

No. 2024-2293

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY,

Plaintiff-Appellee,

v.

UNITED STATES,

Defendant-Appellant.

On Appeal from the United States Court of Federal Claims in case no. 18-1586C,
Judge Philip S. Hadji.

DEFENDANT-APPELLANT'S BRIEF

YAAKOV M. ROTH

Acting Assistant Attorney General

PATRICIA M. MCCARTHY

Director

CLAUDIA BURKE

VINCENT D. PHILLIPS, JR.

*Attorneys, Commercial Litigation Branch
Civil Division, U.S. Department of Justice
P.O. Box 480, Ben Franklin Station
Washington, DC 20044
(202) 305-4591*

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STATEMENT OF RELATED CASES

No other appeal in or from the present civil action has previously been before this or any other appellate court. Pursuant to Federal Circuit Rule 47.5(b), we know of one matter currently pending before the Court of Federal Claims that will be affected by this appeal. *See D.C. Water & Sewer Auth. v. United States*, No. 1:23-cv-2127 (Fed. Cl.).

INTRODUCTION

The Armed Services Retirement Home (Home), established in 1851, sits on a large parcel of land in northwest Washington, D.C. It was started and exists to this day as a military retirement community for disabled veterans, operated by a board that must make all decisions for the benefit of the servicemember residents. In the late 1930s, the District of Columbia—desperate to build a large reservoir to better accommodate the city’s growing water needs—approached the Home to build on its land. The Home was at first disinclined because such a large construction project would have prevented any development of the land for the benefit of the residents. But after negotiations, the District and the Home ultimately entered into an agreement in 1938 where the Home granted the District permission to install a reservoir on the Home’s property in exchange for the “perpetual right to the use of water from the water supply system of the District of Columbia” free of charge.

For the next 66 years, the District provided the Home free water and sewer services. It provided the Home these free services even after the passage of the D.C. Public Works Act of 1954, which required all Federal agencies to start paying for water and sewer services in the District but included an exception for services *furnished for the extension of the water system*. In 1990, the District’s Corporation Counsel even formally advised that the 1938 Agreement was enforceable and protected the Home from any water or sewer charges.

Nevertheless, by the late 1990s, the District had a change of heart, and in 2004, the D.C. Water and Sewer Authority (DC Water or District), the appellee here, informed the Home that it would begin billing for sewer services. DC Water did not, in fact, bill the Home except informally on one or two occasions, but it instead sued in the Court of Federal Claims in 2018, alleging it was owed sewer services under the 1954 Act from 2004 to 2019.

The trial court held that the 1954 Act required the Home to pay for sewer services notwithstanding the agreement, but it also held that DC Water had not properly presented a bill to the Home until the middle of litigation. The trial court later issued a damages opinion, in which it addressed, for the first time, the exception clause in the 1954 Act, but held that the exception did not apply to the Home. The trial court awarded the District \$633,150.90 for unpaid sewer charges for fiscal year 2021. In both decisions, the trial court opined that the 1954 Act nullified the 1938 Agreement.

STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal under 28 U.S.C. § 1295(3), providing jurisdiction to review final judgments of the United States Court of Federal Claims.

STATEMENT OF THE ISSUE

1. Whether the trial court erred in concluding that the 1954 Act's exception for "water and water services furnished to the United States for the

... extension of the water system,” does not apply to sewer services supplied by the District to the Home, because, in its view, the 1938 Agreement did not provide water and water services for the maintenance, operation, and extension of the water system.

2. Whether the District’s demand for payment for its ongoing provision of sewer services is barred by the doctrines of waiver and/or equitable estoppel, where the District abided by the 1938 Agreement for 50 years after the 1954 Act, and where the District had formally asserted that the 1938 Agreement protected the Home from any water or sewer charges, notwithstanding the 1954 Act.

STATEMENT OF THE CASE

I. Statutory Background

We provide below the statutory history of the Armed Forces Retirement Home since its inception in 1851 because it will inform the Court’s consideration of the 1938 Agreement as that document references historical codifications of the Home’s authority. We have reproduced these statutory authorities in the Addendum.

A. The Armed Services Retirement Home

Congress established the Soldiers’ Home in 1851 as a military asylum for invalid and disabled soldiers. An Act to Found a Military Asylum of 1851, Pub. L. Ch. 25, 9 Stat. 595-597 (amended 1878) (Add1-3). The original 1851 legislation governing the Home has been amended over time, first in 1878 through the Revised Statutes, and later in 1883 through subsequent legislation. Most recently, in 1990, Congress enacted further legislation that currently governs the Home. Despite these

various amendments, the Home's authorities have not changed in any meaningful way regarding the Home's authority over its property.

The Soldiers' Home was to be run by a board of commissioners who were given the "power to establish from time to time, regulations for the general and internal direction of the institution" as well as the power to "do any other act or acts necessary for the government and interest of the same, as authorized herein." *Id.* § 2 (Add1); R. S. § 4815 (amended 1990) (Add5). The Home's commissioners were "authorized to receive all donations of money or property made by any person or persons for the benefit of the institution, and hold the same for its sole and exclusive use." Pub. L. Ch. 25 § 7, 9 Stat. 595-596 (Add2-3); R. S. § 4819 (Add5). They were also "authorized and required to procure for immediate use, at a suitable place or places, a site or sites for the Military Asylum, and if the necessary buildings cannot be procured with the site or sites, to have the same erected." Pub. L. Ch. 25 § 8, 9 Stat. 595-596 (Add3); R. S. § 4817 (Add5); An Act Prescribing Regulations for the Soldiers' Home of 1883, Pub. L. Ch. 130 § 11, 22 Stat. 565, (amended 1990) (Add8). Since its creation, the Home has been funded by servicemember fees and payroll deductions. Pub. L. Ch. 25 § 7, 9 Stat. 595-596 (Add2); R. S. § 4819 (Add5); Pub. L. Ch. 130 § 8, 22 Stat. 565 (Add8).

In 1990, Congress enacted the Armed Forces Retirement Home Act of 1991, which incorporated the Soldiers' Home and the Naval Home into the Armed Forces Retirement Home. 24 U.S.C. §§ 401, 411-423 (Add9-36). The 1991 Act established a

trust fund comprising fees, other money, and property given to the Home.

Specifically, Section 419 states that the “[a]mounts in the Fund shall be available solely for the operation of the Retirement Home.” 24 U.S.C. § 419(a)-(b). The 1991 Act also gave to the Chief Operating Officer of the Home, the obligation to make decisions for the Home’s benefit. “The Chief Operating Officer may accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property, or any income therefrom or other interest therein, for the benefit of the Retirement Home.” 24 U.S.C. §§ 415(f)(1). The Chief Operating Officer may acquire property for the Home’s benefit. 24 U.S.C. § 411(e)(2). If the Home’s Chief Operating Officer determines that any property exceeds the Home’s needs, he “shall dispose of the property . . . ,” and deposit the proceeds in the trust fund. *Id.* § 411(e)(3).

B. *The District of Columbia and the Federal Government’s Authority to Transfer of Property*

Before 1932, whenever the Federal Government and the District had wished to transfer jurisdiction of property, they needed an act of Congress. Add39. In 1932, Congress enacted legislation that authorized the two entities to “transfer jurisdiction over parts or all of such properties among or between themselves for purposes of administration and maintenance under such conditions as may be mutually agreed upon.” An Act to Authorize the Transfer of Jurisdiction of 1932, Pub. L. No. 72-143, 47 Stat. 161-162 (formerly codified at 40 U.S.C. § 122) (amended 2002, currently

codified at 40 U.S.C. § 8124) (Add37-38). Before any transfer of property could be finalized, though, the transfer and agreements had to be “recommended by the National Capital Park and Planning Committee” and “shall be reported to Congress by the authorities concerned.” Pub. L. No. 72-143, 47 Stat. 161-162; *see also* 40 U.S.C. § 8124. The report attached to the legislation provides, as an example of such transfer, an agreement between the Home and the District for straightening a road along the property. *Id.*

C. *The 1954 Act*

The District of Columbia Public Works Act of 1954 (the 1954 Act) was established a comprehensive public works system for the District, authorizing it to collect charges for water, sewer, and road services, as well as cigarette and alcohol taxes. An Act to Authorize the Finance a Program of Public Works Construction for the District of Columbia of 1954, Pub. L. No. 83-364, 68 Stat. 101-120 (incorporated into various D.C. Code provisions) (Add42-61, Add80-95).

The 1954 Act has not been codified into the United States Code. Therefore, the Government references the Public Law version of the 1954 Act in this brief, and that version is reproduced in the Addendum. Sections 106(a) and 212(a) of the 1954 Act are at issue in this appeal. The 1954 Act has been incorporated into the D.C. Code, the Government identifies the corresponding D.C. Code provisions in this brief, D.C. Code §§ 34-2401.25, 34-2112, and we have reproduced these provisions in the Addendum. While the D.C. Code has been amended over time, we are unaware

of any amendments that have altered the relevant portions of Sections 106(a) and 212(a) of the 1954 Act at issue in this appeal.

Title I addressed “Adjustment to Water Rates.” Section 101 authorized the District to set rates for water services and Section 103 authorized the District to provide for the collection of charges for the provision of water from the general public. Pub. L. No. 83-364 § 106, 68 Stat. 102 (Add43). Title I authorized the District to charge the Federal Government for water services. Specifically, Section 106 of the 1954 Act requires the Federal Government to pay for water and water services at the same rates charged to the rest of District residents. The section contains a critical exception—no payment is required for water and water services furnished to the United States for the maintenance, operation, and extension of the water system. The current version of that provision states¹:

All water and water services furnished from the District water supply system through any connection thereto for direct use by the Government of the United States or any department, independent establishment, or agency thereof, situated in the District, *except water and water services furnished to the United States for the maintenance, operation, and extension of the water system*, shall be paid for at the rates for the furnishing and readiness to furnish water applicable to other water consumers in the District. [].”

D.C. Code § 34-2401.25(a) (current) (emphasis added) (Water Provision) (Add80).

¹ The text of the Section 106 of the 1954 Act (Add43) is identical to current version of D.C. Code § 34-2401.25 regarding the cited language.

The water provision specifies procedures that DC Water must follow to collect charges from the United States. Specifically, DC Water is required to include the estimated water charges in its annual Federal Cost of Services Estimate (FCSE). D.C. Code § 34-2401.25(b) (Add81-82). The FCSE is an itemized budget estimate that DC Water provides to Treasury annually and upon which Treasury remits payment. *Id.*

Title II addresses sanitary sewer works. Section 206 authorizes the District to collect charges for sewer services from the general public “in the same manner and at the same time as water charges are collected.” Pub. L. No. 83-364 § 206, 68 Stat. 106 (Add47). Section 207 then lays out the manner in which sanitary sewer charges are to be assessed, always based on water services and consumption. *Id.* § 207 (Add47).

Title II, like Title I, contains a provision applying the District’s authority to the Federal Government, but the provision simply refers back to the provision governing the general public. There is no sanitary sewer provision granting the District broad authority to charge the Federal government. Rather, Section 212 implicitly refers back to Section 206—the broad authorization to charge *everyone* for sewer services—and then requires that sewer charges to the Government be predicated on the value of water and water services received by the Government. Pub. L. No. 83-364 § 212(a), 68 Stat. 108 (Add49).

The provision currently states²:

The sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services furnished by the sanitary sewerage works of the District through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof, and *such charges shall be predicated on the value of water and water services received by such facilities of the government* of the United States or any department, independent establishment, or agency thereof from the District water supply system.

D.C. Code § 34-2112(a) (current) (Sewer Provision) (emphasis added) (Add86).

The 1954 Act further explained in the original text that sewer charges “shall be determined in the manner prescribed in section 207.” Pub. L. No. 83-364 § 207(a), 68 Stat. 106 (Add47). And Section 207 as originally enacted provided that “sanitary sewer charges . . . shall be based on the water consumption of, and water service to, the properties served, and be determined . . . as a percentage of the water charge applicable.” *Id.* The current version of this provision, as contained in the D.C. Code, no longer includes the reference to sewer charges being a percentage of the applicable water charge. D.C. Code § 34-2107(a) (Add91). This change is relevant only because sewer charges are typically higher than water charges now.

The sewer provision also includes procedures that DC Water must follow to collect sanitary sewer charges from Federal entities, and they mirror the procedures

² The text of Section 212 of the 1954 Act (Add49) is identical to current version of D.C. Code § 34-2112 regarding the cited language.

for water charges. Any sewer charges sought must also be included in the budget estimates submitted as the FCSE. D.C. Code § 34-2112(b) (Add86-87).

II. Factual Background

A. *The District Needs To Build A Reservoir*

In 1937, District officials wrote to the Home, asking “to construct a new water distribution reservoir” on the Home’s property, “to properly operate and safeguard the supply and distribution of water in the District of Columbia.” Appx5, Appx126 (Letter dated October 4, 1937). The District explained that “[a] study of the contours of the city indicates that the only suitable location for this reservoir that is 250 foot elevation is the United States Soldiers’ Home Grounds.” *Id.* In closing, the District stated its intention to seek authority for the funds. *Id.*

In response, the Home expressed concern with the proposal and suggested that all legislative action be suspended until the Soldier’s Home board could consider the matter, “[o]n account of the fact that the Soldiers’ Home is a public trust owned and operated practically in its entirety from contributions received from enlisted men on the active list of the Regular Army[.]” Appx6, Appx127 (Letter dated October 20, 1937). The Home indicated it would raise the matter with the Board of Commissioners and requested the District to pause its efforts to seek funding for the project. *Id.*

The Board of Commissioners met and initially rejected the proposal, concluding that “having in mind the vested interest of the beneficiaries of the trust, []

it can not, at this time, take favorable action with respect to the proposed construction.” Appx6-7, Appx348 (Letter dated November 2, 1937), *see* Appx129-150 (Board’s Meeting Minutes dated October 25, 1937). The Board explained that a “license, grant, or deed to the District . . . to establish a reservoir within this tract would constitute a violation of the trust imposed upon the Commissioners of the Home unless such action is clearly to the best interest of the old soldiers who are the beneficiaries of the trust[,]” and to determine the best interests of the trust beneficiaries, “the potential applicability of the property . . . must be considered,” to which the Board noted potential plans to expand the Home on the land eyed by the District. Appx7, Appx348.

This initial refusal notwithstanding, the District and the Home continued to discuss the issue and within a few months, the District wrote to the Home again, this time offering “a reasonable price” for the permission to use the site in question, to be determined by a jointly appointed appraiser. Appx7-8, Appx152 (Letter dated January 6, 1938). The Board of Commissioners ultimately acceded to the request, but on different terms than those offered by the District.

B. *The 1938 Agreement*

The parties executed an agreement in February 1938 (the Agreement), in which the Home gave the District permission to install the underground reservoir and a right-of-way for associated mains on the Home’s property, in exchange for the “perpetual right to the use of water from the water supply system of the District of

Columbia.” Appx8-10, Appx360-370 (Record of Board Meeting February 1, 1938), *see* Appx 346-359. The Agreement memorializes the Home’s Board of Commissioners’ belief that the “perpetual right” would “constitute a lasting benefit to [the] Home and adequate consideration for the grant of the privilege requested[.]” Appx9, Appx120-124 (Executed and recorded copy of Agreement), Appx361. The Agreement then expressly grants the District those rights “with the understanding that said grant is made in consideration of the [Home’s] perpetual right to use water from the [District’s] water supply system . . . without compensation therefore at any time[.]” Appx9-10, Appx121, Appx361-362.

The parties memorialized their compliance with the requirement to obtain National Capital Park and Planning Commission approval, and confirmed their statutory authority to enter into such a transfer of property. Appx9-10, Appx120-121, Appx361-362. But the parties were clear that the Agreement was “limited to that necessary in construction, repair and maintenance of the reservoir and water mains above mentioned, an in all other respects, including the power to police the property, jurisdiction retained by the [Soldiers’ Home].” Appx10, Appx121, Appx362.

Although the Agreement addressed a right to free water service, it did not mention a perpetual right to free sewer service. At the time, the D.C. Code provided for separate assessments for the laying of water and sewer lines, but the District appears to have levied charges on the general public for only water use, at least in name. Appx4-5, Appx10-11, Appx13, Appx41, Appx243-246. All D.C. Code

provisions related to water and sewer lines were contained in Chapter 6-Water of the municipal code, and this chapter demonstrates that sewer service was included among water service. Appx243-246. The United States understands that at that time the Federal Government was charged for neither water nor sewer services.

On April 4, 1938, Congress approved funding for the construction of the reservoir on the Soldiers' Home's property. The legislation provided funding "for the construction of a reservoir of approximately fifteen million gallons capacity on the grounds of the United States Soldiers' Home." An Act Making Appropriations for the Government of the District of Columbia for Fiscal Year 1939, Pub. L. No. 75-458, 52 Stat. 156, 190 (Add79); Appx10. The reservoir was thereafter constructed on the Soldiers' Home grounds and has been in use by the District continuously since then. The reservoir currently serves to ensure adequate water supply for a number of hospitals located near the Home, and of course for the Home itself.

C. From 1938 Until 1996, the District Abides by the Agreement

For over 60 years after the parties signed the Agreement and for 50 years after the 1954 Act, the District provided free water and sewer services to the Home. Beginning in 1939, the District acknowledged that the Agreement was executed as a means to secure permission to build and maintain the reservoir on the Soldiers' Home grounds in exchange for the perpetual right to free water. Appx10-11, Appx371-374 (Record of letters dated 1939). And, in 1990, the Home wrote the District regarding the 1938 Agreement and "outlined" certain "terms" for its ongoing implementation.

Appx16, Appx288 (Letter dated June 25, 1990).³ In the District’s 1990 response, the Director of the D.C. Department of Public Works—the predecessor-in-interest to the D.C. Water and Sewer Authority (the plaintiff-appellee here)—explained that before the District could “accept[] or deny[] the terms outlined,” it was first “necessary” that “the D.C. Corporation Counsel . . . review the agreement.” Appx16, Appx288. The Director then represented that “[t]he Corporation Counsel [had] rendered an opinion on the validity and enforceability of the agreement” and that, “[a]s a result of th[at] opinion, the Department of Public Works will honor the 1938 Agreement between the [Home] and the District[].” *Id.* More specifically—and significantly—the Director stated that “[t]he District will continue to render *water and sewer services* to the Home without charge.” *Id.* (emphasis added).

By 1996, however, the District had started to hedge. The Board of Directors of DC Water adopted a resolution acknowledging that “the District is obliged [under the 1938 Agreement] to provide water services to the []Home as long as the District uses the []Home property,” but it asserted for the first time that “[t]he Agreement does not obligate the District of Columbia to provide sewer services without charge.” Appx17-18, Appx395-396 (DC Water Board resolution). The resolution stated that “[t]he no charge sewer services practice will be honored for the remainder of [FY]1997” and that the Board would “determine whether to extend no charge sewer

³ Although the parties have been unable to locate the Home’s initial letter to which the District was responding, the District’s written response is in the record.

services” into FY1998 after considering a yet-to-be-completed “analysis of the annual value of the right to use the U.S. Soldier’s Home property for the reservoir and the value of the no water charge and/or water and sewer services since 1990.” Appx18, Appx395-396. It is unclear whether that analysis was completed or what conclusions, if any, it had reached.

The District never included the Home on the annual cost of services estimate (FCSE) required by the 1954 Act. Appx23 (noting the District’s concession that it did not include the Home on any annual FCSE prior to April 15, 2019), Appx908-943. In 2004, however, a DC Water official wrote the Home stating that, effective July 1, 2004, the District would bill the home for sewer service. Appx18-19, Appx865-866. Notwithstanding this letter, it seems the District attempted to bill the Home for sewer service only sporadically. Appx18-23, Appx19 (stating that the District “produced little evidence” and established only “two actual ‘billings’”).

III. Prior Proceedings

DC Water⁴ sued in the trial court in 2018, alleging it was owed payment for sewer services between 2004 and 2019 under the 1954 Act.⁵ We responded to the

⁴ DC Water is an independent authority of the District of Columbia government. It is a corporate body created to effectuate certain public purposes, and has a separate legal existence within the District of Columbia government. *See* D.C. Code § 34-2202.02.

⁵ The complaint also contained a claim for quantum meruit and for declaratory judgment, both of which were dismissed.

complaint with a motion to dismiss that the trial court eventually converted to a motion for summary judgment.⁶ The trial court issued a liability decision in 2021, partially granting summary judgment for DC Water, holding that the 1954 Act requires the Home to pay for sewer charges properly raised, regardless of the 1938 Agreement. Specifically, the trial court interpreted Section 212 of the 1954 Act to require the United States “to pay for all sanitary sewer services rendered to it by the District” and that “the cost of such services” is “based on what the District charges the United States to supply water to the United States, which is equivalent to what the District charges the District’s public to supply water.” Appx34, Appx59. The trial court stated that it had based its decision on “[S]ection 212’s express, catchall instructions that the District is to be paid for all sanitary sewer services rendered, and that each department, independent establishment, or agency of the United States is to pay for all such services it receives.” Appx39, Appx58-59.

The trial court observed that “even if the 1938 Agreement could be read to include the District’s providing sanitary sewer services without the [Home] having to pay”—an issue that the court did not resolve—the Agreement was still subject to later-in-time congressional legislation defining “the obligations of the United States related to sewer charges by the District.” Appx39. The trial court acknowledged that the case concerned only sewer and not water charges, but it nevertheless opined that

⁶ Had we been permitted to file an answer, we would have had the chance to include a counterclaim for restitution for the District’s repudiation of the Agreement.

the Home, “along with all other United States entities situated within the District receiving water and sewer services, are required to pay for water and sewer services received, in accordance with the express provisions of the 1954 Act.” Appx42.

The trial court further interpreted Section 212(b), as amended, to require that the District satisfy several conditions annually before being paid for sewer services, including that the District produce annually by April 15 estimates of the cost to render sanitary sewer charges to the United States and its subcomponents for the next fiscal year and then to supply such estimates to the Office of Management and Budget, the Secretary of the Treasury, and the head of the relevant component. Appx38-39.

The trial court determined that the District had complied with the relevant prerequisites starting only in 2019 for the Home’s FY2021 sewer charges, and that, as a result, “the United States is not obligated retroactively to pay for such sanitary sewer services alleged by plaintiff to be retrospectively owed.” Appx42-44. The trial court thus determined that the District was “entitled to the costs of sanitary sewer services estimated to be due for the 2021 fiscal year” but not for prior years. Appx43-44, Appx58-59 (“District is entitled to the payments” for “sanitary sewer service” for FY2021).

