILOT”) to address the difficulty associated with assessing this particular asset for real estate tax purposes. The PILOT period would begin when the site is conveyed to the Developer through substantial completion of the platform and then for a period of ten years afterwards. PILOT payments would initially be based on the amount paid by Developer to the District at Closing, with the structure of the PILOT
Agreement allowing for recalculation at multiple points during construction of the deck. PILOT payments would accrue until the Developer requests a vertical building permit for the first private vertical improvement on the site, at which point all accrued PILOT payments will be paid to the District less an approximate $2.4M credit to offset a small portion of the costs associated with the fifty affordable residential units at or below 80% area median income ("AMI") that the Developer will build on the site. If at any point during the PILOT period, the Developer receives a Certificate of Completion of Core and Shell of Building on any private improvement built on the deck, that building and tax lot will be removed from the PILOT area and taxes will begin to be paid on it in customary fashion. This structure would provide the Developer with the certainty of knowing exactly what they will be liable for in taxes over the course of construction which will help facilitate the financing of the costly platform.

The Bill also restates the majority of the basic terms and conditions of the agreement that Council had previously approved, such as the affordable housing and CBE requirements, while slightly modifying certain terms and conditions to provide the District with the flexibility that will be necessary to gain Federal Highways ("FHwA") approval of the disposition of the project site. For example, this Bill authorizes the conveyance of the Jewish Historical Society’s ("JHS") improvements, which are owned by the District, to the Developer upon conveyance of the site. This was not contemplated in earlier legislation, but it is an important piece of the project that needed to be addressed prior to closing. Also, it should be noted that the Developer, who has been in negotiations with JHS for the past two years, recently entered into an agreement with them that outlines JHS’ understanding and support of the project and their role in the future development. Additionally, the Bill allows the District to slightly modify certain aspects of the deal (i.e. timing of payments) as may be necessary to gain FHwA approval. This was not afforded under previous legislation.
Finally, the Bill provides a limited exemption from the District's Procurement Practices Act ("PPA") of 1985. Because the Developer is performing the necessary studies for review and approval by FHwA and DDOT to navigate the project through the environmental assessment process and also constructing F and G Streets as part of the overall platform development, an exemption from the PPA is necessary in order for the Developer to be legally able to complete these aspects of the project. DMPED, DDOT, and the Developer all discussed the best approach for the timely completion of the studies and development of the streets, and all parties agreed that it is best left in the hands of the Developer. Now, it is important to note that DMPED did work with the Office of the Attorney General ("OAG") to determine whether or not an exemption from the PPA was even necessary. After internal deliberation OAG determined that the Developer actually did not need to be exempt from the PPA in order to complete the necessary tasks. However, for the sake of transparency and for the sake of the project we are requesting it anyway. The limited exemption ensures that the expectation of all parties will be met and guarantees that the project will not be exposed to any undue delay in the future, from the beginning of the environmental assessment process through the reintroduction of F and G Streets and completion of the platform.

Conclusion
By taking favorable action on this Bill the Council ensures that the progress that has been made on the project over the course of the past eight months is sustained. Favorable action on the Bill will allow both the Developer and the District to seek FHwA approval this summer, with the Developer beginning the environmental assessment process shortly afterward. This would represent an investment by the Developer in the District of tens of millions of dollars and would be demonstrable progress on a development that would not only reinvigorate a currently
underutilized portion of the District's downtown, but would bring fifty affordable residential
units to the area, significantly grow the District's tax base, and help accomplish the District's
goal of making downtown more vibrant by furthering the original L'Enfant Plan, reconnecting F
and G Streets, creating a new national model for sustainable development within a mixed-use
project, and attracting more residents, visitors and shoppers. I urge the Council to take prompt
and favorable action on this measure. I am happy to answer any questions you may have on the
project and the legislation.
PUBLIC HEARING

ON

Bill 18-806, “Center Leg Freeway (Interstate 395) PILOT and Air Rights Disposition Act of 2010”

Before the
Committee on Finance and Revenue
The Honorable Jack Evans, Chairman
and
Committee on Economic Development
The Honorable Kwame Brown, Chairman

June 4, 2010, 11:30 a.m.
John A. Wilson Building, Chamber

Testimony of
John P. Ross
Senior Advisor and Director of Economic Development Finance
Office of the Chief Financial Officer

Natwar M. Gandhi
Chief Financial Officer
Government of the District of Columbia
Good morning, Chairman Evans and Chairman Brown. My name is John Ross, Senior Advisor and Director of Economic Development Finance for the Office of the Chief Financial Officer. I am pleased to testify for the Office of the Chief Financial Officer on Bill 18-806, The Center Leg (Interstate 395) PILOT and Air Rights Disposition Act of 2010.

The proposed legislation does three things:
1) It authorizes the disposition of the I-395 Air Rights and certain adjacent District-owned parcels to Louis Dreyfus Property Group, with certain conditions.
2) It authorizes a Payment-in-Lieu-of Taxes, or PILOT.
3) It exempts any contracts related to the procurement of studies, or construction of improvements on behalf of the District from the Procurement Procedures Act.

**Disposition**
Prior to the Mayor's conveyance of the property, Louis Dreyfus Property Group is required to obtain the consent of Washington Development Group, Inc to dismissal of the litigation currently associated with the I-395 air rights. In addition, the developer must meet other requirements related to:
- Federal Highway Administration and District environmental and development requirements;
- the District’s Small Disadvantaged Business Enterprise Development and Assistance Act and First Source Agreements;
• contracting with certain Certified Business Enterprises including: The Jarvis Company, LLC, Spectrum Management, and RJB Consulting Group, and
• developing 50 units of affordable housing.

The draft Development and Disposition Agreement describes the process for determining the total purchase price payments to the District as well as the timing of those payments. The final purchase price is not yet determined; therefore, the OCFO cannot complete an analysis of whether actual payments to the District from Louis Dreyfus Properties Group will be more or less than the expected value of the assets of which the District is disposing.

**Payment In Lieu of Taxes**

The legislation exempts the air rights, adjacent parcels, and deck over Interstate 395, when completed, from real property taxes. Instead, the legislation creates a PILOT area and stipulates (along with the draft Disposition and Development agreement) the amount and timing of PILOT payments.

Normally, the air rights would be assessed by the Office of Tax and Revenue and the owner would pay taxes based on the assessed value beginning at transfer of air rights. This legislation defers any PILOT payments until the date that a planned building on top of the deck obtains a building permit. This is not expected to occur until after the four-year financial plan period.
Beyond the financial plan period, the PILOT proposed in this legislation will result in payments to the District that are significantly less than what would otherwise be paid in real property taxes, if the air rights were transferred without a PILOT agreement.

Upon issuance of a Certificate of Completion of Core and Shell of Building with respect to any building that is built upon the Deck, that building would be removed from the PILOT area and become subject to the normal OTR assessment process.

**Exemption from the PPA**
The exemption of contracts from the Procurement and Procedures Act is not expected to have any impact on the budget and financial plan.

**Fiscal Impact**
The proposed PILOT structure would have a fiscal impact of approximately $5.1 million during the financial plan period. The Office of the Chief Financial Officer is working closely with the Office of the Deputy Mayor for Planning and Economic Development and the developer to find a PILOT structure that will have no fiscal impact on the budget and financial plan.