We had separately argued that the District had “extinguished [any] right” “to charge [the Home] for sewer service” based on the 1954 Act “by failing to assert any alleged right to [do so] for about 50 years” after the Act’s enactment. Appx177-178. In addition, we relatedly argued that the District had “waived any right” to argue that

the Home must pay sewer charges under the 1954 Act, stating that a “[w]aiver is ‘an intentional relinquishment or abandonment of a known right’” and that the District’s 1990 letter stating that the District will honor the 1938 Agreement and “‘will continue to render water and sewer services to the Home without charge’” reflected “an ‘intentional’ waiver” of any such claim. Appx687-688 (quoting *Laguna Constr. Co., Inc. v. Carter*, 828 F.3d 1364, 1372 (Fed. Cir. 2016)). The trial court acknowledged the argument in its decision but did not further discuss it. Appx27 (noting Government’s argument that the DC Water’s “inaction in attempting to charge AFRH for sewer services until 2004 constitutes a waiver of [the District’s] right to now bring suit for payments [the District] might have attempted to start recovering as early as 1954”).

Three years later the trial court issued a damages decision, holding that the Home was liable for \$633,151 for FY2021 sewer services properly charged. Appx73. The trial court addressed Section 106(a)’s exception from the United States’ statutory obligation to pay the district for water services, which applies to “water and water services furnished to the United States for the maintenance, operation, and *extension of the water system*.” Appx62-69 (emphasis added). The trial court agreed with the United States that that “exception clause” for water charges applies to charges for “both water and sewer services,” but it concluded that the statutory exemption does not apply in this case. Appx63-64, Appx67-69.

Specifically, the trial court addressed the exception language in Section 106—the provision for water—and construed it together with Section 212—the provision

for sewer. The court “agree[d] with the Government that the Exception applies to both water and sewer services.” Appx66. “Because sewer charges against the Government are ‘predicated on the value of water and water services,’ any exception that applies to water charges must apply to sewer charges as well.” *Id.*

But the trial court held the exception inapplicable. First, it concluded that the District’s supply of water for the “[Home’s] water usage” does not “trigger the Exception” because it does not involve “services furnished for the maintenance, operation, and extension of the water system.” Appx67. The trial court rejected our contention that, based on the plain language, the water and water services furnished to the Home under the 1938 Agreement were water and water services furnished *for the “extension” of the water system.* Appx67-68. It instead interpreted “extension” in light of the “accompanying terms ‘operation’ and ‘maintenance,’” which it found “instructive” under “the principle of *noscitur a sociis*.”⁷ *Id.* The trial court opined that “typical examples” of water used for maintenance or operation of the system involve things such as water used to flush the system of sediment and improve water quality, for which the District does not charge customers. *Id.* In the trial court’s view, it was “difficult to square these relatively isolated and limited exemptions with the

⁷ The principle of *noscitur a sociis* advises that “a word is known by the company it keeps,” and this principle is applied to “avoid ascribing to one word a meaning so broad that it would be inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress.” *Yates v. United States*, 574 U.S. 528, 543 (2015).

Government's reading of the Exception clause, which according to the Government, memorialized the 1938 agreement in which DC Water agreed to provide free water in perpetuity in exchange for an easement to build a reservoir." Appx68. The trial court added that its understanding of "extension" would apply, for instance, where the District "performs post-construction flushing when *extending* a water main or service." *Id.* (emphasis in original).

Second, the trial court held that even if Section 106(a)'s exception might apply under the government's theory, "the 1954 Act nullified the 1938 Agreement's perpetual grant of free water and water services to [the Home]" for the reasons in the court's initial decision and, as a result, "the exchange [of water service for the water-system-extending reservoir] has been nullified." Appx68-69 (citing Appx36-42). "Once superseded by statute, the parties' arrangement exchanging land use for free water and water services ceased to exist, effectively eviscerating any claim that any water and water services now furnished to [the Home] are for the purpose of the 'maintenance, operation, and extension of the water system.'" Appx69. In response to the parties' "concerns regarding the status of the reservoir on AFRH's grounds," the trial court stated "[s]uch concerns are beyond the scope of this action and thus are not addressed here." *Id.*

This appeal followed.

SUMMARY OF ARGUMENT

The trial court’s judgment should be reversed, first, because the court erred when it ignored language in the 1954 Act that directly exempts the Home from having to pay any for water or sewer services, and second, because even if the 1954 Act did apply to the Home, the District waived any rights under it.

The 1954 Act states that the Federal Government must pay for all water and water services provided by the District *except water and water services furnished to the United States for the maintenance, operation, and extension of the water system.*

Although the trial court correctly agreed that the exception applies to both water and sewer services, it incorrectly held that the free water services promised in the 1938 Agreement were not furnished for the extension of the water system. The trial court largely ignored the plain meaning of “extension,” which comfortably includes the building of a reservoir, and instead focused on whether the construction was “maintenance” or “operation” of the water system, finding that it was neither. The judgment should be reversed on this point, particularly because letting the decision stand could mean that the Home now has the right to develop the reservoir land as it wishes, which would deprive the District—particularly the two nearby hospitals and the Home itself—of a water source. There is no way Congress could have intended this.

Even assuming the trial court is correct that the Act’s exception does not apply to the Home, the court should have still held that the District (and DC

Water by association) waived any rights under the 1954 Act. For 50 years after the 1954 Act, the District never charged the Home for any water or sewer services. In fact, when asked by the Home for clarification in 1990, the District doubled down that it did not intend to charge the Home, and confirmed that it would “honor the 1938 Agreement.” Even after its change of heart 14 years later, the District seems to have informally charged the Home only twice from 2004 to 2018, and failed to ever include charges for the Home in any required annual Federal Cost of Services Estimate before filing the lawsuit from which this appeal arises. A waiver is the relinquishment of a known right. Here, the District clearly, and for decades, relinquished a known right. The judgment should be the reversed on this point as well.

ARGUMENT

I. Standard of Review

This Court reviews the trial court’s summary judgment decisions *de novo*. *City of Fresno v. United States*, 124 F.4th 876, 887 (Fed. Cir. 2024). The Rules of the Court of Federal Claims provide that summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” RCFC 56(a). Questions of statutory and contract interpretation are questions of law, also reviewed *de novo*. *See Premier Office Complex of Parma v. United States*, 916 F.3d 1006, 1011 (Fed. Cir. 2019).

II. The Trial Court Erred When It Held that the 1954 Act's Exception Does Not Apply to the Home

The 1954 Act requires Federal entities to pay for water services provided by the District, *except for* water and water services “furnished to the United States for the maintenance, operation, and extension of the water system.” Pub. L. No. 83-364 § 106, 68 Stat. 102 (Add43); D.C. Code § 34-2401.25(a) (Add80). The trial court erred when it held that the exception does not apply to the Home.

Central to the trial court’s decision is the interplay between the water and sewer provisions of the 1954 Act. As the trial court correctly stated in its liability determination, the complaint raises only a claim for damages for unpaid sewer services. The exception that is the heart of this appeal appears in the provision for water charges not sewer charges. But the trial court correctly understood that the two provisions go hand in hand and that if the exception contained in the water provision applied, it would apply to the sewer charges as well. This is because, as we explained earlier, the sewer services title of the 1954 Act operates in a kind of shorthand—referring back to the water services title for authority to charge the government and for the specifics of how to charge the government. Pub. L. No. 83-364 § 212(a), 68 Stat. 108 (Add49) (stating sewer charges are “predicated on” or based on the value of water and water services); D.C. Code § 34-2112(a) (Add86).

Moreover, as noted above, the 1954 Act originally provided that that “[w]here water is supplied from the District water supply system at meter rates,” the District’s

“sanitary *sewer service* charge” must be established “as a percentage of the water charge applicable in the District.” Pub. L. No. 83-364 § 207(a), 68 Stat. 106 (Add47) (emphasis added). That provision thus informs the proper interpretation of Section 212(a), which ultimately instructs that the “sanitary sewer charges *prescribed [by the Act]*” are “applicable” to the sewer services furnished by the District to federal agencies. Pub. L. No. 83-364 § 212(a), 68 Stat. 108 (Add49) (emphasis added); D.C. Code § 34-2112(a) (Add86). Therefore, the trial court correctly made the threshold determination that the 1954 Act’s exception applies to both water and sewer charges.

But the trial court erred in interpreting the exception language. The plain meaning of “extension” both standing alone and in the context of this case, reveals the trial court’s error. In 1954, the noun “extension” would have been understood in this context to refer to any “[a]ct of extending” the water system or any “enlargement in dimension, area, . . . or scope” of that system. *Extension*, Webster’s New Int’l Dictionary at 900 (def. 1 for “extension”) (2d ed. 1943). Any augmentation or “expansion” of the District’s water system should thus qualify as an “extension.” The water and water services furnished to the Home for facilitating the construction of a high-elevation water reservoir within the District’s water system – a reservoir that the trial court recognized was “necessary for the proper operation of the water supply system,” Appx41, are water and water services that are “furnished” to the Home

“for” the “extension” of the water system. As such, Section 106(a) does not require that the Home pay the District for that water and water services.⁸

The trial court barely addressed the plain meaning of “extension,” and focused instead on whether the reservoir construction was “operation” or “maintenance.”

Applying the principle of *noscitur a sociis*, “a word is known by the company it keeps,” Appx67-68, the trial court stated that the reservoir was neither because operation and maintenance are things like flushing of the water system or flow testing. Appx68.

The “typical examples” of charge-free water being used for the maintenance, operation, or extension of the water system cited are where water is supplied to flush the system in order to remove sediment, to improve water quality, or to conduct post-construction flushing after an extension of a water main or service. Appx67-68. But while those might be “typical” examples of water or water service being “furnished . . . for the maintenance, operation, and extension of the water system,” it does not follow that those are the *only* ways in which water and the associated service can be “furnished . . . for the maintenance, operation, and extension of the water system.”

⁸ The legislative history accompanying the enactment of the 1954 Act offers scant insight into the interpretation of the exception language at issue in this appeal. However, it should be noted that the Joint Subcommittee on Fiscal Affairs of the House and Senate took testimony during hearing from the chairman of the National Capital Planning Commission. In his remarks, the chairman of that Commission endorsed, in accordance with the Commission’s obligations, the program of public works construction that would be financed through the 1954 Act. Add62, Add76-78.

The trial court concluded “[i]t simply goes too far to say that a clause which ordinarily exempts payments for” such things, “also exempts an entire Government agency or organization from charges relating to all water and water services in perpetuity through a bargained-for-exchange.” Appx68. The trial court never analyzed the meaning of extension and came to the entirely circular and extreme conclusion that even if the exception contemplated a situation like this one, the exchange “has been nullified.” Appx68-69.

Nor did the trial court acknowledge the parties’ contemporaneous understanding of their deal. The contemporaneous evidence supports the plain language of the 1954 Act by describing the reservoir as an addition to the water system. Appx4-13. The documents explain that DC Water was extending the reserve capacity of the water system through the new underground reservoir system, the new reserve capacity of which would alleviate problems associated with increased demand. The negotiations preceding the 1938 Agreement show that DC Water needed to build a new underground reservoir to address the increasing demand and drain on the system. Those communications also show that the Home’s grant of an easement to build the underground reservoir on the Home’s grounds was necessary to enable plaintiff to “safe-guard the water supply of the District of Columbia” by adding (in other words, extending) the water system infrastructure to create a new “reserve supply.” Appx6 (citing Appx129-130 (Board’s Meeting Minutes dated October 25, 1937)). This “new water distribution reservoir” enabled DC Water to “properly

operate and safeguard the supply and distribution of water in the District of Columbia.” Appx5-6 (citing Appx126 (Letter dated October 4, 1937)).

The contemporaneous documents also show that while “the United States has title to the land where the District desires to construct the new reservoir, the deed [of the Soldiers’ Home] contains a definite limitation as to its use, in that the land is held . . . in Trust nevertheless for the sole use, benefit and behoof of the Commissioners of the Soldier’s Home and for no other use or purpose whatsoever[.]” Appx6-7 (citing Appx347-348 (Letter dated November 2, 1937)). To account for this limitation, and to enable the new underground reservoir to be built, the Commissioners of the Soldiers’ Home “recommend[ed] payment of a reasonable price for the site in question since the need for the construction of the reservoir is so urgent[.]” Appx7-8 (citing Appx152 (Letter dated January 6, 1938)).

There would be no reason why Congress would have intended to narrow the commonly understood meaning of the words in Section 106(a)’s exception in a manner that would invalidate the 1938 Agreement. The Agreement was essential to the District’s expansion of the water system, and the District furnished the Home free water and water services “for” that expansion. Any statutory abrogation of the Agreement would void the very instrument by which the District continues to operate a water reservoir on the Home’s property—a reservoir that remains an essential part of the District’s expanded water system. If the trial court were correct that the 1954 Act had “nullified” the 1938 Agreement, Appx68, then the District would no longer

have any right to use the Home's property and is therefore trespassing by continuing to use the property – without authorization – for the District's own water-system purposes. After all, the 1938 Agreement expressly identified the District's perpetual supply of water to the Home as the consideration essential to the deal. Nullification of the 1938 Agreement would be hugely detrimental to both the District and its water supply system.⁹

III. Alternatively the District Waived its Reliance on the 1954 Act

The trial court entirely ignored the District's course of dealing from 1938 until 2004.¹⁰ Even worse, the court also ignored the District's explicit legal opinion that it

⁹ In any event, even if the 1954 Act had forced the District to repudiate the 1938 Agreement, the result would not be nullification of the contract. Instead, the United States would be entitled to restitution. When the United States enters into contracts, its rights and duties are governed by the law applicable to contracts between private individuals. *See United States v. Winstar Corp.*, 518 U.S. 839, 895 (1996). “[W]hen one party to a contract repudiates that contract, the other party ‘is entitled to restitution for any benefit that he has conferred on’ the repudiating party ‘by way of part performance or reliance.’” *Mobile Oil Exploration & Producing SE, Inc. v. United States*, 530 U.S. 604, 607-08 (2000) (quoting the Restatement (Second) of Contracts § 373 (1979)).

¹⁰ In our motion to dismiss before the trial court, we argued that the District had “extinguished [any] right” “to charge [the Home] for sewer service” based on the 1954 Act “by failing to assert any alleged right to [do so] for about 50 years” after the Act's enactment. Appx177-178.

would abide by the promises in the 1938 Agreement.¹¹ Both of these omissions were error.

Assuming the 1954 Act applied to the Home, the District intentionally abandoned any rights under it. Waiver is “the intentional relinquishment or abandonment of a known right.” *Morgan v. Sundance, Inc.*, 596 U.S. 411, 417 (2022); *see also Laguna Construction Co. Inc. v. Carter*, 828 F.3d 1364, 1372 (Fed. Cir. 2016). Here, it is undisputed that any claim for sewer services arose in 1954 and it is undisputed that the District failed to charge the Home for sewer services for 50 years after 1954. That exceptionally prolonged course of conduct spanning multiple generations demonstrates the District’s “[i]mplied” waiver, which may be shown through a party’s “course of conduct” even “absent formal or express statements of waiver.” *See Berghuis v. Thompkins*, 560 U.S. 370, 383-84 (2010). That is particularly true because the 1954 Act is *the* legislation governing the District’s collection of payments for water and sewer services. The District officials responsible for providing water and sewer services under that 1954 statutory authority were undoubtedly aware of its provisions.

This course of conduct would be enough to demonstrate abandonment. But here there is much more. In 1990, the District specifically consulted its legal counsel about the agreement and determined—based on that considered legal advice—that

¹¹ We also argued that the District had “waived any right” to argue that the Home must pay sewer charges, pointing out the District’s corporation counsel opinion on the matter. Appx687-688.

the agreement was “valid[] and enforceab[le]” and that the District would thus “honor” the agreement and “continue to render *water and sewer* services to the Home without charge.” Appx16 (citing Appx288) (emphasis added). That representation constitutes an intentional and knowing waiver—the District’s expert government counsel specializing in the District’s affairs provided legal advice to the District, and the District then acted thereon in a manner entirely inconsistent with its current position.

Although waiver does not turn on whether the other party was “prejudice[d],” *Morgan*, 596 U.S. at 417, excusing the District’s intelligent and knowing waiver would prejudice the Home. Even putting aside the fact that the Home could have taken action to enforce its property rights to the District’s underground reservoir (rights that would have been reinstated if the 1954 Act had displaced the 1938 Agreement allowing the District to use the Home’s property)—the Home would be prejudiced by now altering the District’s half-century-long failure to charge for sewer services.

The Home’s existence, and its continued operation from 1851, reflects a measure of public thanks for the military service and sacrifice of the Home’s residents. Indeed, the Home is a residence for, and provides a dignified environment to, individuals who have honorably served as enlisted personnel in our Nation’s Armed Forces if they have served for at least 20 years; were disabled in the line of duty; suffer from injuries, disease, or disability after serving in a war theater; or served in a women’s component of the Armed Forces before June 1948 and have

“compelling personal circumstances” for their admission to the Home. 24 U.S.C. § 412(a). And significantly, Congress has directed that the Home charge each such resident a monthly fee “based on the financial needs of the Retirement Home and the ability of its residents to pay.” *Id.* § 414(a), (c)(1). Those fees are then deposited in a statutory trust fund for the Home, which must be used “solely for the operation of the Retirement Home.” *Id.* §§ 414(b), 419(b). The Home would be prejudiced by imposing sewer charges now because such charges (at least for the FY2021 charges at issue here) cannot be retroactively collected from the Home’s servicemember residents and would therefore deplete the Home’s statutory trust fund, which Congress has specifically designed to ensure the Home’s ongoing operations.

Relatedly, the trial court should have found, if not through waiver, that the doctrine of equitable estoppel foreclosed the District’s extraordinarily belated attempt to collect sewer charges. “The gravamen of estoppel, a defense long recognized as available in actions at law, is misleading and consequent loss.” *Petrella v. MGM, Inc.*, 572 U.S. 663, 684 (2014) (internal citation omitted). “Delay may be involved, but is not an element of the defense.” *Id.* at 684-85. This Court has thus determined that “[e]quitable estoppel requires ‘(1) misleading conduct, which may include not only statements and action but silence and inaction, leading another to reasonably infer that rights will not be asserted against it; (2) reliance upon this conduct; and (3) due to this reliance, material prejudice if the delayed assertion of such rights is permitted.’”

Habnenkamm, LLC v. United States, 104 F.4th 1333, 1348 (Fed. Cir. 2024) (quoting *SUFI Network Servs., Inc. v. United States*, 755 F.3d 1305, 1325 (Fed. Cir. 2014)).

The District's conduct was misleading to any reasonable observer. For 50 years after the 1954 Act, the District provided free water and sewer service to the Home and, in 1990, the District affirmatively responded to the Home's inquiry about the 1938 Agreement by consulting counsel and then specifically confirming the Agreement's validity and enforceability and the District's associated provision of free water and sewer service. These are not disputed facts. The Home relied on this formal response and was necessarily deprived of the opportunity to modify its charges to residents to cover sewer charges (as an operating expense) because, as the District's own conduct showed, no valid sewer charges were reasonably understood to exist. And for the reasons discussed above, the Home suffers direct prejudice. The Home's trust does not account for sewer charges, nor does the Home currently receive appropriated funds that could be used to pay the charges. Perhaps more importantly, if the Home no longer receives the benefit of the 1938 bargain, it will be obligated to make decisions about the land that benefit its residents. This could very well be a decision to develop the land on which the reservoir sits—a decision that could throw into disarray a whole host of regional issues.

Regardless of the theory, the error is the same. In analogous circumstances, the Supreme Court has determined that where the facts of a case implicate similar equitable principles “in various guises,” judicial relief should be denied where it would

be “inequitable” to grant it. *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197, 217-21 (2005) (denying relief where litigant’s delay “evoke[d] the doctrines of laches, acquiescence, and impossibility” without stating whether any such particular doctrine applied). Although a claim for equitable estoppel is subject to abuse-of-discretion review, *John Bean Techs. Corp. v. Morris & Assocs., Inc.*, 887 F.3d 1322, 1327 (Fed. Cir. 2018), the trial court erred by never exercising any discretion because it failed entirely to address the Government’s waiver and related estoppel arguments.

CONCLUSION

For these reasons, the judgment of the Court of Federal Claims should be reversed.

Respectfully submitted,

YAAKOV M. ROTH

Acting Assistant Attorney General

PATRICIA M. MCCARTHY

Director

/s/ Claudia Burke.

CLAUDIA BURKE

Deputy Director

/s/ Vincent D. Phillips, Jr.

VINCENT D. PHILLIPS, JR.

Senior Trial Counsel

Commercial Litigation Branch

Civil Division

U.S. Department of Justice

P.O. Box 480, Ben Franklin Station

Washington, DC 20044

(202) 305-4591

Vincent.Phillips2@usdoj.gov

February 28, 2025

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 8,837 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Garamond 14-point font, a proportionally spaced typeface.

/s/ Vincent D. Phillips, Jr.
VINCENT D. PHILLIPS, JR.

ADDENDUM

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In the United States Court of Federal Claims

No. 18-1586 C

Filed: July 3, 2024

**DISTRICT OF COLUMBIA WATER
AND SEWER AUTHORITY
Plaintiff**

JUDGMENT

v.

**THE UNITED STATES
Defendant**

Pursuant to the court's Opinion, filed September 10, 2021, granting in part and denying in part defendant's motion to dismiss and granting in part and denying in part plaintiff's motion for summary judgment, and the court's Opinion and Order, filed July 3, 2024, awarding damages,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that plaintiff recover of and from the United States damages in the amount of \$633,150.91.

Lisa L. Reyes
Clerk of Court

By: s/ Debra L. Samler

Deputy Clerk

NOTE: As to appeal to the United States Court of Appeals for the Federal Circuit, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is \$605.00, effective December 1, 2023.

In the United States Court of Federal Claims

No. 18-1586C

Filed: September 10, 2021

* * * * *

DISTRICT OF COLUMBIA WATER AND
SEWER AUTHORITY,

Plaintiff,

v.

UNITED STATES,

Defendant.

* * * * *

Frederick A. Douglas, Douglas & Boykin PLLC, Washington, D.C., for plaintiff. Of counsel was **Tram T. Pham**, Douglas & Boykin PLLC, Washington, D.C.

Douglas T. Hoffman, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for defendant. With him were **Claudia Burke**, Assistant Director, Commercial Litigation Branch, **Martin F. Hockey, Jr.**, Jr., Acting Director, Commercial Litigation Branch, and **Brian M. Boynton**, Acting Assistant Attorney General, Civil Division.

OPINION

HORN, J.

The above-captioned case involves a dispute between the District of Columbia Water and Sewer Authority (DCWS) and the Armed Forces Retirement Home of Washington, D.C. (AFRH), over the alleged lack of payment by AFRH for sewer services provided by DCWS. Plaintiff's amended complaint seeks payment for sewer services, including impervious area charges, or what plaintiff refers to as stormwater charges.¹ In

¹ As explained on the DCWS website:

Impervious surfaces such as rooftops, paved driveways, patios, and parking lots are major contributors to stormwater runoff entering the District's combined sewer system. This adds significantly to pollution in the Anacostia and Potomac Rivers and Rock Creek.

The Clean Rivers Impervious Area Charge (CRIAC) is a fair way to distribute the cost of maintaining storm sewers and protecting area

the case currently before the court, plaintiff does not seek payment for the provision of non-sewage-related-water to the AFRH by the District of Columbia (the District). Plaintiff's amended complaint alleges amounts due in excess of \$12,000,000.00 which plaintiff asserts have not been paid by the AFRH over a number of years.² Plaintiff asserts entitlement to payment for sewer services pursuant to the District of Columbia Public Works Act of 1954, Pub. L. No. 83-364, 68 Stat. 101 (1954) (the 1954 Act), as amended and codified in the Code of the District of Columbia (D.C. Code) at § 34-2101, et seq., which plaintiff argues obligates the United States to compensate DCWS for sewer services rendered to the AFRH. The United States responds by relying on a 1938 agreement between DCWS' predecessor-in-interest and the AFRH's predecessor-in-interest (the 1938 Agreement), in which, according to defendant, DCWS' predecessor-in-interest agreed to provide water and sewer services to the AFRH's predecessor-in-interest, free of charge and in perpetuity, in exchange for AFRH's predecessor-in-interest providing DCWS' predecessor-in-interest an easement to build and access a critical water reservoir on the property of AFRH's predecessor-in-interest. Plaintiff disputes defendant's interpretation of the 1938 Agreement, arguing that the 1938 Agreement did not cover sewer services free of charge and in perpetuity. Plaintiff also argues that, regardless of whether the 1938 Agreement included sewer services, the alleged mandatory payment obligations of the United States set forth in the 1954 Act, as amended, controls. Defendant

waterways because it is based on a property's contribution of rainwater to the District's sewer system. Because charges are based on the amount of impervious area on a property, owners of large office buildings, shopping centers and parking lots will be charged more than owners of modest residential dwellings.

All residential, multi-family and non-residential customers are billed a CRIAC. The charge is based on an Equivalent Residential Unit (ERU). An ERU is a statistical median of the amount of impervious surface area in a single-family residential property, measured in square feet.

Available at <https://www.dwater.com/impervious-area-charge> (last visited Sept. 10, 2021).

² Plaintiff's amended complaint and subsequent submissions are unclear as to the date starting from which plaintiff seeks compensation for sewer services rendered, and the amount of damages requested. In its amended complaint, plaintiff states that it has been billing the AFRH since 2004 without receiving any payments, however, at oral argument, plaintiff indicated that it was only requesting payments allegedly due starting in January of 2012. Moreover, in supplemental briefing to the court, plaintiff states that it is requesting "judgment in the amount of \$9,234,228.76 for past and estimated sewer services and for past and estimated stormwater costs," which plaintiff appears to have calculated from 2012 to 2019, and, as discussed below, was the amount requested in its April 2019 submission of its Federal Cost of Service Estimates (FCSE) for the fiscal year 2021. Plaintiff also requests "an Order approving the methodology for calculating the Federal Cost of Service Estimates for FY2022 and FY2023."

filed a motion to dismiss pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Rules of the United States Court of Federal Claims (RCFC). The parties also filed cross-motions for summary judgment, all of which were fully briefed.

FINDINGS OF FACT

The AFRH, which was originally established in 1851 as the Military Asylum of Washington, D.C., was created for

every soldier of the army of the United States who shall have served, or may serve, honestly and faithfully twenty years in the same, and every soldier, and every discharged soldier, whether regular or volunteer, who shall have suffered by reason of disease or wounds incurred in the service and in the line of his duty, rendering him incapable of further military service, if such disability has not been occasioned by his own misconduct

31st Cong. § 4 (1851). After a number of re-designations by Congress, on September 7, 1972, the AFRH was designated as “an independent establishment in the executive branch” for the purpose of providing “residences and related services for certain retired and former members of the Armed Forces.” See 24 U.S.C. § 411 (2018). At the time of the 1938 Agreement, discussed below, the AFRH was called the United States Soldiers’ Home (the Soldiers’ Home).

Plaintiff asserts that “[t]he various buildings on the AFRH-W [Washington] grounds are connected to separate water and sewer mains operated by” DCWS. Plaintiff offers a history of the organization of the District of Columbia Water and Sewer Departments, stating that “[s]ewer lines were mapped separately from water mains as early as the late 1800s,” and that, unlike water in the water mains, the sewer mains “provides non-potable water for waste products and removes it for treatment.” Plaintiff further provides that, dating back to the early 1900s, “water and sewer services were overseen by the District of Columbia Water Department and the Sewer Department, respectively.” Plaintiff states, that the Sanitary Engineer of the Sewer Department oversaw “construction and maintenance of the sewer system,” while the Superintendent of the Water Department oversaw the Water Department. Plaintiff also states that the head of each department also provided separate annual reports of their respective departments’ activities.

In the 1929 edition of the D.C. Code, which existed through 1939 by way of five supplements thereto, relevant water and sewer provisions were contained in title 20, titled: “Municipality of the District of Columbia.” The “Drainage of Lots” provisions were included as Part 6 of Chapter 5, “Health,” in title 20 of the D.C. Code. See D.C. Code, title 20, §§ 1311-1314 (1929). Chapter 6 of title 20 was titled: “Water.” See id. §§ 1371–1408. The provision in section 1311, part of the “Drainage of Lots” provisions in Chapter 5, stated that lots on streets where there was a “public sewer” were required to be “connected with said sewer in such manner that any and all of the drainage of such lot, whether water or liquid refuse of any kind, except human urine and fecal matter, shall flow into said sewer.” Id. § 1311.

Despite the separate labels of “Drainage of Lots” and “Water,” each set of provisions contained instructions pertaining to both water and sewer services. For instance, section 1311 of title 20 of the D.C. Code, the section discussed immediately above, which was part of the “Drainage of Lots” provisions in Chapter 5, also provided that lots on streets which had both a “public sewer and water main” were required to “be connected with said sewer and also with said water main in such manner that any and all of the drainage of such lot, whether water or liquid refuse of any kind shall flow into said sewer.” D.C. Code, title 20, § 1311. Similarly, section 1380 of title 20 of the D.C. Code, which was part of the “Water” Chapter, provided that the “Commissioners of the District of Columbia are authorized . . . to construct water mains and service sewers in any street, avenue, road, or ally in the District of Columbia.” *Id.* at § 1380; see also *id.* at § 1387 (part of the “Water” Chapter, and which provided a definition of “service sewer” as “a sewer with which connection may be directly made for the purpose of providing sewerage facilities to abutting property,” and that “such sewers shall be so indicated on the records of the sewer division of the engineer department of the District of Columbia”).

Regarding payment, the provision in section 1381 in the “Water” Chapter stated by 1939 that assessments were to be “levied against all lots or land abutting upon that part of the street, avenue, road, or ally,” “at the rate of one dollar and twenty-five cents per linear front foot” where a “water main shall be laid,” and “at the rate of one dollar per linear front foot” where a “sewer shall be laid.” D.C. Code, title 20, § 1381 (Supp. V, 1939). In the D.C. Code at title 20, section 1390, part of the “Water” Chapter, an assessment for “water rents” was set forth for the “use of water for domestic purposes through unmetered services,” at “\$9.85 per annum for all tenements two stories high, or less, with a front width of sixteen feet, or less,” and “for each additional front foot or fraction thereof greater than one-half, 62 cents; and for each additional story or part thereof, one-third of the charges as computed above.” *Id.* § 1390. The provision at section 1390 in the D.C. Code at title 20, also stated that “[f]or the use of water through metered services,” there was “a minimum charge of \$8.75 per annum for seven thousand five hundred cubic feet of water, and 7 cents per one hundred cubic feet for water used in excess of that quantity.” *Id.* There was no indication in the 1929 edition of the D.C. Code, or its supplements through 1939, that a reoccurring fee was charged for the use of water for sewage purposes.

The 1938 Agreement

On October 4, 1937, the Honorable Melvin C. Hazen, the President of the Board of Commissioners of the District of Columbia, wrote the following letter to Major General Frederick W. Coleman, the Governor of the Soldiers’ Home, one of the predecessors-in-interest to the AFRH:

The Commissioners of the District of Columbia wish you to know that it is necessary for them to construct a new water distribution reservoir of approximate elevation of 250 feet above mean tide level in order to properly operate and safeguard the supply and distribution of water in the District of Columbia.

A study of contours of the city indicates that the only suitable location for this reservoir that is 250 foot elevation is the United States Soldiers' Home Grounds.

Accordingly, request for authority and funds for the construction of a reservoir and pipe line in the United States Soldiers' Home Grounds is embodied in the Annual Estimates of the District of Columbia Water Division for 1939, as shown on the attached sketch, which will shortly be placed before the Bureau of the Budget.

Your comments and cooperation in this matter are requested.

(capitalization in original).

On October 20, 1937, Major General Coleman replied with an acknowledgement of receipt, and wrote to the Honorable Melvin C. Hazen:

On account of the fact that the Soldiers' Home is a public trust owned and operated practically in its entirety from contributions received from enlisted men on the active list of the Regular Army, I would suggest that the legislative action contemplated by you be suspended until such time as this matter can be considered by the Board of Commissioners of the Home. Your letter will be presented to the Board and I will be glad to communicate further with you when the Board has taken action thereon.

(capitalization in original). On October 25, 1937, the Board of Commissioners of the Soldiers' Home "convened a Board Meeting . . . to discuss the matter." At the October 25, 1937 Board of Commissioners meeting General Pillsbury, who was a member of the Board of Commissioners of the Solders' Home, stated :

I have gone into the matter and I believe without any question this proposed installation is necessary to safe-guard the water supply of the District of Columbia in the increasing drain and demand on the service. The increased water demand is such that the water is filtered at the McMillan plant here at an excessive rate. This installation is designed to offer a reserve supply so that the filters could be run at the regular rate in the day time and the surplus water filtered at night could be drawn on during the following day. There is an emergency in the water supply of the District that I think makes this installation necessary. The only reasonable solution is the installation of the reservoir so as to afford a reserve supply.

Nevertheless, Major General Coleman, then the President of the Board of Commissioners for the Soldiers' Home, initially rejected the proposal to build the reservoir. In a November 2, 1937 letter from Major General Coleman to the Honorable Melvin C. Hazen, the President of the Board of Commissioners of the District of Columbia,

Major General Coleman wrote:

[A]lthough the United States has title to the land where the District desires to construct the new reservoir, the deed [of the Soldiers' Home] contains a definite limitation as to its use, in that the land is held " * * * In Trust nevertheless for sole use, benefit and behoof of the Commissioners of the Soldiers' Home and for no other use or purpose whatsoever: * * * " and that the Commissioners held the property in trust for the use and benefit of the soldiers of the United States Army.

A license, grant, or deed to the District of Columbia which would enable the District of Columbia to establish a reservoir within this tract would constitute a violation of the trust imposed upon the Commissioners of the Home unless such action is clearly to the best interest of the old soldiers who are the beneficiaries of the trust. In determining what these "best interests" are, the potential applicability of the property, among other things, must be considered. The location of the proposed reservoir is one of the logical building sites in event of enlargement of the Home and should be reserved for such purpose. In all matters affecting the Home the Commissioners regard the trust as being concerned not only with the present or with the immediate future but with the years far ahead.

The Commissioners of the Home are informed and believe that there are, in fact, other points in the District of Columbia of sufficient elevation and accessibility which can be used for the uprose of operating and safeguarding the supply and distribution of water in the District of Columbia

It was the conclusion of the Board of Commissioners of the Home, having in mind the vested interest of the beneficiaries of the trust, that it can not, at this time, take favorable action with respect to the proposed construction.

In view of what has been stated above, I am directed by the Board of Commissioners to request that you withdraw from you estimates for 1939, which will shortly be placed before the Bureau of the Budget, any request for authority or funds for the construction of a reservoir on Soldiers' Home property and that the Board of Commissioners of the United States Soldiers' Home be advised of your action in the matter.

(capitalization and ellipses in original). The District complied with the Soldiers' Home's request for the District to withdraw from its budget request the funds for the construction of the reservoir, however, discussions between the Soldiers' Home and the District continued. In a letter dated January 6, 1938 to Major General Coleman of the Soldiers' Home, the Honorable Melvin C. Hazen, President of the Board of Commissioners of the District of Columbia, wrote:

In view of the absolute necessity of ample water supply at adequate pressure, not only for Federal institutions but also in the interest of the general public welfare, your renewed consideration of our request for permission to locate a vitally important storage reservoir on high ground within the territory under the jurisdiction of the Board of Commissioners of the United States Soldiers' Home is requested.

Our renewed request that you grant this permission would not be made but for the fact that the proposed site is the only one considered feasible. The engineers of the District of Columbia Water Division have made a comprehensive survey of all possible sites for a reservoir and after exhaustive study have reluctantly reached the conclusion that all contemplated alternates are impracticable.

The Commissioners are willing, with your advice and approval, to recommend payment of a reasonable price for the site in question since the need for the construction of this reservoir is so urgent, and they therefore are most reluctant to postpone a recommendation for the enactment of legislation beyond the present (75th) Congress which would authorize its construction and the necessary appropriation. The Commissioners are willing that the price be determined by a board of appraisers selected jointly by the Board of Commissioners of [the] Soldiers' Home and the Board of Commissioners of the District of Columbia.

(capitalization in original).

The Honorable Melvin C. Hazen's renewed request to construct the reservoir on the premises of the Soldiers' Home was subsequently discussed by the Board of Commissioners of the Soldiers' Home and, on February 1, 1938, the 1938 Agreement was signed and executed. The 1938 Agreement stated:

This Agreement made this 1st day of February, 1938, by and between Frederick W. Coleman (Retired), Governor of the United States Soldiers' Home; Major General Charles R. Reynolds, The Surgeon General; Major General Edgar T. Conley, The Adjutant General; Major General Henry Gibbins, The Quartermaster General; Major General Julian L. Schley, The Chief of Engineers; Major General Allen W. Gullion, The Judge Advocate General; and Major General Frederick W. Boschen, The Chief of Finance, constituting the Board of Commissioners of the United States Soldiers' Home, parties of the first part, and Melvin C. Hazen, George E. Allen, and Colonel Dan I. Sultan, constituting the Board of Commissioners of the District of Columbia, parties of the second part, witnesseth:

That Whereas the Commissioners of the District of Columbia have made application to the Board of Commissioners of the United States Soldiers' Home for permission to install and maintain an underground reservoir, for

use in connection with the water supply system of the District of Columbia, on lands constituting a part of the Soldiers' Home grounds;

And Whereas the lands on which it is proposed to construct said reservoir were conveyed to the United States of America in Trust "for the sole use, benefit and behoof of The Commissioners of the Soldiers' Home and for no other purpos [sic] whatsoever";

And Whereas to grant the request of the District of Columbia would constitute a violation of the trust imposed unless such action is clearly to the best interest of the old soldiers who are the beneficiaries of the said trust;

And Whereas the Board of Commissioners of the United States Soldiers' Home at a meeting held on the 24th day of January, 1938, after careful consideration of all of the facts, have determined that the recognition of the perpetual right to the use of water from the water supply system of the District of Columbia, and the right to use water from the reservoir proposed to be installed on the Soldiers' Home grounds, with the right to tap the District of Columbia Water mains and use water therefrom to the extent necessary for the purpose of said Home, and the advantage of having a more continuous pressure for fire fighting purposes in the protection of the buildings and property of said Home resulting from the installation of the proposed reservoir, constitute a lasting benefit to said Home and adequate consideration for the grant of the privilege requested by the parties of the second part;

And Whereas the National Capital Park and Planning Commission has recommended the transfer of jurisdiction for the purposes and to the extent hereinafter set forth;

Now Therefore, pursuant to the authority vested in the Board of Commissioners of the United States Soldiers' Home and the Secretary of War, by Section 4815, United States Revised Statutes (U.S.C. 24:41), with the approval of the Secretary of War, as evidenced by signature hereto, the parties of the first part hereby grant to the parties of the second part, permission, and transfer jurisdiction to the extent hereinafter set forth, to install an underground reservoir, for use in connection with the water supply system of the District of Columbia, together with right-of-way for water mains leading to and from said reservoir, on and across the grounds of the United States Soldiers' Home, at the locations, and in the manner, and in accordance with the plans therefor, as more fully shown, described, and set out on the map attached hereto and made a part hereof, together with the right of ingress and egress thereto for the purpose of constructing, repairing and maintaining same, so long as the said reservoir is used in connection with the water supply system of the District of Columbia, and no longer, with the understanding that said grant is made in consideration of the perpetual

right to use water from the water supply system of the District of Columbia, as may be needed, for the purpose of said Home, including water for fire protection purposes without compensation therefore at any time, which right the said parties of the second part, under authority of the act of Congress approved May 20, 1932 (47 Stat. 161, U.S.C. 40:122), hereby grant, warrant and confirm to the parties of the first part.

The parties of the second part agree to repair all damages done to roads and property of the parties of the first part, in the construction, repair and maintenance of said reservoir, and to save the parties of the first part harmless from any damages or claims resulting from the occupation of the premises under this agreement by the parties of the second part.

It is mutually understood and agreed that the jurisdiction over said property hereby transferred to the parties of the second part is limited to that necessary in construction, repair and maintenance of the reservoir and water mains above mentioned, and in all other respects, including the power to police the property, jurisdiction retained by the parties of the first part.

This Agreement is made in anticipation of an appropriation to be made for the construction of said proposed reservoir, and in the event the necessary appropriation is not made within two years, this agreement shall become null and void and of no effect.

In Witness Whereof, the said parties have hereunto, and to a duplicate hereof of like tenor and affect, set their hands and seals, in the City of Washington and District of Columbia, the day and year first above written.

(capitalization in original).

On April 4, 1938, Congress passed the following legislation which provided:

For the construction of a reservoir of approximately fifteen million gallons capacity on the grounds of the United States Soldiers' Home, District of Columbia, including necessary appurtenances and auxiliaries, and including not to exceed \$12,000 for the employment, by contract or otherwise, and without reference to section 3709 of the Revised Statutes (41 U.S.C. [§] 5) or the Classification act of 1923, as amended, of engineering and other professional services, \$400,000, to continue available [sic] until June 30, 1940.

52 Stat. 190, 75th Cong. (1938).

On January 26, 1939, Major General Coleman of the Soldiers' Home wrote to the Honorable Melvin C. Hazen, the President of the Board of Commissioners of the District of Columbia, regarding the 1938 Agreement's applicability in the face of potential

legislation recommended by the District that would require the federal government “to purchase the water used by” the federal government. Major General Coleman’s letter January 26, 1939 letter stated:

There has been noted recently in the press apparently authentic statements that the Commissioners of the District of Columbia either have recommended or propose to recommend to the Congress that legislation be enacted which will require that Federal Government activities in the District of Columbia be required to purchase the water used by them.

On February 1, 1938, the Commissioners of the District of Columbia and the Board of Commissioners of the U.S. Soldiers’ Home entered into a contract of agreement where, in consideration of the authority given the former to erect and maintain a large water storage reservoir on the grounds of the Soldiers’ Home, the perpetual right to free water for its use was granted to the latter. This agreement appears to be entirely satisfactory to both parties; it will result in a very considerable construction and maintenance savings to the District of Columbia and at the same time will satisfy the requirements of the Trustees of this Home in their responsibility to the trust obligation imposed upon them by law.

In view of the existing contract above referred to, I feel that it is fair to assume that any proposed legislation on this subject will specifically exclude the U.S. Soldiers’ Home from the provisions of any Act in reference hereto to be proposed to Congress by the Commissioners of the District of Columbia.

(capitalization in original).

The Honorable Melvin C. Hazen of the District responded in a letter to Major General Coleman of the Soldiers’ Home, stating:

On January 13, 1939, the Commissioners [of the District] transmitted to Congress a report of a study of the Water System authorized by Public Act No. 172, 75th Congress, First Session, approved June 29, 1937, and stated to Congress that it was their belief “that the Federal Government should reimburse the water fund for water used at the established meter rates, possibly with a preferential discount of about 10 %.”

The Commissioners are cognizant of the fact that a contract was entered into between the Soldiers’ Home and the District under which the Home was given the perpetual right to free water. It is not intended to modify this contract in any way. When, as and if definite legislation is under consideration, the Commissioners will make suitable recommendations to this effect.

(capitalization in original).

In a March 4, 1939 Memorandum to the Board of Commissioners for the Soldiers' Home, Judge Advocate General, Major General Allen W. Gullion questioned the validity of the perpetual water rights granted to the United States Soldiers' Home by the 1938 Agreement, as follows:

1. By letter, subject as above, dated February 21, 1939, inclosing copy of an agreement dated February 1, 1938, between the Board of Commissioners of the United States Soldiers' Home and the Board of Commissioners of the District of Columbia, together with a copy of a letter from the Governor of the United States Soldiers' Home dated January 26, 1939, and the reply to said letter signed by the President of the Board of Commissioners of the District of Columbia, I am requested to express an opinion on the following questions:

"a. As to the binding effects of the [1938] agreement entered into and as further supported by the two letters hereinbefore referred to.

"b. What further action, if any, the Board of Commissioners of the U.S. Soldiers' Home, should now take to guarantee perpetual water rights to the U.S. Soldiers' Home by the District of Columbia in return for the action of the Board of Commissioners in granting them the right to construct an underground water reservoir on the grounds of the U.S. Soldiers' Home, to improve and enlarge the water system of the District of Columbia.

"c. The desirability or necessity of filing a copy of the agreement and pertinent papers for record in the office of the Recorder of Deeds of the District of Columbia."

2. In substance the agreement gives to the District of Columbia the right to install an underground reservoir on lands constituting a part of the Solders' Home grounds in consideration of the perpetual right to the use of water from the water supply system of the District of Columbia, by the Home without compensation therefor.

3. (a) In response to question a: Whether the agreement is enforceable in the courts is an extremely doubtful question which can only be resolved by the courts. The agreement is, however, binding on the parties in accordance with its terms. It is, of course, subject to the will of Congress. The subject matter of the agreement is within the exclusive legislative jurisdiction of Congress under Article I, section 8 of the Constitution.

(b) With respect to question b, it is my opinion that there is nothing that can be done by the Board of Commissioners of the Home to guarantee perpetual water rights to the Home by the District of Columbia. The power to tax or charge Government instrumentalities for water does not reside in the Board of Commissioners of the District of Columbia, but in Congress which has not delegated this power. It is suggested that if a bill is introduced in Congress contemplating a tax or charge on water supply, the agreement should be brought to the attention of the Committee to whom the bill is referred. The agreement may have some persuasive effect but as heretofore stated has no binding effect on Congress.

(c) With respect to question c, it is my opinion that it is not necessary to file a copy of the agreement in the Office of the Recorder of Deeds of the District of Columbia. However, such filing will cause the agreement to become a matter of public and permanent record and thus may be influencing in future consideration of water charges to the Home. Accordingly, I deem it desirable that the agreement be so filed.

(capitalization and emphasis in original).

The District of Columbia Public Works Act of 1954

The United States, including the AFRH, had not paid for water or sewer services until the enactment of the 1954 Act. The enactment of the 1954 Act marked the first time that the District's public was charged for sewer services on a recurring basis. As originally enacted, in section 206 of Title II, "Sanitary Sewage Works," the 1954 Act provided that the "Commissioners [of the District of Columbia] are authorized to establish charges for the provision of sanitary sewer service, such charges to be collected in the same manner and at the same time as water charges are collected, and to be paid into the D.C. Sanitary Sewage Works Fund." Id.

The 1954 Act also marked the first time the United States was to be charged for sewer services rendered by the District. The provision in section 212(a) of the 1954 Act, as originally enacted, stated:

The sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services furnished by the sanitary sewage works of the District through any connection thereto for direct use by the Government of the United States or any department, independent establishment, or agency thereof, and such charges shall be predicated on the value of water and water services received by such facilities of the Government of the United States or any department, independent establishment, or agency thereof from the District water supply system. Payment of the said sanitary sewer

service charge shall be made as provided in subsection (b) of this section: *Provided*, That the aggregate amount of such sanitary sewer service charge for each fiscal year shall be determined in the manner prescribed in section 207 hereof: *Provided further*, That the obligation to pay for sanitary sewer services received by the Government of the United States or any department, independent establishment, or agency thereof shall be with respect to such service furnished on and after July 1, 1954.

Id. § 212(a) (capitalization and emphasis in original). In section 212(b), the 1954 Act provided:

For the purpose of effectuating the provisions of subsection (a) of this section there shall be included annually in the budget estimates of the Commissioners beginning with the estimates for the fiscal year ending June 30, 1955, the value as determined by the Commissioners of the sanitary sewer service furnished to the United States or to any department, independent establishment, or agency thereof during the most recent preceding fiscal year for which such value can be determined based on the rates for such charges prevailing during the period of such service, and there shall be appropriated annually for the D.C. Sanitary Sewage Works Fund out of any money in the Treasury not otherwise appropriated (to be advanced on July 1 of each fiscal year beginning in July 1, 1954) a sum corresponding to the said value of charges for sanitary sewer service furnished the United States.

Id. § 212(b) (capitalization in original). Title II of the 1954 Act was incorporated into the D.C. Code in what is now D.C. Code § 34-2101, et seq. Neither the AFRH (including any of its predecessors-in-interest), nor the 1938 Agreement, were mentioned in the 1954 Act.

Relevant to the above-captioned case, in 1989, section 212 of the 1954 Act was amended and section 212(b) imposed a specific set of instructions on (1) the Secretary of the Treasury, (2) the District, and (3) each Federal entity receiving sanitary sewer services from the District before the District was to receive payment from the United States for sanitary sewer services rendered by the District. As amended in 1989, section 212(b) provided, in full:

(b)(1) Beginning in the second quarter of fiscal year 1990, the government of the District of Columbia shall receive payment for sanitary sewer services from funds appropriated or otherwise available to the Federal departments, independent establishments, or agencies. In accordance with the provisions of paragraphs (2) and (3) of this subsection, one-fourth (25 percent) of the annual estimate prepared by the District government shall be paid, not later than the second day of each fiscal quarter, to the District government by the Secretary of the Treasury from funds deposited by said departments, establishments, or agencies in a United States Treasury account entitled “Federal Payment for Water and Sewer Services.” In the absence of

sufficient funds in said account, payment shall be made by the Secretary of the Treasury from funds available to the United States Treasury and shall be reimbursed promptly to the United States Treasury by the respective user agencies. Payments shall be made to the District government by the Secretary of the Treasury without further justification, and shall be equal to one-fourth (25 percent) of the annual estimate prepared by the District government pursuant to paragraph (2) of this subsection.

(2) By April 15 of each calendar year the District shall provide the Office of Management and Budget, for inclusion in the President's budget of the respective Federal departments, independent establishments, or agencies, an estimate of the cost of service for the fiscal year commencing October 1st of the following calendar year. The estimate shall provide the total estimated annual cost of such service and an itemized estimate of such costs by Federal department, independent establishment, or agency. The District's estimates on a yearly basis shall reflect such adjustments as are necessary to (1) account for actual usage variances from the estimated amounts for the fiscal year ending on September 30th of the calendar year preceding April 15th, and (2) reflect changes in rates charged for water and sewer services resulting from public laws or rate covenants pursuant to water and sewer revenue bond sales.

(3) Each Federal department, independent establishment, or agency receiving sanitary sewer services in buildings, establishments, or other places shall pay from funds specifically appropriated or otherwise available to it, quarterly and on the first day of each such fiscal quarter, to an account in the United States Treasury entitled "Federal Payment for Water and Sewer Services" an amount equal to one-fourth (25 percent) of the annual estimate for said services as provided for in paragraph (2) of this subsection.

(4) The amount or time period for late payment of charges for sanitary sewer services involving a building, establishment, or other place owned by the Government of the United States imposed by the District of Columbia shall not be different from those imposed by the District of Columbia on its most favored customer.

District of Columbia Appropriations Act, 1990, Pub. L. No. 101-168, 103 Stat. 1267, 1281–82 (1989) (capitalization in original). As indicated in the quote immediately above, and of particular relevance to the above-captioned case, section 212(b), as amended in 1989, required that the District, "[b]y April 15 of each calendar year, shall provide the Office of Management and Budget, for inclusion in the President's budget of the respective Federal departments, independent establishments, or agencies, an estimate of the cost of service for the fiscal year commencing October 1st of the following calendar year." Id. (emphasis added). The parties refer to this provision of required annual estimates as the Federal Cost of Service Estimates (FCSE). Subsection 212(b)(2) was later amended in 2001 to

require that the District provide its annual FCSE, in addition to the Office of Management and Budget, also to “the Secretary of Treasury, and the head of each of the respective Federal departments, independent establishments, and agencies.” See District of Columbia Appropriations Act, 2002, Pub. L. No. 107-96, 115 Stat. 923, 943 (2001). The District of Columbia Appropriations Act of 2002 also added subsection 212(c), which stated:

Nothing in this section may be construed to require the District of Columbia to seek payment for sanitary sewer services directly from any Federal entity which is under the jurisdiction of a department, independent establishment, or agency which is required to make a payment for such services under this section, or to allocate any amounts charged for such services among the entities which are under the jurisdiction of any such department, independent establishment, or agency. Each Federal department, independent establishment, and agency receiving sanitary sewer services from the District of Columbia shall be responsible for allocating billings for such services among entities under the jurisdiction of the department, establishment, or agency, and shall be responsible for collecting amounts from such entities for any payments made to the District of Columbia under this section.

Id.

Subsequent Correspondence between DCWS and AFRH

As discussed below, the parties have submitted to the court various copies of correspondence between DCWS and the AFRH, beginning in 1990, in which DCWS and the AFRH discuss their respective positions regarding the sewer service charges allegedly owed by the AFRH to DCWS. On June 25, 1990, John Touchstone, then the Director of the District of Columbia Department of Public Works, DCWS’ predecessor-in-interest, wrote the following letter to Colonel (Retired) R.W. Hampton, then the Secretary Treasurer of the Soldiers’ Home, AFRH’s predecessor-in-interest, regarding the validity of the 1938 Agreement and its applicability to sewer services:

This is in response to your letter of January 10, 1990, addressed to Mr. James E. Dennis, regarding a 1938 Agreement between the District Government and the U.S. Soldiers’ and Airmen’s Home. We regret the delay in responding to your inquiry. However, it was necessary for us to allow the D.C. Corporation Counsel to review the agreement, prior to accepting or denying the terms outlined.

The Corporation Counsel recently rendered an opinion on the validity and enforceability of the agreement. As a result of their opinion, the Department of Public Works will honor the 1938 Agreement between the U.S. Soldiers’ and Airmen’s Home and the District of Columbia. The District will continue to render water and sewer services to the Home without charge.

(capitalization in original).

In 1996, DCWS, the successor-in-interest to the District of Columbia Department of Public Works, and the plaintiff in this case, was established “to plan, design, construct, operate, maintain, regulate, finance, repair, modernize, and improve water distribution and sewage collection, treatment, and disposal systems and services, and to encourage conservation.” Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, 1995 D.C. Sess. L. Serv. 11–111 (Act 11–201), § 202(c) (1996) (codified as amended at D.C. Code § 34-2202.02(c) (2021)). DCWS was authorized to “establish, adjust, levy, collect, and abate charges for services, facilities, or commodities furnished or supplied by it,” D.C. Code § 34-2202.03(11). DCWS was also authorized to “determine whether churches, charitable organizations, or institutions that receive annual appropriations from Congress should be furnished with water or sewer service without charge.” D.C. Code § 34-2202.03(31).

The Resolution of the Board of Directors of the D.C. Water and Sewer Authority, which was presented and adopted on December 5, 1996, stated:

In accordance with the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, D.C. Law 11-111, sections 203 (31) and 216 (the Act), the District of Columbia members of the Board of Directors considered the matter of furnishing water and sewer services to the United States Soldiers’ Home without charge. The Act transferred the responsibility for determining whether any customers are to receive water and sewer services without charge or at reduced rates. Upon consideration, it was decided by a vote of six (6) in favor, and none (0) opposed, and be it resolved as follows:

1) Pursuant to an agreement between the U.S. Soldiers’ Home and the District of Columbia, the Commissioners of the Soldiers’ Home dated February 1, 1938, granted permission to the District of Columbia to place an underground reservoir on property conveyed in trust to the U.S. Soldiers’ Home. As consideration the District of Columbia granted the U.S. Soldiers’ Home the perpetual right to use water from the District’s water supply system without charge. In a legal review of this agreement, an Assistant D.C. Corporation Counsel and the D.C. Deputy Corporation Counsel for Public Works determined that under the terms of the Agreement, the District is obligated to provide water services to the U.S. Soldier’s [sic] Home as long as the District uses the U.S. Soldiers’ Home property.

2) The Agreement does not obligate the District of Columbia to provide sewer services without charge to the U.S. Soldiers’ Home, and the April 25, 1990 memorandum of the Office of Corporation Counsel concludes that “since the Agreement does not discuss the gratuitous sewer services, the Soldiers’ Home may be legally obligated to pay the District for sewer

services.” However, in a memorandum dated June 19, 1990, the Director of Public Works extended no charge [for] sewer services to the U.S. Soldiers’ Home.

3) The Board of Directors wishes to honor the agreement and continue providing water without charge to the U.S. Soldiers’ Home. The no charge sewer services practice will be honored for the remainder of fiscal year 1997.

On or before March 1997, the Board will determine whether to extend no charge sewer services into fiscal year 1998. To assist in this determination, the Interim General Manager shall cause a comparative analysis of the annual value of the right to use the U.S. Soldiers’ Home property for the reservoir and the value of the no water charge and/or water and sewer services since June 1990. The analysis should be submitted for consideration by the Retail Rates Committee at its February 1997 meeting.

(capitalization in original).

In a letter dated January 12, 2004, the Chief Financial Officer of DCWS, Mr. Paul Bender, wrote to the Facilities Manager of the Soldiers’ Home, stating:

The U.S. Soldiers’ and Airmen’s Home (“Soldiers’ Home”) receives free water service from the District of Columbia Water and Sewer Authority (WASA) for eight accounts pursuant to an agreement executed in 1928 [sic] between the District of Columbia and the Soldier’s Home

WASA, and before October 1996 the District of Columbia Government, has also provided the Soldier’s Home sewer service at no charge even though sewer service is not part of the agreement. In 1996, the WASA Board of Directors reviewed the agreement with Soldier’s Home and determined that the sewer exemptions should be eliminated; this was part of an overall elimination of all other free services that were then being provided by the D.C. Government, including free water and sewer service to the District of Columbia Government itself.

Therefore, effective July 1, 2004, WASA will begin to bill Soldier’s Home for sewer service for all of its accounts. The institution of sewer fees is also consistent with federal law; fee exemptions of sewer services conflict with Section 204(b)(1) of the Clean Water Act (PL 92-500). Federal regulations require elimination of any contract that contravenes this section of the law.

Free water service for the eight accounts will continue for the time being. WASA desires to open discussion with Soldier’s Home regarding the continuation of free water service and the value already provided to the Home compared to the value of the property. We also need to resolve with

you the historical unbilled amounts for sewer service.

Soldiers' Home eight exempt accounts registered 70,000 hundred cubic feet (ccf) of use from October 2002 to September 2003. WASA's wastewater rate is \$2.57 per ccf. We estimate the annual cost of sewer service to these eight accounts to be approximately \$180,000. WASA understands this amount may impose a financial burden on the Soldier's Home and we welcome your thoughts on how to mitigate this impact.

I would like to meet with you to develop a mutually agreeable plan to implement sewer charges for these accounts and resolve these issues. I will contact you to arrange a meeting.

(capitalization in original).

Based on the record before the court, including the supplemental submissions filed by both parties, it appears that DCWS did not attempt to charge the AFRH for sewer services rendered until at least 2004. Plaintiff alleges that "[b]eginning in 2004, and at regular, [sic] intervals since," DCWS "has billed AFRH for sewer services provided which includes impervious area charges." Although plaintiff has produced a number of spreadsheets and tables documenting charges for various sewer services rendered by the DCWS to the AFRH, plaintiff has produced little evidence that it had sent billings for such sewer services to the AFRH at "regular intervals" since 2004. There are only two actual "billings" which have been produced in the record before the court, even after multiple instructions to the parties to file fuller and more complete documentation if available. One billing is a "Bill Summary," dated March 9, 2012, indicating a bill amount to the AFRH for \$1,794,808.89, of which \$1,744,174.48 is indicated as past due. The second billing is a "Group Bill Summary," dated May 25, 2018, which indicates a total amount due by the AFRH of \$12,472,946.91, of which \$12,452,520.54 is indicated as past due. Plaintiff also states in supplemental briefing:

Beginning in October 2007, DC Water's electronic data system records reflect billings for sewer services being sent to:

Soldiers' Home,
ACCTG OPS/UNB Building 5th FL,
Bureau of Public Debt/PO BOX 1328,
Parkersburg, WV 26106

(hereinafter referred to as the "West Virginia AFRH business address").

(capitalization in original).³

³ Although plaintiff alleges that "billings were sent to" the above West Virginia address, plaintiff has not produced any billings sent to that address, including the two billings discussed above, for the record before the court.

Based on the record before the court, DCWS retained a consultant company, PB Consult, and, in a July 16, 2004 memorandum from David Earley of PB Consult to Paul Bender, Chief Financial Officer of DCWS, Thomas Bridenbaugh of Leftwich & Ludaway, LLC, Nick Amrhein of PB Consult, and John Cromwell of Stratus Consulting, Mr. Earley estimated that “[c]umulatively, the Soldiers Home has received \$13.3 million in water and sewer services over the 65 year period.”

The court notes that, according to plaintiff, in 2010, DCWS and the AFRH began another negotiation to “construct a five-million-gallon reservoir” on AFRH’s premises. A January 20, 2011 email from Jessica Demoise of the DCWS Department of Engineering and Technical Services, to Jody Russell of the AFRH provided, in relevant part:

This email summarizes our meeting today, January 20th, with Soldiers Home regarding the feasibility of locating a 5MG tank on their property.

We met with Justin Seffens, Chief of Campus Operations, and Steve McManus, Acting GM and Deputy COO/CFO. They stated that AFRH is open to the idea of locating the tank at the Eisenhower Drive site, and requested that the design include a garden on top of the tank. A condition of AFRH’s cooperation is that DC Water must renew the agreement to provide water service on a perpetual basis. (It should be noted that AFRH believes that their sewer is also currently subsidized.)

(capitalization in original).

In a February 2, 2011 email from Olu Adebo, Chief Financial Officer of DCWS, to Steven McManus of the AFRH, Mr. Adebo wrote:

I am reaching out to you and your team to find out how we can resolve a long standing financial dispute between our 2 agencies. As you may already be aware, Soldiers Home currently owes over \$4m in unpaid sewer charges on its sewer account. In addition, while we wish to continue to honor the current agreement for providing free water (this agreement does not obligate the Water Authority to provide free sewer), due to the extensive passage of time since the agreement was struck, we will like to discuss and clarify certain aspects of the agreement.

Note that although, we started to bill your agency for sewer services in 2004, to date, we have not received any payment or formal notification explaining your lack of payment. Also, note that between 1996 and 2004 we made numerous attempts to understand the basis for an exemption to your agency for sewer services, however, to date, no one has been able to substantiate the basis for the exemption. Our suspicion is that the

exemption stems from an old tradition (that has long since changed) of providing free water and sewer to government and non-profit type organizations in the District. Note that after 1996 through legislation and rulemaking in the District this exemption was cancelled for all entities and every customer now pays for services provided.

While we concede that an existing agreement obligates us to provide free water, we however see no basis, or know of any basis (in light of our current legislative structure), for not charging for sewer services on your accounts. As I stated above, the outstanding balance now exceeds \$4m and has risen to the attention of our board of directors who have identified this as a critical issue that has to be dealt with this fiscal year. Coincidentally, we are also interested in discussing with you an option to build additional water facility on your premises, which could create an opportunity to discuss and negotiate these matters.

I have been tasked by our General Manager and Board to coordinate a resolution to this matter. Please confirm that you are the appropriate officer in your organization to work with directly on this matter, and if so when we can reasonable [sic] expect to get together “soon” to discuss. If you are not the appropriate officer please direct me to the correct party. I look forward to a productive dialogue and a timely resolution to this matter.

(capitalization in original). On February 3, 2011, Mr. McManus of the AFRH responded:

Mr. Adebo, Thank you for your note. As the agency head, I’m probably the best person to start with. Please see attached memo from DC Public Works dated June 25, 1990. Based on this letter I’m not sure it is correct to use the terminology – “long standing financial dispute between our 2 agencies.” Also believe it is important to understand and point out that our 1938 agreement that was validated in 1990 by the DC Corporation Counsel was the result of DC placing a large water reservoir on the AFRH-W Campus and not because we were government or a non-profit. We look forward to discussing the mutual benefits of DC building an additional water facility on AFRH. We are in the process of moving real property support from GSA to DoD. Would expect this to take another 30 to 60 days. Once this realignment has occurred we will reach out for discussions. Is that timeline acceptable to you?

Mr. Adebo responded the same day, February 3, 2011, writing:

Thanks for your timely response on this matter. I will appreciate if we can meet within the next two weeks to clarify the facts around our current arrangement. If that works I will send you some tentative dates for such a meeting.

The long standing dispute I referenced was related to the sewer bills and not water. I expect that this meeting I requested would set the stage for our negotiation meetings in the very near future.

Finally, also on February 3, 2011, Mr. McManus responded: “Mr. Adebo, Understand, but the letter dated June 25, 1990 by DC validated both water and sewer. I will be in Gulfport, MS all next week. You are welcome to propose some dates the following week.” No further communications between Mr. Adebo and Mr. McManus are included in the record before the court.

In a supplemental brief, plaintiff asserts:

Between 2012 and 2017, negotiating teams from AFRH and DC Water met to discuss AFRH’s payment for water and sewer services regarding the following issues: whether the residential properties that AFRH rented should receive free water services, whether there should be a cap on free water services to encourage conservation, whether the 1938 Agreement exempted AFRH from payment for sewer, whether the meters were accurately recording water consumption necessary for sewer billing, whether all accounts were active, whether there was any objection to DC Water’s statement of amounts due, defining core (essential to AFRH’s mission) and non-core properties and buildings for services, whether an agreement could be reached for a valuation of the past consumption of water in order to agree on an amount for the past sewer services and a time frame for payment for the past, ongoing and future services.

Throughout this litigation the parties have provided little documentation of the negotiations between the parties between 2012 and 2017 or copies of billing statements from the DCWS to the AFRH, even after multiple requests from the court for more evidence of comprehensive communications or documentation. The record before the court does include a May 7, 2012 letter from Justin Seffens, Chief of Campus Operations of the AFRH, to Jacqueline Brown-Ervin, a Commercial Care Associate of DCWS, stating:

The Armed Forces Retirement Home disputes the three (3) Billings, sent by FedEx dated May 1, 2012 to this facility because we are exempt from charges pursuant to a longstanding Agreement between the Armed Forces Retirement Home and the District of Columbia Water and Sewer Authority, whereby, in 1939 [sic], the District of Columbia agreed to exempt the Armed Forces Retirement Home. The Armed Forces Retirement Home and DC Water are currently negotiating a resolution to this dispute, and until this dispute is resolved, the Armed Forces Retirement Home shall continue to officially dispute all billing charges.

(capitalization and emphasis in original). As discussed above, there are only two billing records which were provided for inclusion in the record before the court: one in March of 2012, and one in May of 2018. It is, therefore, unclear as to which “three (3) Billings,

sent by FedEx dated May 1, 2012,” mentioned in the quote immediately above, Mr. Seffens of the AFRH is referring. Plaintiff also alleges that “DC Water and AFRH entered into a Tolling Agreement to stay the running of the District of Columbia’s three – year statute of limitations while exploring efforts to resolve the impasse over the payment for sewer services,” starting on January 22, 2013, and that the “January 2013 Tolling Agreement was thereafter renewed every six months until January 10, 2017 when the term of the agreement was set for one-year to expire on January 9, 2018.” Plaintiff states that “[i]n December 2017, Joseph H. Pollard, AFRH’s General Counsel, advised DC Water that AFRH would not extend the tolling agreement beyond its January 8th [2018] expiration.” In its supplemental submissions to the court, plaintiff provided a January 22, 2013 Tolling Agreement, as well as a January 10, 2017 extension, but did not produce any record of the extensions in between or beyond those dates.

DCWS’ Annual Federal Cost of Service Estimate Submission

Plaintiff concedes that “[p]rior to April 15, 2019, DC Water did not include the AFRH in the annual FCSE submitted to the Office of Management and Budget, the United States Treasury and the Department of Defense official responsible for AFRH.” The record before the court contains an April 13, 2021 affidavit from Carolyn Mackool, who attested that “[s]ince 2017” she has “been the Director of Customer Care for the District of Columbia Water and Sewer Authority,” and that among her duties are to “supervise accounting and billing services to customers, including federal departments, agencies, and independent establishments of the United States Government.” Additionally, Ms. Mackool attested that “[u]ntil January 2019, DC Water treated AFRH as a commercial account, exempted from paying for drinking water, billed on a retrospective pay as you go basis.” She further attested that “[a]t least once every year, on or about April 15th, DC Water provides the United States its estimate of the cost of service for the upcoming fiscal year for each of the United States’ agencies, federal departments, and independent establishments.” Ms. Mackool further attested that up until 2019, DCWS “had not included the sewer services provided to AFRH as part of the Federal Cost of Service Estimate (FCSE) for any fiscal year,” but that “[i]n January 2019, the Department of Customer Services became aware that AFRH was a federal entity and should be included in the federal estimate.” Ms. Mackool further attested that DCWS then “prepared a summary of the costs of sewer services provided to AFRH from FY2010 through FY2017,” which “were thought to be those for which we could legally recover costs.” She further indicated that, on January 23, 2019, DCWS “provided this summary of sewer services costs to the U.S. Treasury as a true-up for sewer services provided to the AFRH and requested payment for those services,” but that DCWS’s “request was denied.”⁴

In the record before the court, plaintiff produced a ten-page set of spreadsheets which appear to be what plaintiff and Ms. Mackool refer to as the “true-up” provided to the United States Treasury on January 23, 2019 for sewer services and impervious area

⁴ In a footnote to Ms. Mackool’s April 13, 2021 affidavit, she explained that her “best recollection is the denial was communicated in a telephone conversation to members of my staff from the Treasury officials with whom they had been communicating.”

charges allegedly incurred by the AFRH. The January 23, 2019 “true-up” is specific to the AFRH, and is a separate document from the FCSE’s submitted later in 2019, which are discussed below. The first spreadsheet of the January 23, 2019 “true-up” is titled: **“FY2020 Federal Billing Estimate & FY2017 True-up (For Agencies Appropriations).”** (capitalization and emphasis in original). For the first eight pages of the spreadsheet, the years listed in the title of each page decreases one fiscal year from the previous page, with the eighth page titled: **“FY2013 Federal Billing Estimate & FY2010 True-up (For Agencies Appropriations).”** (capitalization and emphasis in original). In each of the first eight pages, for each of the fiscal years for federal billing estimate and true-up indicated in the title, there are columns named: **“Estimated Amount Billed,” “Actual Usage Cost,”** and **“Adjusted for . . . Actual Usage Variance,”** and are associated with the following five categories of fees: **“WSRF [Water System Replacement Fee],” “METERING FEE,” “CLEAN RIVERS IAC [Impervious Area Charge (CRIAC)],” “STORMWATER,”** and **“RIGHT-OF-WAY FEE.”** (capitalization and emphasis in original). Almost all of the amounts in the **“Estimated Amount Billed”** columns, however, are left empty, and all of the amounts in the **“Actual Usage Cost”** columns are identical to the amounts in the **“Adjusted for . . . Actual Usage Variance”** columns. (emphasis in original). For example, the following WSRF and metering fees are listed in the first spreadsheet page, which is titled: **“FY2020 Federal Billing Estimate & FY2017 True-up (For Agencies Appropriations).”**

Account Number	WSRF					METERING FEE			
	FY2020		FY2017			FY2017			
	FY 2020 Estimated W/S Only Amount	TOTAL FY 2020 WSRF Estimated Amount	Estimated Amount Billed for FY 2017 Usage	Actual Usage Cost for FY 2017	Adjustment for FY 2017 Actual Usage Variance	TOTAL FY 2020 Metering Fee Estimated Amount	Estimated Amount Billed for FY 2017 Usage	Actual Usage Cost for FY 2017	Adjustment for FY 2017 Actual Usage Variance
78282			-	83,940.04	83,940.04			4,910.71	4,910.71
78284				23,871.64	23,871.64			3,879.48	3,879.48
201063				1,052.46	1,052.46			89.22	89.22
	-	-	-	108,865.04	108,865.04	-	-	8,879.41	8,879.41

The ninth page of the spreadsheet lists the same categories of fees, but focuses on **“Pre FY2010 Past Due Amount[s].”** (capitalization and emphasis in original). The tenth page appears to contain the sum of all previous costs from the document, and lists a final **“Total Past Due”** for the charges in the amount of \$10,637,264.10 (capitalization and emphasis in original).

As explained in the April 13, 2021 affidavit of Ms. Mackool, “[o]n or about April 18, 2019, DC Water submitted its FCSE” for the fiscal year 2021, “to the United States Office of Management and Budget, U.S. Treasury and appropriate officials of federal agencies, departments, and independent establishments of the United States, including AFRH, included in the FCSE.” Ms. Mackool further attested that “[o]n July 16, 2019, DC Water submitted a revised estimate for FY2021 to correct certain formulaic errors that affected all of DC Water’s calculations throughout the estimate.” Plaintiff has produced both the initial 2019 FCSE, dated April 15, 2019, as well as the revised, July 16, 2019 submission, both of which are for the fiscal year 2021.⁵ Both the April 15, 2019 FCSE and the revised,

⁵ Plaintiff’s submissions also include another affidavit from Carolyn Mackool, dated December 18, 2019, in which Ms. Mackool attested that the “[o]n or about April 18, 2019” FCSE submission was for the 2022 fiscal year, not for the 2021 fiscal year. That the April 15, 2019 FCSE, or revised July 16, 2019 FCSE, provided estimates for the 2022 fiscal

July 16, 2019 FCSE include a cover letter, which states, as taken from the July 16, 2019 version:⁶

This letter serves to formally transmit a revision of the FY 2021 water and sewer bill for all federal agencies served by the District of Columbia Water and Sewer Authority (DC Water). We reviewed the previously issued Federal Cost of Service Estimate for FY2021 and identified some errors, including the incorrect version of Exhibit V. In addition, there were some incorrect formulas in Exhibit I. These errors have caused some confusion and we are reissuing the Cost of Service Estimate for FY2021 with the appropriate corrections. In the interest of improving our process, minimizing our risk for data link errors, and providing less redundant information, we reduced the FY2021 estimate from eleven exhibits to four. This decision was made in conjunction with the Department of Treasury and our legal counsel. It is our sincerest hope you find this document easier to understand and identify the responsibility of each respective agency.

As detailed further in the enclosed documents, the total water and sewer bill for all federal agencies is approximately \$101,518,263.58. This bill is net of the FY 2018 actual settlement as required by federal law and as further explained below.

This bill constitutes the basis for appropriation of FY 2021 federal payment for all services furnished by DC Water in accordance with the DC Public Works Act of 1954, as amended, and Public Laws 103-334, 107-96 and 108-335. The enclosed detail exhibits accommodate the change to the legislation, Public Law 111-378, that clarifies federal responsibility for payment of storm water charges and restricts payment of such storm water charges from permanent appropriation of the U.S. Treasury. As a result, the enclosed bill delineates the portion of the appropriation that will be paid from the U.S. Treasury permanent authorization account and the remaining balance that will be paid directly from each federal agency account. The total amount remains the sum of the appropriation required for each agency.

year is in contradiction to the information transmitted either by the original or the revised 2019 FCSE, both of which state that the estimates pertained to fiscal year 2021. Adding further confusion, plaintiff's amended complaint states that the "[o]n or about April 18, 2019" FCSE submission was for estimates pertaining to "the upcoming fiscal year," which neither would be for the 2022 or for the 2021 fiscal year, but for the 2020 fiscal year. In supplemental briefing to the court, plaintiff states that its references to the 2019 submissions of its FCSE were for the 2021 fiscal year.

⁶ Aside from the first paragraph added to the cover letter of the July 16, 2019 revised FCSE, which explains the need for the revision, the July 16, 2019 FCSE cover letter is substantially similar to the April 15, 2019 FCSE cover letter.

Each agency is required to pay the IPAC⁷ request they receive from the Department of Treasury. In the event an agency disputes what is owed, they should contact the designated billing agent. If adjustments are warranted, we will correct individual accounts and the outcome will be reflected on the true-up for the agency. As in previous years, we have included detailed information, by federal agency and meter, for your reference, and consistent with federal law, are transmitting a copy of this estimate to all federal agencies (see enclosed distribution list).

(capitalization in original). Notably, the July 16, 2019 FCSE lists as a “[k]ey assumption[] for the FY 2021 billing,” that “[t]his year’s adjustment includes billing from 2012 to 2018 for Department of Defense- AFRH in the amount of \$7.5 million.” Enclosed with the July 16, 2019 transmission letter is an exhibit which lists the **“FY2021 Net Federal Bill Payment (For Agencies Appropriations),”** and provides, with respect to the AFRH, that the AFRH’s **“Total FY2021 Estimate”** equals \$1,747,090.49; that the AFRH’s **“FY18 True-Up,”** which, based on the “[k]ey assumption” described in the July 16, 2019 letter, includes “billing” to the AFRH from 2012 to 2018, equals \$7,487,138.27; that the **“Total \$ FY2021 Bill Amount,”** which is the previous two amounts added together, equals \$9,234,228.76, and of that amount, \$648,299.31 is for stormwater charges; and that the **“US Treasury Total \$ FY2021 Bill”** for the AFRH, which is equal to the **“Total \$ FY2021 Bill Amount”** for the AFRH, less AFRH’s stormwater fees, is calculated as \$8,585,929.45. (capitalization and emphasis in original).

DISCUSSION

This case was originally filed in the United States District Court for the District of Columbia on January 9, 2018, and subsequently transferred from the United States District Court for the District of Columbia to the United States Court of Federal Claims in October 2018. In this court, the case was originally assigned to Judge Thomas C. Wheeler. The case was stayed to allow for plaintiff to submit its 2019 FCSE for the 2021 fiscal year. Once plaintiff had submitted its estimate for the 2021 fiscal year, plaintiff filed an amended complaint containing four counts. The parties subsequently stipulated to dismiss the first two counts. Plaintiff’s remaining two counts allege a violation of the 1954 Act, which plaintiff argues created a statutory obligation for the AFRH to make payments for sewer services rendered by the District, and alleges a claim for quantum meruit and that AFRH has received valuable sewer services from DCWS without payment.

After the amended complaint was filed, defendant initially filed a motion to dismiss pursuant to RCFC 12(b)(1) or RCFC 12(b)(6). With respect to the motion to dismiss pursuant to RCFC 12(b)(6), defendant argues that plaintiff’s amended complaint fails to state a claim because the 1938 Agreement must be read to prevent DCWS from charging the AFRH for sewer services. Defendant argues that: (1) the 1938 Agreement was “unambiguous” and included sewer services free of charge to the AFRH; (2) the laws in

⁷ Although not defined in the revised July 16, 2019 FCSE, IGPC appears to be an acronym for “Intra-Governmental Payment and Collection.”

effect at the time of the 1938 Agreement treat water and sewer services similarly; (3) plaintiff's predecessor-in-interest acknowledged that the 1938 Agreement encompassed sewer services; and (4) plaintiff's inaction in attempting to charge AFRH for sewer services until 2004 constitutes a waiver of plaintiff's right to now bring suit for payments plaintiff might have attempted to start recovering as early as 1954. Defendant also alternatively argues, pursuant to RCFC 12(b)(1), that plaintiff lacks jurisdiction to bring all but one year of plaintiff's claims for recovery of payments allegedly due, because "[t]he District does not allege proper submission of any AFRH sewer charges until April 2019." (emphasis in original). As discussed above, plaintiff alleges in its amended complaint that it has billed the AFRH "at regular intervals" since 2004, but, until 2019, had not ever included the AFRH in its annual submission of its FCSE.⁸ Defendant excludes from its RCFC 12(b)(1) jurisdictional motion, plaintiff's claim for the recovery of such funds related to its April 2019 submission of estimates as they pertain to the 2021 fiscal year, but argues that recovery of such funds nevertheless fails for the reasons discussed in its RCFC 12(b)(6) motion. Defendant also argues that plaintiff lacks jurisdiction to the extent it seeks to recover impervious area charges, because the 1954 Act, as amended, does not waive sovereign immunity for such charges. After the parties completed briefing on defendant's motion to dismiss, the parties brought cross-motions for summary judgment which generally tracked the parties' arguments addressed in the briefing for the motions to dismiss. The above captioned case was first transferred to another Judge of this court before ultimately being assigned to the undersigned for resolution during the summary judgment briefing. After oral argument on the motions to dismiss and for summary judgment, the court ordered the parties to submit supplemental briefings to explain their respective positions on the interplay between the 1954 Act and the 1938 Agreement, as well as to give the parties an opportunity to supplement the record with additional relevant, but apparently missing, documents. In defendant's supplemental briefing, defendant continues to maintain that plaintiff is not entitled to payment for sewer services rendered because of the 1938 Agreement in which the District, according to defendant, agreed to provide sewer services, in addition to water services, to AFRH's predecessor-in-interest

⁸ In supplemental briefing to the court, plaintiff stated:

On April 15, 2020, DC Water submitted its FCSE for FY2022 to the federal government for federal entities including the AFRH. The FY2022 for AFRH includes a True-up for FY 2019 of the actual charges incurred in FY2019 although there was not a prior estimate for the fiscal year charges. On April 15, 2021, DC Water will submit its FCSE for FY2023. This estimate will have a True-up for of [sic] the actual charges incurred in providing sewer services to the AFRH in FY2020 although there was not a prior estimate for the fiscal year charges. The methodology for estimating the cost of services and True-up are the same for each fiscal year and consistent with DC Water's treatment of other federal customers.

(capitalization in original). The court also notes that plaintiff also requests in its supplemental briefing that the undersigned issue "an Order approving the methodology for calculating the Federal Cost of Service Estimates for FY2022 and FY2023."

free of charge and in perpetuity in exchange for the permission to build a water distribution reservoir on the property on which the AFRH is situated. Although the defendant does not dispute that the 1954 Act generally obligates the United States and its federal entities situated in the District to pay for sewer services rendered by the District, defendant argues that the obligation does not apply to the AFRH.

Defendant also does not dispute the general authority of Congress to obligate the United States to pay for sewer services rendered to the AFRH by the District, or the authority of Congress to effectively nullify the 1938 Agreement through the passage of legislation. Defendant argues, however, that “any interpretation of the 1954 Act must necessarily account for the 1938 agreement,” and, thus, an exception for the AFRH must be read into the 1954 Act and its subsequent amendments, such that the AFRH is to be excluded from the general mandate that federal entities are to compensate the District for sewer services rendered. Defendant argues that congressional intent to uphold the AFRH’s rights gained from the 1938 Agreement is evidenced by the 1954 Act’s failure to explicitly “disband the parties’ earlier 1938 Agreement if it wished to eliminate its [the 1938 Agreement’s] protections.” Defendant argues that “harmony” between the 1938 Agreement and the 1954 Act “is further supported by the fact that both parties’ behavior shows that they understood Congress did not intend to obviate the parties’ 1938 agreement.” Defendant also argues that it would achieve an “absurd result” if the 1954 Act, which, in addition to section 212, mandates, in a similar, but separate, provision, federal entities to pay for water services, as it does for sewer services, were to be read to nullify the 1938 Agreement in its entirety, because such an interpretation would also eliminate AFRH’s right to free water services, which, the parties do not dispute, was agreed to in the 1938 Agreement. Such nullification of the 1938 Agreement, defendant argues, would “result in an illusory agreement wherein AFRH gets no benefit, and resultantly, the District had no right to its easement in the first place.” In plaintiff’s supplemental briefing, plaintiff maintains that the 1938 Agreement did not include sewer services free of charge and in perpetuity, but that even if the 1938 Agreement did, Congress exercised its authority through the enactment of the 1954 Act and subsequent amendments thereto to obligate all federal entities, including the AFRH, to pay for sewer services rendered.

Construction and Operation of Section 212 of the 1954 Act, as Currently Amended

The amended provisions of section 212 of the 1954 Act are incorporated into the D.C. Code at § 34-2112, titled: “Sanitary sewer service charges for United States government.” Section 212, in its entirety, as currently amended, reads:

(a) The sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services furnished by the sanitary sewage works of the District through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof, and such charges shall be predicated on the value of water and water services received by such facilities of the government of the United States or any department, independent establishment, or agency thereof from the District water supply system.

Payment of the said sanitary sewer service charge shall be made as provided in subsection (b) of this section.

(b)(1) Beginning in the second quarter of fiscal year 1990, the government of the District of Columbia shall receive payment for sanitary sewer services from funds appropriated or otherwise available to the Federal departments, independent establishments, or agencies. In accordance with the provisions of paragraphs (2) and (3) of this subsection, one-fourth (25 percent) of the annual estimate prepared by the District government shall be paid, not later than the second day of each fiscal quarter, to the District government by the Secretary of the Treasury from funds deposited by said departments, establishments, or agencies in a United States Treasury account entitled “Federal Payment for Water and Sewer Services”. In the absence of sufficient funds in said account, payment shall be made by the Secretary of the Treasury from funds available to the ~~[United States Treasury and shall be reimbursed promptly to the United States Treasury by the]~~^[9] respective user agencies. Payments shall be made to the District government by the Secretary of the Treasury without further justification, and shall be equal to one-fourth (25 percent) of the annual estimate prepared by the District government pursuant to paragraph (2) of this subsection.

(2) by April 15 of each calendar year the District shall provide the Office of Management and Budget, the Secretary of the Treasury, and the head of each of the respective Federal departments, independent establishments, and agencies, for inclusion in the President’s budget of the respective Federal departments, independent establishments, or agencies, an estimate of the cost of service for the fiscal year commencing October 1st of the following calendar year. The estimate shall provide the total estimated annual cost of such service and an itemized estimate of such costs by Federal department, independent establishment, or agency. The District’s estimates on a yearly basis shall reflect such adjustments as are necessary to (A) account for actual usage variances from the estimated amounts for the fiscal year ending on September 30th of the calendar year preceding April 15th, and (B) reflect changes in rates charged for water and sewer

⁹ The Consolidated Appropriations Act for FY2001 amended section 212(b) of the 1954 Act as follows, “in the third sentence of paragraph (1), by striking ‘United States Treasury and’ and all that follows through ‘by the.’” The versions of section 212 which are published on Westlaw, Lexis Nexis, Bloomberg Law, and the D.C. Code website do not strike this language, and there are no subsequent amendments to section 212 in which such language is reincluded. The parties, in a joint supplemental submission in response to the court’s inquiry, confirmed an error in the D.C. Code, contrary to the citations on Westlaw, Lexis Nexis, Bloomberg Law, and the D.C. Code website.

services resulting from public laws or rate covenants pursuant to water and sewer revenue bond sales.

(3) Each Federal department, independent establishment, or agency receiving sanitary sewer services in buildings, establishments, or other places shall pay from funds specifically appropriated or otherwise available to it, quarterly and on the first day of each such fiscal quarter, to an account in the United States Treasury entitled "Federal Payment for Water and Sewer Services" an amount equal to one-fourth (25 percent) of the annual estimate for said services as provided for in paragraph (2) of this subsection.

(4) The amount or time period for late payment of charges for sanitary sewer services involving a building, establishment, or other place owned by the Government of the United States imposed by the District of Columbia shall not be different from those imposed by the District of Columbia on its most favored customer.

(5) Repealed.

(c) Nothing in this section may be construed to require the District of Columbia to seek payment for sanitary sewer services directly from any Federal entity which is under the jurisdiction of a department, independent establishment, or agency which is required to make a payment for such services under this section, or to allocate any amounts charged for such services among the entities which are under the jurisdiction of any such department, independent establishment, or agency. Each Federal department, independent establishment, and agency receiving sanitary sewer services from the District of Columbia shall be responsible for allocating billings for such services among entities under the jurisdiction of the department, establishment, or agency, and shall be responsible for collecting amounts from such entities for any payments made to the District of Columbia under this section.

D.C. Code § 34-2112 (capitalization and emphasis in original) (brackets and strike-out represent words which were struck by the Consolidated Appropriations Act for FY2001).

In order to reach a decision in the above-captioned case, the court must interpret section 212 of the 1954 Act. In a statutory construction analysis, the first step is "to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." Barnhart v. Sigmon Coal Co., 534 U.S. 438, 450 (2002) (quoting Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997)); see also Republic of Sudan v. Harrison, 139 S. Ct. 1048, 1056 (2019) (quoting Caraco Pharm. Labs., Ltd. v. Novo Nordisk A/S, 566 U.S. 399, 412 (2012) ("We begin 'where all such inquiries must begin: with the language of the statute itself.'" (quoting United States v.

Ron Pair Enters., Inc., 489 U.S. 235, 241 (1989)))); Jimenez v. Quarterman, 555 U.S. 113, 118 (2009) (“As with any question of statutory interpretation, our analysis begins with the plain language of the statute.”); Facebook, Inc. v. Windy City Innovations, LLC, 973 F.3d 1321, 1330 (Fed. Cir. 2020) (“Our ‘first step’ is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.”) (quoting Barnhart v. Sigmon Coal Co., Inc., 534 U.S. at 450 (quoting Robinson v. Shell Oil Co., 519 U.S. at 340))); Starry Assocs., Inc. v. United States, 892 F.3d 1372, 1377 (Fed. Cir. 2018) Click-To-Call Techs., LP v. Ingenio, Inc., YellowPages.com, LLC, 899 F.3d 1321, 1329 (Fed. Cir. 2018); Starry Assocs., Inc. v. United States, 892 F.3d 1372, 1377 (Fed. Cir. 2018); Bettcher Indus., Inc. v. Bunzl USA, Inc., 661 F.3d 629, 644 (Fed. Cir.), reh’g and reh’g en banc denied (Fed. Cir. 2011); Strategic Hous. Fin. Corp. of Travis Cnty. v. United States, 608 F.3d 1317, 1323 (Fed. Cir.) (“When interpreting any statute, we look first to the statutory language.”), reh’g and reh’g en banc denied (Fed. Cir. 2010), cert. denied, 562 U.S. 1221 (2011). “The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” Robinson v. Shell Oil Co., 519 U.S. at 341 (citing Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 477 (1992); McCarthy v. Bronson, 500 U.S. 136, 139 (1991)); see also King v. Burwell, 576 U.S. 473, 474 (2015) (“[W]hen deciding whether the language is plain, we must read the words ‘in their context and with a view to their place in the overall statutory scheme.’” (quoting FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000))). In construing a statute, courts “‘must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.’” Schindler Elevator Corp. v. United States, 563 U.S. 401, 407 (2011) (2011) (quoting Gross v. FBL Fin. Servs., Inc., 557 U.S. 167, 175 (2009) (internal quotation marks omitted)). Even “[w]hen terms used in a statute are undefined, we give them their ordinary meaning.” Schindler Elevator Corp. v. United States, 563 U.S. at 407 (quoting Asgrow Seed Co. v. Winterboer, 513 U.S. 179, 187 (1995)). “Beyond the statute’s text, the traditional tools of statutory construction include the statute’s structure, canons of statutory construction, and legislative history.” Bartels Trust for the Benefit of Cornell Univ. ex rel. Bartels v. United States, 617 F.3d 1357, 1361 (Fed. Cir.) (quoting Bull v. United States, 479 F.3d 1365, 1376 (Fed. Cir. 2007)), reh’g en banc denied (Fed. Cir. 2010); see also Caraco Pharm. Labs., Ltd. v. Novo Nordisk A/S, 566 U.S. at 412 (“[W]e consider each question [of statutory interpretation] in the context of the entire statute.” (citing Robinson v. Shell Oil Co., 519 U.S. at 341)); Roberts v. Sea-Land Servs., Inc., 566 U.S. 93, 100 (2012); Bush v. United States, 655 F.3d 1323, 1329 (Fed. Cir. 2011), cert. denied, 566 U.S. 1021 (2012).

The initial inquiry into the statutory text ceases “if the statutory language is unambiguous and ‘the statutory scheme is coherent and consistent.’” Barnhart v. Sigmon Coal Co., 534 U.S. at 450 (quoting Robinson v. Shell Oil Co., 519 U.S. at 340); see also King v. Burwell, 576 U.S. at 474 (“If the statutory language is plain, we must enforce it according to its terms.” (citing Hardt v. Reliance Standard Life Ins. Co., 560 U.S. 242, 251 (2010)); Sucic v. Wilkie, 921 F.3d 1095, 1098 (Fed. Cir. 2019) (quoting Barnhart v. Sigmon Coal Co., 534 U.S. at 450); Bettcher Indus., Inc. v. Bunzl USA, Inc., 661 F.3d at 644; Arko Foods Int’l, Inc. v. United States, 654 F.3d 1361, 1364 (Fed. Cir. 2011) (“[W]here Congress has clearly stated its intent in the language of a statute, a court

should not inquire further into the meaning of the statute.” (quoting Millenium Lumber Distrib., Ltd. v. United States, 558 F.3d 1326, 1328 (Fed. Cir.), reh’g denied (Fed. Cir. 2009)); Am. Airlines, Inc. v. United States, 551 F.3d 1294, 1300 (Fed. Cir. 2008). Thus, when the “statute’s language is plain, “the sole function of the courts is to enforce it according to its terms.”” Johnson v. United States, 529 U.S. 694, 723 (2000) (quoting United States v. Ron Pair Enters., Inc., 489 U.S. at 241 (quoting Caminetti v. United States, 242 U.S. 470, 485 (1917))); see also Jimenez v. Quarterman, 555 U.S. at 118; Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 6 (2000)); Bartels Trust for the Benefit of Cornell Univ. ex rel. Bartels v. United States, 617 F.3d at 1361 (citing Sharp v. United States, 580 F.3d at 1237); Candle Corp. of Am. v. U.S. Int’l Trade Comm’n, 374 F.3d 1087, 1093 (Fed. Cir.), reh’g and reh’g denied (Fed. Cir. 2004).

In interpreting the plain meaning of the statute, it is the court’s duty, if possible, to give meaning to every clause and word of the statute. See Setser v. United States, 566 U.S. 231, 239 (2012) (“Our decision today follows the interpretive rule they invoke, that we must ‘give effect . . . to every clause and word’ of the Act.” (omission in original) (quoting United States v. Menasche, 348 U.S. 528, 538–39 (1955))); see also Alaska Dep’t of Env’t Conservation v. EPA, 540 U.S. 461, 489 n.13 (2004) (“It is, moreover, “a cardinal principle of statutory construction” that “a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or otherwise insignificant.”” (quoting TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) (quoting Duncan v. Walker, 533 U.S. 167, 174 (2001)))); Williams v. Taylor, 529 U.S. 362, 404 (2000) (describing as a “cardinal principle of statutory construction” the rule that every clause and word of a statute must be given effect if possible); Boeing Co. v. Sec’y of the Air Force, 983 F.3d 1321, 1327 (Fed. Cir. 2020) (quoting Shea v. United States, 976 F.3d 1292, 1300 (Fed. Cir. 2020) (“[i]t is a ‘cardinal principle of statutory construction that courts must give effect, if possible, to every clause and word of a statute.’” (quoting Williams v. Taylor, 529 U.S. at 364))); Sharp v. United States, 580 F.3d 1234, 1238 (Fed. Cir. 2009). Similarly, the court must avoid an interpretation of a clause or word which renders other provisions of the statute inconsistent, meaningless, or superfluous. See Duncan v. Walker, 533 U.S. at 174 (noting that courts should not treat statutory terms as “surplusage”). “[W]hen two statutes are capable of co-existence, it is the duty of the courts . . . to regard each as effective.” Radzanower v. Touche Ross & Co., 426 U.S. 148, 155 (1976); see also Xianli Zhang v. United States, 640 F.3d 1358, 1368 (Fed. Cir.) (citing Cathedral Candle Co. v. U.S. Int’l Trade Comm’n, 400 F.3d 1352, 1365 (Fed. Cir. 2005)), reh’g and reh’g en banc denied (Fed. Cir. 2011), cert. denied, 566 U.S. 986 (2012); Hanlin v. United States, 214 F.3d 1319, 1321 (Fed. Cir.), reh’g denied (Fed. Cir. 2000).

The United States Supreme Court also has held that the specific terms of a statute supersede general terms within that statute or within another statute that might otherwise control. See Fourco Glass Co. v. Transmirra Prods. Corp., 353 U.S. 222, 228–29 (1957) (“Specific terms prevail over the general in the same or another statute which otherwise might be controlling.” (quoting D. Ginsberg & Sons v. Popkin, 285 U.S. 204, 208 (1932))); see also Bloate v. United States, 559 U.S. 196, 207 (2010); Bulova Watch Co. v. United States, 365 U.S. 753, 761 (1961). In addition, the Supreme Court has endorsed “the ‘normal rule of statutory construction’ that ‘identical words used in different parts of the same act are intended to have the same meaning.’” Gustafson v. Alloyd Co., 513 U.S.

561, 570 (1995) (quoting Dep't of Revenue of Or. v. ACF Indus., Inc., 510 U.S. 332, 342 (1994)); see also Kislev Partners, L.P. ex rel. Bahar v. United States, 84 Fed. Cl. 385, 389, recons. denied, 84 Fed. Cl. 378 (2008).

If a statute is unequivocal on its face or the meaning of the statute is plain, there is usually no need to resort to the legislative history underlying the statute. See Whitfield v. United States, 543 U.S. 209, 215 (“Because the meaning of [the statute’s] text is plain and unambiguous, we need not accept petitioners’ invitation to consider the legislative history . . .”), reh’g denied sub nom. Hall v. United States, 544 U.S. 913 (2005); but see Chamberlain Grp., Inc. v. Skylink Techs., Inc., 381 F.3d 1178, 1196 (Fed. Cir.) (“Though ‘we do not resort to legislative history to cloud a statutory text that is clear,’ Ratzlaf v. United States, 510 U.S. 135, 147–48 (1994), we nevertheless recognize that ‘words are inexact tools at best, and hence it is essential that we place the words of a statute in their proper context by resort to the legislative history.’” (quoting Tidewater Oil Co. v. United States, 409 U.S. 151, 157 (1972))), reh’g and reh’g en banc denied (Fed. Cir. 2004), cert. denied, 544 U.S. 923 (2005). In limited circumstances, legislative history may be helpful in certain instances “to shed light on what legislators understood an ambiguous statutory text to mean when they voted to enact it into law.” Bruesewitz v. Wyeth LLC, 562 U.S. 223, 242 (2011) (citing Exxon Mobile Corp. v. Allapatah Servs., Inc., 545 U.S. 546, 568 (2005); see also Xianli Zhang v. United States, 640 F.3d at 1373. Legislative history, however, does not “trump[] clear text.” Bartels Trust for the Benefit of Cornell Univ. ex rel. Bartels v. United States, 617 F.3d at 1361 (citing Sharp v. United States, 580 F.3d at 1238; Glaxo Operations UK Ltd. v. Quigg, 894 F.2d 392, 396 (Fed. Cir. 1990)). The Supreme Court, however, has noted that when it appears that the plain language of a statute resolves the issue, a court is to “look to the legislative history to determine only whether there is [a] ‘clearly expressed legislative intention’ contrary to that language, which would require us to question the strong presumption that Congress expresses its intent through the language it chooses.” INS v. Cardoza-Fonseca, 480 U.S. 421, 432 n.12 (1987) (citing United States v. James, 478 U.S. 597, 606 (1986), abrogated on other grounds by Cent. Green Co. v. United States, 531 U.S. 425, 436 (2001); Consumer Product Safety Comm’n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980)).

The amended section 212 of the 1954 Act, quoted above, provides for procedures by which the District is to be paid for sewer services rendered to the federal entities situated in the District. The general instruction appears in section 212(a), which states:

The sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services furnished by the sanitary sewage works of the District through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof, and such charges shall be predicated on the value of water and water services received by such facilities of the government of the United States or any department, independent establishment, or agency thereof from the District water supply system. Payment of the said sanitary sewer service charge shall be made as provided in subsection (b) of this section.

D.C. Code § 34-2112(a). As the immediately above-quoted provision states, sanitary sewer service charges are to be “predicated on the value of water and water services

received by” each federal entity. The value of water and water service are provided in the D.C. Code at section 34-2401.25, titled: “Water and water service supplied for the use of the government of the United States,” which states, in relevant part:

All water and water services furnished from the District water supply system through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof, situated in the District, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for at the rates for the furnishing and readiness to furnish water applicable to other water consumers in the District.

D.C. Code § 34-2401.25. Reading D.C. Code sections 34-2112(a) and 34-2401.25 together, the United States is to pay for all sanitary sewer services rendered to it by the District, and the cost of such services are to be based on what the District charges the United States to supply water to the United States, which is equivalent to what the District charges the District’s public to supply water.

In order for the District to be paid for sewer services rendered to the United States, there must be compliance with certain prerequisites identified in the provision of subsection 212(b), as currently amended and incorporated into the D.C. Code at section 34-2112(b). This subsection (b) divides responsibilities into three steps to be undertaken by: (1) the District, (2) the federal entities which receive sanitary sewer services from the District, and (3) the Secretary of the Treasury. See D.C. Code at § 34-2112(b)(1)–(3). These steps are to be complied with annually, and, with respect to the responsibilities of the federal entities and the Secretary of the Treasury, actions are required on a quarterly basis.

Starting with the instructions to the District, which are set forth in section 212(b)(2), “[b]y April 15 of each calendar year,” the District is to produce annual estimates of sewer services used by the federal government “for the fiscal year commencing October 1st of the following calendar year.” D.C. Code § 34-2112(b)(2). By way of example, by April 15, 2019, the District was to have produced its estimates for the fiscal year beginning on October 1, 2020, which, for purposes of the federal government’s budget, is the fiscal year of 2021. See Budget of the United States, available at <https://www.usa.gov/budget> (last visited Sept. 10, 2021) (“The government’s fiscal year runs from October 1 of one year to September 30 of the next.”). Section 212(b)(2) also provides specific instructions to the District with respect to the format of the District’s production of estimates. See D.C. Code § 34-2112(b)(2). Additionally, section 212(b)(2) states that the estimates are to be provided to “the Office of Management and Budget, the Secretary of the Treasury, and the head of each of the respective Federal departments, independent establishments, and agencies, for inclusion in the President’s budget of the respective Federal departments, independent establishments, or agencies.” Id. Section 212(b)(2) also requires the format of the estimates to include “the total estimated annual cost of such service and an itemized estimate of such costs by Federal department, independent establishment, or agency.” Id. Section 212(b)(2) also requires that the estimates produced be adjusted

as are necessary to (A) account for actual usage variances from the estimated amounts for the fiscal year ending on September 30th of the calendar year preceding April 15th, and (B) reflect changes in rates charged for water and sewer services resulting from public laws or rate covenants pursuant to water and sewer revenue bond sales.

Id. Therefore, for example, taking estimates which were to have been produced by the District on April 15, 2019, such estimates were to have accounted for any differences in usage from the estimates supplied for the fiscal year 2018, which estimates were to have been produced by the District by April 15, 2016.

In accordance with the instructions in section 212(b)(2), and, again, using April 15, 2019 as an example, the District was to comply with the following: (1) the estimates produced by the District by April 15, 2019 were to have been for the fiscal year 2021; (2) the estimates were to have been produced to the Office of Management and Budget, the Secretary of the Treasury, and the head of each of the respective federal entities located within the District to receive such services for the fiscal year 2021; (3) the estimates were to have included the total amount estimated to be due for all sanitary sewer services rendered to the United States government in the fiscal year 2021, as well as that total itemized by each federal department, independent establishment, and agency receiving such sewer services; and (4) the estimates were to have been adjusted to reflect the actual usage variances from the estimates which were to have been submitted for the fiscal year 2018 and which were to have been submitted by April 15, 2016, as well as any changes in rates resulting from public laws or rate covenants entered into pursuant to water and sewer revenue bond sales.

Section 212(b)(3) contains instructions for each of the federal entities which are to receive sanitary sewer services within the District. The instructions delegated to each federal entity are triggered by the District's production of estimates, discussed immediately above. According to section 212(b)(3):

Each Federal department, independent establishment, or agency receiving sanitary sewer services in buildings, establishments, or other places shall pay from funds specifically appropriated or otherwise available to it, quarterly and on the first day of each such fiscal quarter, to an account in the United States Treasury entitled "Federal Payment for Water and Sewer Services" an amount equal to one-fourth (25 percent) of the annual estimate for said services as provided for in paragraph (2) of this subsection.

D.C. Code § 34-2112(b)(3) (capitalization in original). For example, on October 1, 2020, each federal entity was to have paid to the above-referenced Treasury account one-fourth of its estimated, allocated amount for the fiscal year 2021, which amount, as discussed above, was to have been produced by the District by April 15, 2019. An additional one-fourth payment of the estimated fiscal year 2021 was to have been submitted by each federal entity by January 1, 2021, April 1, 2021, and July 1, 2021, respectively. As also discussed above, the estimates produced for the fiscal year 2021 were to have included an adjustment representing the actual costs of services from the fiscal year 2018, and, therefore, the payments starting on October 1, 2020 by each federal entity also were to have reflected such adjustments.

Section 212(b)(3) contains the instructions for the Secretary of the Treasury. Although section 212(b)(2) charges each Federal entity with the primary responsibility to pay the estimated funds, section 212(b)(1) contemplates that it is the Secretary of the Treasury who is charged with executing the actual payment of the estimated funds to the District. See D.C. Code § 34-2112(b)(1). Section 212(b)(1) states:

In accordance with the provisions of paragraphs (2) and (3) of this subsection, one-fourth (25 percent) of the annual estimate prepared by the District government shall be paid, not later than the second day of each fiscal quarter, to the District government by the Secretary of the Treasury from funds deposited by said departments, establishments, or agencies in a United States Treasury account entitled “Federal Payment for Water and Sewer Services”.

Id. Additionally, in the “absence of sufficient funds” in the above-referenced United States Treasury account, section 212(b)(1) instructs that “payment shall be made by the Secretary of the Treasury from funds available to the ~~United States Treasury and shall be reimbursed promptly to the United States Treasury by the respective user agencies.~~”¹⁰ Id. Furthermore, section 212(b)(1) states that “[p]ayments shall be made to the District government by the Secretary of the Treasury without further justification, and shall be equal to one-fourth (25 percent) of the annual estimate prepared by the District government pursuant to paragraph (2) of this subsection.” Id.

Reconciliation Between the 1938 Agreement and Section 212 of the 1954 Act, as Currently Amended and Codified at D.C. Code § 34-2112

The parties’ dispute in the above-captioned case revolves around the effect of the 1938 Agreement in light of section 212 of the 1954 Act, as currently amended. As discussed above, in the 1938 Agreement, the parties’ predecessors-in-interest agreed that, in exchange for the Soldiers’ Home’s permission for the District to install and access a water reservoir on the Soldiers’ Home’s premises “for use in connection with the water supply system,” the Soldiers’ Home would have “the perpetual right to use water from the water supply system of the District of Columbia, as may be needed, for the purpose of said Home, including water for fire protection purposes without compensation therefore at any time.” Defendant argues that such language in the 1938 Agreement must be interpreted to allow the AFRH, the Soldiers’ Home’s successor-in-interest, to receive, in addition to water services free of charge and in perpetuity, sewer services free of charge also in perpetuity. Plaintiff disagrees that uncompensated sewer services were included in the 1938 Agreement. Moreover, plaintiff argues, regardless of what was agreed to in the 1938 Agreement, section 212 of the 1954 Act obligates each federal entity situated in the District, including the AFRH, to pay for sewer services rendered to it by the District. As noted above, defendant does not dispute that Congress possesses the authority to enact legislation which could nullify the 1938 Agreement and obligate the AFRH to pay for sewer services rendered. As further noted above, defendant also does not dispute that section 212 of the 1954 Act mandates payment from federal entities receiving

¹⁰ As discussed above, the crossed-out language was stricken by the Consolidated Appropriations Act for FY2001.

sanitary sewer services within the District, but argues that the AFRH is excepted from such a mandate. Defendant argues that any legislation subsequent to the 1938 Agreement would have had to explicitly evidence congressional intent to nullify the 1938 Agreement. Defendant further argues that section 212 of the 1954 Act does not evidence explicit congressional intent to nullify the 1938 Agreement because section 212 makes no reference the AFRH or the 1938 Agreement.

The United States Supreme Court recently discussed the authority of Congress to mandate the government to pay compensation through the enactment of legislation. See generally Me. Cmty. Health Options v. United States, 140 S. Ct. 1308 (2020). In Maine Community Health Options, the Supreme Court ruled on the effect of a statute which, on its face, appeared to mandate the government to reimburse health insurers participating in the national health exchanges created by the Patient Protection and Affordable Care Act (ACA) under certain circumstances. See id. at 1320–21. The Supreme Court found that “Congress can create an obligation directly through statutory language.” Id. at 1321. According to the Supreme Court, the statute at issue in Maine, section 1342 of the ACA “imposed a legal duty of the United States that could mature into a legal liability through the insurers’ actions—namely, their participating in the healthcare exchanges.” Me. Cmty. Health Options v. United States, 140 S. Ct. at 1320. The Supreme Court explained:

This conclusion flows from § 1342’s express terms and context. See, e.g., Merit Management Group, LP v. FTI Consulting, Inc., 583 U.S. ----, ----, 138 S. Ct. 883, 893, 200 L.Ed.2d 183 (2018) (statutory interpretation “begins with the text”). The first sign that the statute imposed an obligation is its mandatory language: “Shall.” “Unlike the word ‘may,’ which implies discretion, the word ‘shall’ usually connotes a requirement.” Kingdomware Technologies, Inc. v. United States, 579 U.S. ----, ----, 136 S. Ct. 1969, 1977, 195 L.Ed.2d 334 (2016); see also Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26, 35, 118 S. Ct. 956, 140 L.Ed.2d 62 (1998) (observing that “shall” typically “creates an obligation impervious to . . . discretion”).

Me. Cmty. Health Options v. United States, 140 S. Ct. at 1320. The Supreme Court in Maine observed that section 1342 of the ACA used the “shall” “command three times,” and that Congress opted to use the term “shall” instead of the term “may,” despite the use of the latter term in section 1342’s “adjacent provisions.” Me. Cmty. Health Options v. United States, 140 S. Ct. at 1320.

Related to the above-captioned case, section 212 of the 1954 Act, as currently amended, uses the term “shall” fifteen times.¹¹ By way of example, and relevant to the federal government’s obligations, section 212 of the 1954 Act uses the term “shall” to instruct: (1) that the “sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services” rendered by the District to federal entities of United States situated in the District; (2) that the District “shall receive payment for sanitary sewer services from funds appropriated or otherwise available to” the federal entities situated in

¹¹ The term “shall” also appears one time in the text stricken by the Consolidated Appropriations Act for FY2001, discussed above.

the District; (3) that “[e]ach” federal entity “shall pay” the sanitary sewer service charges into the named United States Treasury account “from funds specifically appropriated to it;” (4) that, even in absence of sufficient funds in the named Treasury account, “payments shall be made” to the District “by the Secretary of the Treasury;” and (5) that “[p]ayments shall be made to the District government by the Secretary of the Treasury without further justification.” D.C. Code § 34-2112 (all emphasis added). The term “may” is used only once in section 212, appearing in section 212(c), to indicate that “[n]othing in this section may be construed to require” the District of Columbia “to seek payment for sanitary sewer services directly from any Federal entity which is under the jurisdiction of a department, independent establishment, or agency which is required to make a payment for such services under this section.” D.C. Code § 34-2112(c) (emphasis added).

Given the use of the term “shall” fifteen times in section 212 of the 1954 Act, the court finds that section 212, as currently amended and codified in the D.C. Code at section 34-2112, can create “a legal duty of the United States” that matures into a “legal liability” if not fulfilled. See Maine Cmty. Health Options v. United States, 140 S. Ct. at 1320. As was the case in Maine, however, in which the legal liability was contingent upon the “insurers’ actions—namely, their participating in the healthcare exchanges,” this court finds that the legal liability imposed upon the United States by section 212 of the 1954 Act is contingent upon the “actions” of the District, namely, the District’s mandatory production of its annual estimates, or what the parties refer to as the District’s annual FCSE submission.

As indicated above, section 212(b)(2) of the 1954 Act, as amended, instructs that the District “shall” comply with the following: (1) by April 15 of each year, the District must produce estimates of the costs to render sanitary sewer services to federal entities in the District for the fiscal year beginning the following calendar year; (2) such estimates must be produced to the Office of Management and Budget, the Secretary of the Treasury, and the head of each of the respective federal entity within the District receiving such services; (3) such estimates must indicate the total amount estimated to be due for all sanitary sewer services rendered to the United States government for the relevant fiscal year, as well as that total itemized by each federal entity to receive such sewer services; and (4) such estimates must be adjusted to reflect the actual usage variances from the estimates for the fiscal year preceding April 15th, as well as any changes in rates resulting from public laws or rate covenants entered into pursuant to water and sewer revenue bond sales. See D.C. Code § 34-2112(b)(2). If the District does not timely produce its statutorily required estimates to the various federal entities receiving sanitary sewer services within the District, as well as to the Secretary of the Treasury and the Office of Management and Budget, the issue becomes whether the subsequent obligations of a federal entity, such as the AFRH, are triggered. A federal entity receiving sanitary sewer services from the District would have great difficulty to be able to determine what the federal entity would be obligated to pay into the named Treasury account, and, in the event of a federal entity’s nonpayment of the proper amount into the Treasury account, the Secretary of the Treasury would also have great difficulty to know what amount is due to be paid to the District. Therefore, unless the District first completes its statutory obligations, as set forth in section 212(b)(2) of the 1954 Act, to properly inform the United States of its estimated sanitary sewer service charges, the United States’ payments equal to such estimated

amounts for sanitary sewer services, as set forth in sections 212(b)(1) and (3), do not mature into a legal liability for the United States to pay such estimated sanitary sewer service charges to the District.

Aside from the above condition that, in order to receive payment, the District must comply with all the instructions set forth in section 212(b)(2) of the 1954 Act, as currently amended, with respect to its production of estimates, section 212 contains no other contingencies or exceptions which would permit any federal entity the discretion not to execute the required payments into the named Treasury account, or which would permit the Secretary of the Treasury the discretion not to execute the required payments to the District. By the plain language of section 212, there is no exemption for a federal entity, such as the AFRH which receives sanitary sewer services delivered by the District, from submitting the required payments into the named Treasury account. To the contrary, “[t]he sanitary sewer service charges” in section 212 “shall be applicable to all sanitary sewer services furnished by the sanitary sewage works of the District through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof,” see D.C. Code § 34-2112(a) (emphasis added), and “[e]ach Federal department, independent establishment, or agency receiving sanitary sewer services in buildings, establishments, or other places shall pay from funds specifically appropriated or otherwise available to it, quarterly and on the first day of each such fiscal quarter,” into the named Treasury account, for payment to the District. See id. § 34-2112(b)(2) (emphasis added). Although defendant argues that Congress would have had to explicitly subject the AFRH to make sanitary sewer service payments, or otherwise explicitly nullify the 1938 Agreement so as to subject the AFRH to make sanitary sewer service payments, such a reading of section 212 would be in direct contradiction with section 212’s express, catchall instructions that the District is to be paid for all sanitary sewer services rendered, and that each department, independent establishment, or agency of the United States is to pay for all such services it receives. See King v. Burwell, 576 U.S. at 474 (“If the statutory language is plain, we must enforce it according to its terms.” (citing Hardt v. Reliance Standard Life Ins. Co., 560 U.S. at 251); Sucic v. Wilkie, 921 F.3d at 1098 (quoting Barnhart v. Sigmon Coal Co., 534 U.S. at 450); Bettcher Indus., Inc. v. Bunzl USA, Inc., 661 F.3d at 644; see also Arko Foods Int’l, Inc. v. United States, 654 F.3d at 1364 (quoting Millenium Lumber Distrib., Ltd. v. United States, 558 F.3d at 1328); Am. Airlines, Inc. v. United States, 551 F.3d at 1300.

This court, therefore, finds that provided the proper furnishing of estimates by the District occurs, section 212 of the 1954 Act creates a mandatory obligation for federal entities within the District, including the AFRH, to pay for sanitary sewer services rendered by the District. Section 8 of Article I of the Constitution vests explicit authority in Congress “[t]o exercise exclusive legislation in all cases whatsoever, over” the District of Columbia. See U.S. Const. art 1, § 8. Therefore, despite the silence in the 1938 Agreement as to the provision of sewer services, free or not, or in perpetuity or not, and even if the 1938 Agreement could be read to include the District’s providing sanitary sewer services without the AFRH having to pay, the 1938 Agreement was always going to be subject to potential, subsequently enacted legislation by Congress concerning the obligations of the United States related to sewer charges by the District.

As noted above, in the case currently before the court, the District only seeks to be paid sewer services charges, not paid for water service charges. The parties do not dispute that free water services were agreed to in the 1938 Agreement. In very similar language to section 212 of the 1954 Act, section 106 of the 1954 Act, as currently amended and incorporated into the D.C. Code at § 34-2401.25 (2021), requires that all federal entities of the United States within the District, including the AFRH, make payments for water and water services rendered to it by the District. Section 106(a) of the 1954 Act provides, as currently amended and codified at D.C. Code § 34-2401.25:

All water and water services furnished from the District water supply system through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof, situated in the District, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for at the rates for the furnishing and readiness to furnish water applicable to other water consumers in the District.

Id. § 34-2401.25(a). Section 106 also states:

Each Federal department, independent establishment, or agency receiving water services in buildings, establishments, or other places shall pay from funds specifically appropriated or otherwise available to it, quarterly and on the first day of each such fiscal quarter, to an account in the United States Treasury entitled “Federal Payment for Water and Sewer Services” an amount equal to one-fourth (25 percent) of the annual estimate for said services as provided for in paragraph (2) of this subsection.

Id. § 34-2401.25(b)(1). Section 106 of the 1954 Act, as currently amended, also requires the proper furnishing of estimates by the District, in the same fashion as Section 212 of the 1954 Act, as currently amended:

By April 15 of each calendar year the District shall provide the Office of Management and Budget, the Secretary of the Treasury, and the head of each of the respective Federal departments, independent establishments, and agencies, for inclusion in the President's budget of the respective Federal departments, independent establishments, or agencies, an estimate of the cost of service for the fiscal year commencing October 1st of the following calendar year. The estimate shall provide the total estimated annual cost of such service and an itemized estimate of such costs by Federal department, independent establishment, or agency. The District's estimates on a yearly basis shall reflect such adjustments as are necessary to (A) account for actual usage variances from the estimated amounts for the fiscal year ending on September 30th of the calendar year preceding April 15th, and (B) reflect changes in rates charged for water and sewer services resulting from public laws or rate covenants pursuant to water and sewer revenue bond sales.

Id. § 34-2401.25(b)(2).

Prior to the 1938 Agreement, as well as prior to the 1954 Act, it appears that the United States was not required to pay for either water or sewer services rendered by the District. As noted above, defendant tries to argue that reading the 1954 Act to obligate the AFRH's payment for both water and sewer services renders the 1938 Agreement an illusory agreement, because, according to defendant, the AFRH would then have received nothing in return for having permitted the District an easement to build and access a water reservoir on its premises. As explained, however, in the documents of correspondence between the District and the AFRH leading up to the 1938 Agreement, the District identified building a water reservoir on the grounds of the AFRH as necessary for the proper operation of the water supply system throughout the District. As discussed above, in a January 6, 1938 letter from the President of the Board of Commissioners of the District, the Honorable. Melvin C. Hazen, to the Governor of the Soldiers' Home, Major General Frederick W. Coleman, the Honorable Melvin C. Hazen stated:

In view of the absolute necessity of ample water supply at adequate pressure, not only for Federal institutions but also in the interest of the general public welfare, your renewed consideration of our request for permission to locate a vitally important storage reservoir on high ground within the territory under the jurisdiction of the Board of Commissioners of the United States Soldiers' Home is requested.

Our renewed request that you grant this permission would not be made but for the fact that the proposed site is the only one considered feasible. The engineers of the District of Columbia Water Division have made a comprehensive survey of all possible sites for a reservoir and after exhaustive study have reluctantly reached the conclusion that all contemplated alternates are impracticable.

The necessity of the water reservoir also was acknowledged by a member of the Board of Commissioners of the Soldiers' Home, prior to the letter from the Honorable Melvin C. Hazen. As noted above, the record reflects that General Pillsbury acknowledged at the October 25, 1937 Board of Commissioners meeting:

I have gone into the matter and I believe without any question this proposed installation is necessary to safe-guard the water supply of the District of Columbia in the increasing drain and demand on the service. The increased water demand is such that the water is filtered at the McMillan plant here at an excessive rate. This installation is designed to offer a reserve supply so that the filters could be run at the regular rate in the day time and the surplus water filtered at night could be drawn on during the following day. There is an emergency in the water supply of the District that I think makes this installation necessary. The only reasonable solution is the installation of the reservoir so as to afford a reserve supply.

Therefore, permission by the Soldiers' Home for the District to build the water reservoir was a direct benefit to the United States and its government buildings, including the Solders' Home, because, once the water reservoir was built, the Soldiers' Home, as well as other government entities in the District, would not be affected by an inadequately

constructed and operated water supply system, and at that time memorialized the provision of free water to the AFRH. Moreover, that the 1938 Agreement always remained subject to changes at a later time as a result of legislation subsequently enacted by Congress that might obligate the AFRH to pay for both water and sewer services, does not make the 1938 Agreement illusory merely because such legislation ultimately came to fruition. In its authority over matters concerning the District, Congress had, and has, the discretion to include, or not to include, mandatory language in sections 106 and 212 of the 1954 Act. As currently amended by Congress, the AFRH, along with all other United States entities situated within the District receiving water and sewer services, are required to pay for water and sewer services received, in accordance with the express provisions of the 1954 Act.

The District's Compliance with the Submission Requirements of Section 212 of the 1954 Act, as Currently Amended

Plaintiff's amended complaint alleges: "Beginning in 2004, and at regular intervals since, DC Water has billed the AFRH for sewer services provided by DC Water." At oral argument, plaintiff's counsel of record explained that DCWS had been sending "monthly bills" to the AFRH, although only two actual billings were produced for inclusion in the record before the court. Plaintiff's submissions to the court also include a "true-up" statement which the District alleged was sent to the Treasury on January 23, 2019, which defendant does not dispute, in which plaintiff allegedly provided the costs of what the District claimed were "**Actual**" usage fees incurred by the AFRH for sewer services, including certain impervious area charges, organized by fiscal years, from the fiscal years of 2017 to 2010, as well as for charges for "**PRE FY2010**." (capitalization and emphasis in original). Plaintiff's amended complaint also states: "At least once every year, on or before April 15th, DC Water provides the United States its estimate of the cost of service for the upcoming fiscal years for each of the United States' agencies, federal department, and independent establishments," and that the estimate "includes adjustments to account for actual usage variances from its estimated amounts and changes in rates charged for water and sewer services resulting from public laws or rate covenants pursuant to water and sewer revenue bond sales." Plaintiff, however, concedes that it did not include the AFRH in its annual FCSE until the District's April 15, 2019 FCSE submission for the 2021 fiscal year. The record before the court includes the April 15, 2019 FCSE, as well as a July 16, 2019 revision of the April 15, 2019 FCSE, both of which include sewer service charges the District estimated it would provide in the 2021 fiscal year to the AFRH, as well as water and sewer service charges the District estimated it would provide to many other United States entities situated within the District for the 2021 fiscal year. The April 15, 2019 FCSE and the July 16, 2019 revision reflect that those documents were submitted to the Office of Management and Budget, as well as to the Department of Treasury. Plaintiff also states that the submissions were sent to the AFRH. Defendant does not dispute that the April 15, 2019 FCSE, or the July 16, 2019 revision of the April 15, 2019 FCSE, were sent to various entities of the United States, including the AFRH, nor does defendant dispute that original and revised 2019 FCSE for the 2021 fiscal year were sent on April 15, 2019, and July 16, 2019, respectively. In addition, both the April 15, 2019 FCSE and the July 16, 2019 revision included, with respect to the AFRH, an adjustment to account for an alleged amount owed due to "billing from 2012 to 2018."

As discussed above, this court has determined that section 212 of the 1954 Act, as currently amended and codified at D.C. Code § 34-2112, created mandatory payment obligations for the AFRH, as well as for each federal entity receiving sanitary sewer services provided by the District, contingent upon the District's proper production and presentation of fiscal year estimates, as set forth in section 212 of the 1954 Act, as currently amended and codified at D.C. Code in section 34-2112. As indicated above, the District's production and presentation of annual estimates "shall" conform to the following instructions: (1) by April 15 of each year, the District is to produce estimates of the costs to render sanitary sewer services to the federal entities in the District for the fiscal year beginning the following calendar year; (2) such estimates are to be produced to the Office of Management and Budget, the Secretary of the Treasury, and the head of each of the respective federal entity within the District to receiving such services; (3) such estimates are to indicate the total amount estimated to be due for all sanitary sewer services rendered to the United States government for the relevant fiscal year, as well as that total itemized by each federal entity to receive such sewer services; and (4) such estimates are to be adjusted to reflect the actual usage variances from the estimates for the fiscal year preceding April 15th, as well as any changes in rates resulting from public laws or rate covenants entered into pursuant to water and sewer revenue bond sales. See D.C. Code § 34-2112(b)(2).

The record before the court does not indicate that before 2019 plaintiff included in its annually submitted FCSE any estimated costs of services to account for usage by the AFRH, despite multiple opportunities and requests from this court to submit such evidence. Although plaintiff has alleged it made submissions of monthly billings for sewer services to the AFRH since 2004, as well as the submission of a "true-up" sent to the Treasury on January 23, 2019, for various charges incurred by the AFRH from fiscal years 2017 to 2010 and earlier, those submissions did not comply with the requirements in section 212 that the District was to have submitted such charges prospectively, and by April 15th, on an annual basis, not only to AFRH, but to the Secretary of the Treasury, as well as to the Office of Management and Budget for inclusion in the President's budget for the AFRH. See D.C. Code § 34-2112(b)(2). Because plaintiff's attempts to bill the AFRH for sewer services prior to 2019 were not in compliance with section 212's mandatory submission requirements, the United States is not obligated retroactively to pay for such sanitary sewer services alleged by plaintiff to be retrospectively owed.

The only instance in the record before the court in which plaintiff appears to have complied with section 212's mandatory submission requirements with respect to the AFRH was in 2019, as described above, when the District submitted its 2019 FCSE for the fiscal year 2021, on April 15, 2019, and then submitted a revised version of the 2019 FCSE for the fiscal year 2021 on July 16, 2019. Plaintiff's April 15, 2019 FCSE submission was in compliance with the statutory submission requirements in section 212, in that: (1) it was submitted "by April 15" of 2019; (2) it included sanitary sewer service charges estimated to be due for the fiscal year 2021; and (3) it was submitted to "the Office of Management and Budget, the Secretary of the Treasury, and the head of" the AFRH. Plaintiff, therefore, can be entitled to the costs of sanitary sewer services estimated to be due for the 2021 fiscal year, and an amount equivalent to one-fourth of such costs should have been included in the AFRH's deposit into the "Federal Payment for Water and Sewer

Services” Treasury account on October 1, 2020, January 1, 2021, April 1, 2021, and July 1, 2021, respectively, and such amounts should have been included in the executed payments by the Secretary of the Treasury to the District on October 2, 2020 January 2, 2021, April 2, 2021, and July 2, 2021, respectively.

As discussed above, plaintiff’s 2019 FCSE for the 2021 fiscal year included adjustments to the AFRH’s fiscal year 2021 estimated sewer service charges for “billing from 2012 to 2018 for Department of Defense- AFRH in the amount of \$7.5 million.” Plaintiff, however, is not entitled to adjustments for past years with respect to the AFRH because the District did not include in its annual estimates, any estimated charges due for the AFRH. Section 212(b)(2) of the 1954 Act provides that “[t]he District’s estimates on a yearly basis shall reflect such adjustments as are necessary to (A) account for actual usage variances from the estimated amounts for the fiscal year ending on September 30th of the calendar year preceding April 15th.” D.C. Code § 34-2112(b)(2). In the case of plaintiff’s 2019 annual submission for the 2021 fiscal year, section 212(b)(2) required the District to adjust its 2021 fiscal year annual estimates to account for the difference between the United States’ actual cost of usage for sanitary sewer services in the 2018 fiscal year from what the District estimated was to be the cost of usage for the 2018 fiscal year. Because the District did not submit any sanitary sewer service charges estimated to be due for the AFRH in its annual fiscal year 2018 submission, or any other prior year before its submission of the 2019 FCSE, and, subsequently, did not receive any payments from the AFRH associated with its 2018 fiscal year submission, plaintiff now would not be entitled to an adjustment of its 2021 fiscal year estimates.

Entitlement to Impervious Area Charges

In its amended complaint, plaintiff included a request for payment of “sewer service and impervious area charges” by the AFRH. As indicated above, the DCWS website provides the following explanation of its impervious area charges:

Impervious surfaces such as rooftops, paved driveways, patios, and parking lots are major contributors to stormwater runoff entering the District’s combined sewer system. This adds significantly to pollution in the Anacostia and Potomac Rivers and Rock Creek.

The Clean Rivers Impervious Area Charge (CRIAC) is a fair way to distribute the cost of maintaining storm sewers and protecting g area waterways because it is based on a property’s contribution of rainwater to the District’s sewer system. Because charges are based on the amount of impervious area on a property, owners of large office buildings, shopping centers and parking lots will be charged more than owners of modest residential dwellings.

All residential, multi-family and non-residential customers are billed a CRIAC. The charge is based on an Equivalent Residential Unit (ERU). An ERU is a statistical median of the amount of impervious surface area in a single-family residential property, measured in square feet.

Available at <https://www.dwater.com/impervious-area-charge>.

Plaintiff's amended complaint states:

Beginning in 2004, and at regular intervals since, DC Water has billed AFRH for sewer services provided by DC Water to AFRH-W at the rates set by the DC Retail Water and Sewer Rates Committee and for Impervious Surface Area charges ("IAC") that are part and parcel of sewer services.

(capitalization in original; footnote omitted).

In defendant's motion to dismiss, defendant states:

The District's first amended complaint relies on the D.C. Public Works Act of 1954 as the jurisdictional basis for the District's claim for stormwater charges. The District's reliance is misplaced because section 212 is explicitly limited to "sanitary sewer service charges," and section 201 [of the 1954 Act] differentiates between "sanitary sewage" and "stormwater sewage." The District's impervious surface area charges relate to stormwater sewage, not sanitary sewage. See DCMR § 556.1, 3, 5, (Stormwater Fees); 21 DCMR § 4101.3.

(capitalization in original; brackets added; internal references omitted). Defendant further argues that "[t]he substantive law the District must rely on for its claim for stormwater charges is 33 U.S.C. § 1323," and notes "the obvious applicability of 33 U.S.C. § 1323 to stormwater." The statute at 33 U.S.C. § 1323 (2018), enacted as part of the Federal Facilities Section of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. No. 92-500, 86 Stat. 816 (the Clean Water Act), states, as currently amended, in relevant part:

(a) Compliance with pollution control requirements by Federal entities

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges. . . . This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. . . .

(c) Reasonable service charges

(1) In general

For the purposes of this chapter, reasonable service charges described in subsection (a) include any reasonable nondiscriminatory fee, charge, or assessment that is--

(A) based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution (in terms of quantities of pollutants, or volume or rate of stormwater discharge or runoff from the property or facility); and

(B) used to pay or reimburse the costs associated with any stormwater management program (whether associated with a separate storm sewer system or a sewer system that manages a combination of stormwater and sanitary waste), including the full range of programmatic and structural costs attributable to collecting stormwater, reducing pollutants in stormwater, and reducing the volume and rate of stormwater discharge, regardless of whether that reasonable fee, charge, or assessment is denominated a tax.

(2) Limitation on accounts

(A) Limitation

The payment or reimbursement of any fee, charge, or assessment described in paragraph (1) shall not be made using funds from any permanent authorization account in the Treasury.

(B) Reimbursement or payment obligation of Federal Government

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government, as described in subsection (a), shall not be obligated to pay or reimburse any fee, charge, or assessment

described in paragraph (1), except to the extent and in an amount provided in advance by any appropriations Act to pay or reimburse the fee, charge, or assessment.

Id. (emphasis in original). Defendant in the above-captioned case, however, argues that because plaintiff's amended complaint does not assert 33 U.S.C. § 1323 as a basis for entitlement to stormwater charges, "the portion of the District's complaint seeking stormwater charges should be dismissed pursuant to RCFC 12(b)(6)." Defendant also cites to DeKalb County, Georgia v. United States, 108 Fed. Cl. 681 (2013), in which a Judge of this court found that 33 U.S.C. § 1323, as amended in 1977, waived the United States' sovereign immunity for stormwater assessments considered service fees, but did not waive such immunity for stormwater assessments considered taxes until 33 U.S.C. § 1323 was subsequently amended in 2011, after which sovereign immunity for stormwater assessments considered taxes was waived. In DeKalb County, plaintiff, DeKalb County, was attempting to collect DeKalb County "stormwater utility charges" prior to 2011. See DeKalb Cnty., Ga. v. United States, 108 Fed. Cl. at 687. The Judge in DeKalb County determined DeKalb County was not entitled to such stormwater assessments because the DeKalb the court found that such charges were to be considered taxes, not fees. See generally id. at 694–710.

In plaintiff's response to defendant's motion to dismiss, plaintiff disagrees with defendant that section 212 of the 1954 Act's mandate does not include stormwater charges. Relying on the definitions provided in section 201 the 1954 Act, plaintiff argues that the charges mandated in section 212 of the 1954 Act "are applicable 'to all sanitary sewage works of the District.'" (emphasis added by plaintiff) (citing subsection 212(a) of the 1954 Act). Plaintiff continues:

"Sanitary sewage works" means "a system of sanitary and combined sewers, appurtenances, pumping stations, and treatment works for conveying, treating, and disposing of sanitary sewage." "Combined sewer" means "a sewer which carries both sanitary sewage and stormwater sewage." "Stormwater sewage" means "liquid flowing in sewers resulting directly from precipitation."

(emphasis added by plaintiff; internal citations and footnotes omitted). Plaintiff also disagrees with defendant's assertion that 33 U.S.C. § 1323 is the proper avenue to seek stormwater charges, stating:

Contrary to the United States' position, the Federal Facilities Pollution Control provision of the Clean Water Act ("Federal Facilities Section"), 33 U.S.C. § 1323, does not control the instant issue of whether DC Water may demand payment for impervious area charges from the United States. Rather, this section governs water pollution and merely requires the Government to comply with all applicable law and to pay "reasonable service charges."

Plaintiff continues:

The Federal Facilities Pollution Control (“FFC”) provision of the Clean Water Act (“CWA”) merely provides the necessary waiver of sovereign immunity for DC Water to charge for stormwater services. Both federal provisions work in conjunction by first granting permission for the District of Columbia to charge for stormwater via the FFC and then delineating the way the District may seek compensation via the 1954 Act. Indeed, DC Water charges for stormwater charges through its annual federal estimate which all other federal agencies accept.

(emphasis in original).

Responding to plaintiff’s contention that “DC Water charges for stormwater charges through its annual federal estimate which all other federal agencies accept,” defendant states:

It is unclear what the District means by the phrase “which all other federal agencies accept.

Whatever the District may mean, section 1323 *explicitly excludes* the payment of stormwater charges through Treasury’s process. Section 1323 provides that “[t]he payment or reimbursement of any fee, charge, or assessment described in paragraph (1) shall not be made using funds from any permanent authorization account in the Treasury.” 33 U.S.C. § 1323(c)(2)(A). The account Treasury uses for water and sewer charges is a “permanent authorization account” that is *not used* for stormwater charges. 33 U.S.C. § 1323(c)(2)(A). Thus as our prior filings have described, Treasury does not collect for stormwater charges from agencies, nor does it pay for any stormwater charges under 33 U.S.C. § 1323, from the permanent authorization account.

(emphasis in original; quotation marks to internal references omitted).

The 1954 Act provides the following definitions in section 201, codified at D.C. Code § 34-2101, and which particular section has not been amended since the 1954 Act’s initial enactment:

For the purposes of this subchapter:

(1) The term “sanitary sewage” means:

(A) Domestic sewage with storm and surface water limited;

(B) Sewage discharging from sanitary conveniences;

(C) Commercial or industrial wastes; and

(D) Water supply after it has been used.

(2) The term “stormwater sewage” means liquid flowing in sewers resulting directly from precipitation.

(3) The term “combined sewage” means sewage containing both sanitary sewage and stormwater sewage.

(4) The term “sewer” means a pipe or conduit carrying sewage.

(5) The term “sanitary sewer” means a sewer which carries sanitary sewage.

(6) The term “stormwater sewer” means a sewer which carries stormwater sewage.

(7) The term “combined sewer” means a sewer which carries both sanitary sewage and stormwater sewage.

(8) The term “sanitary sewage works” means a system of sanitary and combined sewers, appurtenances, pumping stations, and treatment works for conveying, treating, and disposing of sanitary sewage.

(9) The term “stormwater sewer system” means a system of sewers, appurtenances, and pumping stations for conveying and disposing of stormwater sewage.

(10) The term “combined sewer system” means a system of sewers and appurtenances conveying both sanitary sewage and stormwater sewage.

1954 Act § 201; see also D.C. Code § 34-2101 (emphasis in original).

Subsection 212(a) of the 1954 Act, as amended and codified at D.C. Code § 34-2112(a), states:

The sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services furnished by the sanitary sewage works of the District through any connection thereto for direct use by the government of

the United States or any department, independent establishment, or agency thereof, and such charges shall be predicated on the value of water and water services received by such facilities of the government of the United States or any department, independent establishment, or agency thereof from the District water supply system. Payment of the said sanitary sewer service charge shall be made as provided in subsection (b) of this section.

1954 Act § 212(a); see also D.C. Code § 34-2112(a) (emphasis added). Although section 201 of the 1954 Act and the section 34-2101 of the D.C. Code provide specific definitions for multiple different terms related to sewer and sanitary sewer, the 1954 Act and the D.C. Code do not provide a specific definition for “sanitary sewer service charges,” the critical term for subsection 212(a) of the 1954 Act and D.C. Code § 34-2112(a).

As indicated in the definitions above, section 201 of the 1954 Act and the section 34-2101 of the D.C. Code define the term “sanitary sewer” as “a sewer which carries sanitary sewage.” 1954 Act § 201; see also D.C. Code § 34-2101. The term “sanitary sewage” is defined in section 201 of the 1954 Act and the section 34-2101 of the D.C. Code as:

- (A) Domestic sewage with storm and surface water limited;
- (B) Sewage discharging from sanitary conveniences;
- (C) Commercial or industrial wastes; and
- (D) Water supply after it has been used.

1954 Act § 201; see also D.C. Code § 34-2101. Although it is not entirely clear what the words in section 201 of the 1954 Act and section 34-2101 of the D.C. Code, “with storm and surface water limited,” mean, or if the words are meant as a limitation of storm and surface water as it relates to the term “Domestic sewage.” Notably, section 201 of the 1954 Act provides separate definitions for “sanitary sewage” and “stormwater sewage,” as well as “sanitary sewer” and “stormwater sewer.” See D.C. Code § 34-2101 The 1954 Act does not explain why storm and surface water are limited. See id. Given, however, the distinct definitions in section 201 of the 1954 Act of sanitary sewage/sewer and stormwater sewage/sewer, and given section 212’s multiple uses of the term “sanitary” to qualify the term “sewer,” without reference to “stormwater,” it appears that section 212’s mandate for the United States to pay for sewer services was intended to be limited to sanitary sewer services charges, to the exclusion of stormwater sewer service charges.

In addition, section 212 of the 1954 Act, which, as discussed above, governs the United States’ obligations to pay sanitary sewer service charges, was not amended to include reference to an impervious area charge. This is in contrast to section 207 of the 1954 Act, codified as amended at D.C. Code § 34-2107, which applies to the District’s

building owners,¹² which makes no specific mention of an obligation of the United States to pay sewer service charges for its buildings. As originally enacted, section 207 provided, in relevant part:

The sanitary sewer service charges established under the authority of this title shall be based on the water consumption of, and water services to, the properties served, and be determined by one of the following methods:

(a) Where water is supplied from the District water supply system at meter rates, the Commissioners shall establish the sanitary sewer service charge as a percentage of the water charge applicable in the District, but such percentage shall not exceed 60 per centum of the water charge.

1954 Act § 207. In 2008, the D.C. Council amended D.C. Code § 34-2107, which tracks section 207 of the 1954 Act, to include the impervious area of a property as an additional basis upon which the District could determine the sanitary sewer service charges for a property. See Water and Sewer Authority Equitable Ratemaking Amendment Act of 2008, 2008 D.C. Sess. L. Serv. 17–370 (Act 17–705) (“AN ACT to amend the District of Columbia Public Works Act of 1954 to broaden the bases for the determination of sanitary sewer service charges to include impervious surface area and to provide for an appeal process for the assessment of an impervious surface area fee.” (capitalization in original)). The provisions at D.C. Code § 34-2107 now provide for the “[m]ethods of determination of sanitary sewer services charges,” as follows:

(a) The sanitary sewer service charges established under the authority of this subchapter shall be based on the following:

(1) A billing methodology which takes into account both the water consumption of, and water service to, a property and the amount of impervious surface on a property that either prevents or retards the entry of water into the ground as occurring under natural conditions, or that causes water to run off the surface in greater quantities or at an increased rate of flow, relative to the flow present under natural conditions. For the purposes of this paragraph, the term “surface” shall include rooftops, footprints of patios, driveways, private streets, other paved areas, athletic courts and swimming pools, and any path or walkway that is covered by impervious material.

D.C. Code § 34-2107(a)(1). Therefore, for building owners in the District, the impervious surface area of a property is included as part of the methodology for determining the cost of sanitary sewer services, and is in addition to the consideration of “the water

¹² D.C. Code § 34-2108 describes the “Persons obligated to pay sanitary sewer service charge,” in subsection (a), as “[t]he owner or occupant of each building, establishment, or other place in the District connected with any District sewer conducting sanitary sewage shall pay the sewer service charge authorized by this subchapter.” Id.

consumption of, and water service to,” the property. See id. A United States’ waiver of sovereign immunity, however, does not appear in section 207 of 1954 Act, as originally enacted, or as it currently appears at D.C. Code § 34-2107. Instead, the United States’ waiver of sovereign immunity is in section 212(a) of 1954 Act, which, as discussed above, governs the United States’ obligation to pay for sanitary sewer service charges, but does not include a property’s impervious surface area as part of the basis upon which sanitary sewer services charges are predicated. Section 212(a) of 1954 Act has stated, since its enactment in 1954, that “[t]he sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services furnished by the sanitary sewage works of the District through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof, and such charge shall be predicated on the value of water and water services received by such facilities of the Government of the United States.” D.C. Code § 34-2112(a) (emphasis added).

Although the D.C. Council amended the D.C. Code at D.C. Code § 34-2107, to include the impervious surface area as part of the basis upon which sanitary sewer service charges are determined, such an amendment could not extend to the United States. In 1973, Congress enacted the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. 93–198, 87 Stat. 774 (1973) (codified as amended at D.C. Code § 1-201.01, et seq.) (the Home Rule Act), which, among other things, “established a Council of the District of Columbia,” Home Rule Act, § 401, and granted it “legislative power,” id. § 404, subject to specific limitations set forth in Title VI of the Home Rule Act. See id. §§ 404, 601–04. Among these limitations, section 603(a)(3) in Title VI of the Home Rule Act provides:

(a) The Council shall have no authority to pass any act contrary to the provisions of this act except as specifically provided in this act, or to—

...

(3) enact any act, or enact any act to amend or repeal any act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District.

Id. (emphasis added). Therefore, the D.C. Council’s amendment to the D.C. Code at D.C. Code § 34-2107 to include a property’s impervious area as an additional basis upon which to determine sanitary sewer service charges, should be read to the exclusion of sanitary sewer service charges for the impervious area of a United States property, including the AFRH.

The United States’ waiver of sovereign immunity to incur monetary damages is to be narrowly construed. See, e.g., RHI Holdings, Inc. v. United States, 142 F.3d 1459, 1461 (Fed. Cir. 1998). In RHI Holdings, the United States Court of Appeals for the Federal Circuit stated:

Waivers of sovereign immunity must be explicit, and cannot be implied. See United States v. Testan, 424 U.S. 392, 399, 96 S. Ct. 948, 953–54, 47 L. Ed. 2d 114 (1976) (citing United States v. King, 395 U.S. 1, 4, 89 S. Ct. 1501, 150203, 23 L. Ed. 2d 52 (1969)); see also Irwin v. Department of Veterans Affairs, 498 U.S. 89, 93, 111 S. Ct. 453, 456, 112 L. Ed. 2d 435 (1990); cf. Seminole Tribe of Florida v. Florida, 517 U.S. 44, 55, 116 S. Ct. 1114, 1123, 134 L. Ed. 2d 252 (1996). Any statute which creates a waiver of sovereign immunity must be strictly construed in favor of the Government. See Sherwood, 312 U.S. at 590, 61 S. Ct. at 771.

RHI Holdings, Inc. v. United States, 142 F.3d at 1461; see also Lane v. Pena 518 U.S. 187, 192 (1996) (“[W]hen confronted with a purported waiver of the Federal Government’s sovereign immunity, the Court will ‘constru[e] ambiguities in favor of immunity.’” (alteration in original) (quoting United States v. Williams, 514 U.S. 527, 531 (1995))). Based on the forgoing, this court finds that the 1954 Act’s waiver of sovereign immunity for sanitary sewer service charges applicable to the United States, should be construed so as to exclude stormwater or impervious area charges, and should be construed only to permit the United States to be charged sanitary sewer service charges which are “predicated on the value of water and water services received by such facilities of the Government of the United States.” D.C. Code § 34-2112(a). This is because of the 1954 Act’s separate definitions for stormwater sewage/sewer as opposed to sanitary sewage/sewer, section 212 of the 1954 Act’s continuous use of “sanitary” sewer service charges, without mention of “stormwater” sewer service charges, and the absence of congressional action to amend section 212 of the 1954 Act to include a property’s impervious area as an additional basis upon which to determine sanitary sewer service charges for the United States.

Although not claimed in the amended complaint filed in this court, and not argued for by the plaintiff in the above captioned case, the court notes that 33 U.S.C. § 1323, as enacted in the Clean Water Act, may be relevant to plaintiff’s claims regarding stormwater charges. As indicated above, the statute at 33 U.S.C. § 1323(a) provides that federal entities “shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges.” Id. (emphasis added). With respect to what is included in “reasonable service charges,” the statute at 33 U.S.C. § 1323(c) states:

For the purposes of this chapter, reasonable service charges described in subsection (a) include any reasonable nondiscriminatory fee, charge, or assessment that is--

(A) based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution (in terms of quantities of pollutants, or volume or rate of

stormwater discharge or runoff from the property or facility); and

(B) used to pay or reimburse the costs associated with any stormwater management program (whether associated with a separate storm sewer system or a sewer system that manages a combination of stormwater and sanitary waste), including the full range of programmatic and structural costs attributable to collecting stormwater, reducing pollutants in stormwater, and reducing the volume and rate of stormwater discharge, regardless of whether that reasonable fee, charge, or assessment is denominated a tax.

Id. (emphasis in original).

In its amended complaint plaintiff makes no mention of the Clean Water Act, or any subsequent amendments to the Clean Water Act, or 33 U.S.C. § 1323 in particular, and instead relies solely on the 1954 Act as its basis for entitlement to stormwater charges incurred by the AFRH. Moreover, plaintiff appears to disagree with defendant's assertion that "[t]he substantive law the District must rely on for its claim for stormwater charges is 33 U.S.C. § 1323." As noted above, plaintiff argues:

Contrary to the United States' position, the Federal Facilities Pollution Control provision of the Clean Water Act ("Federal Facilities Section"), 33 U.S.C. § 1323, does not control the instant issue of whether DC Water may demand payment for impervious area charges from the United States. Rather, this section governs water pollution and merely requires the Government to comply with all applicable law and to pay "reasonable service charges."

(capitalization in original). Plaintiff has not alleged in its amended complaint filed in this court entitlement to stormwater charges pursuant to 33 U.S.C. § 1323, and has specifically rejected reliance on the Clean Water Act as a basis for its recovery. Additionally, plaintiff has provided no evidence that any alleged stormwater charges were reasonable and in accordance with 33 U.S.C. § 1323. Moreover, as discussed above, nor does the 1954 Act allow plaintiff to recover for stormwater charges. The court, therefore, dismisses plaintiff's claim for stormwater charges, without prejudice.

Quantum Meruit

In plaintiff's amended complaint, plaintiff sets forth an alternative argument alleging entitlement to all payments alleged to be owed by the AFRH under a theory of quantum meruit. Plaintiff's amended complaint states: "There exists a contract between the United

States and DC Water as expressed through the District of Columbia Public Works Act,” and that such contract “obligates the United States to pay for sewer services, including IAC [impervious area charge] charges, received from the District of Columbia as provided by DC Water.” Plaintiff further asserts that “[t]he sewer services billed to AFRH-W are the kind of services that are typically paid for by individuals, businesses, and federal agencies in the District of Columbia.” Plaintiff also asserts that “[t]he United States received valuable services from DC Water for AFRH,” and that “[t]he United States accepted and enjoyed these services.” Plaintiff also argues in its amended complaint that “[s]ince 2004, the United States has been aware that DC Water expected to be paid for the provision of sewer services to the buildings on AFRH-W’s grounds.”

“Quantum meruit is ‘[a] claim or right of action for the reasonable value of services rendered.’” United Pac. Ins. Co. v. United States, 464 F.3d 1325, 1329 (Fed. Cir. 2006) (quoting Black’s Law Dictionary 1276 (8th ed. 2004)). The United States Court of Appeals for the Federal Circuit distinguishes two types of quantum meruit claims: implied-in-law and implied-in-fact. See Int’l Data Prods. Corp. v. United States, 492 F.3d 1317, 1325 (Fed. Cir. 2007). An implied-in-law contract is

a contract in which there is no actual agreement between the parties, but the law imposes a duty in order to prevent injustice. The Court of Federal Claims, however, lacks jurisdiction over contracts implied in law. 28 U.S.C. § 1491(a)(1) (2000). On the other hand, “[w]here a benefit has been conferred by the contractor on the government in the form of goods or services, which it accepted, a contractor may recover at least on a quantum valebant or quantum meruit basis for the value of the conforming goods or services received by the government prior to the rescission of the contract for invalidity. The contractor is not compensated under the contract but rather under an implied-in-fact contract.” United Pac. Ins. Co. v. United States, 464 F.3d at 1329-30.

Int’l Data Prods. Corp. v. United States, 492 F.3d at 1325-26; see also Perri v. United States, 340 F.3d 1337, 1343 (Fed. Cir. 2003) (“Recovery in quantum meruit, however, is based upon a contract implied in law.” (citing Fincke v. United States, 230 Ct. Cl. 233, 246, 675 F.2d 289, 296 (1982)); Sanders v. United States, 252 F.3d 1329, 1334 (Fed. Cir. 2001); Reid v. United States, 143 Fed. Cl. 661, 671 (2019); Lee v. United States, 130 Fed. Cl. 243, 260 (2017)). Thus, the Court of Federal Claims does not have jurisdiction over implied-in-law contract claims, but does have jurisdiction over express and implied-in-fact contracts.

Similarly, the United States Court of Appeals for the Federal Circuit stated at a later date:

Recovery in quantum meruit is typically “based on an implied-in-law contract.” Int’l Data Prods. Corp., 492 F.3d at 1325. Because the jurisdiction of the Claims Court over contract claims “extends only to contracts either express or implied in fact, and not to claims on contracts implied in law,” Perri v. United States, 340 F.3d 1337, 1343 (Fed. Cir. 2003) (quoting Hercules, Inc. v. United States, 516 U.S. 417, 423, 116 S. Ct. 981, 134 L.

Ed. 2d 47 (1996), that court ordinarily does not entertain quantum meruit claims. However, we have on occasion approved the use of quantum meruit or quantum valebant as a measure of damages for breach of an implied in fact contract. See Amdahl Corp., 786 F.2d at 393; Barrett, 242 F.3d at 1059–61.

Seh Ahn Lee v. United States, 895 F.3d 1363, 1373–74 (Fed. Cir. 2018).

Plaintiff in the above-captioned case appears to be trying to allege that “[t]here exists a contract between the United States and DC Water as expressed through the District of Columbia Public Works Act.” The United States Court of Appeals for the Federal Circuit, however, has explained that “the general requirements of a binding contract with the United States are identical for both express and implied contracts.” Trauma Serv. Grp. v. United States, 104 F.3d 1321, 1325 (Fed. Cir. 1997) (citing Russell Corp. v. United States, 210 Ct. Cl. 596, 537 F.2d 474, 482 (1976); and Thermalon Indus. v. United States, 34 Fed. Cl. 411, 414 (1995)). These general requirements are “(1) mutuality of intent to contract; (2) consideration; and, (3) lack of ambiguity in offer and acceptance.” Lewis v. United States, 70 F.3d 597, 600 (Fed. Cir. 1995) (quoting City of El Centro v. United States, 922 F.2d 816, 820 (Fed. Cir. 1990), cert. denied, 501 U.S. 1230 (1991)). “When the United States is a party, a fourth requirement is added: the government representative whose conduct is relied upon must have actual authority to bind the government in contract.” Id. (internal quotation marks omitted). The United States Supreme Court has stated generally that “absent some clear indication that the legislature intends to bind itself contractually, the presumption is that ‘a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.’” Nat’l R.R. Passenger Corp. v. Atchison Topeka & Santa Fe Ry. Co., 470 U.S. 451, 465–66 (1985) (quoting Dodge v. Bd. of Educ., 302 U.S. 74, 79 (1937)). As the Supreme Court cautioned National Railroad:

This well-established presumption is grounded in the elementary proposition that the principal function of a legislature is not to make contracts, but to make laws that establish the policy of the state. Indiana ex rel. Anderson v. Brand, 303 U.S. 95, 104-105, 58 S. Ct. 443, 447-448, 82 L. Ed. 685 (1938). Policies, unlike contracts, are inherently subject to revision and repeal, and to construe laws as contracts when the obligation is not clearly and unequivocally expressed would be to limit drastically the essential powers of a legislative body. Indeed, “[t]he continued existence of a government would be of no great value, if by implications and presumptions, it was disarmed of the powers necessary to accomplish the ends of its creation.” Keefe v. Clark, 322 U.S. 393, 397, 64 S. Ct. 1072, 1074, 88 L. Ed. 1346 (1944) (quoting Charles River Bridge v. Warren Bridge, 11 Pet. 420, 548, 9 L. Ed. 773 (1837)). Thus, the party asserting the creation of a contract must overcome this well-founded presumption, Dodge [v. Board of Education], 302 U.S. 74,] 79 [(1937)], and we proceed cautiously both in identifying a contract within the language of a regulatory statute and in defining the contours of any contractual obligation.

Nat'l R.R. Passenger Corp. v. Atchison Topeka & Santa Fe Ry. Co., 470 U.S. at 466; see also Brooks v. Dunlop Mfg., Inc., 702 F.3d 624, 630-31 (Fed. Cir. 2012); XP Vehicles, Inc. v. United States, 121 Fed. Cl. 770, 787 (2015) (“As a preliminary matter, a federal statute or regulation does not inherently create a contractual relationship between an individual and the United States.”); ARRA Energy Co. I v. United States, 97 Fed. Cl. 12, 27 (2011) (“There is a general presumption that statutes are not intended to create any vested contractual rights.”).

“[I]t is of first importance to examine the language of the statute,” when trying to discern whether a particular statute creates an implied-in-fact contract. See Nat'l R.R. Passenger Corp. v. Atchison Topeka & Santa Fe Ry. Co., 470 U.S. at 466 (quoting Dodge v. Bd. of Educ., 302 U.S. at 78); see also Hanlin v. United States, 316 F.3d 1325, 1330 (Fed. Cir. 2003) (rejecting the moving party’s argument that the text of the statute at issue “establish[ed] contractual intent on the government’s part,” because “[w]e discern no language in the statute or the regulation that indicates an intent to enter into a contract”). If the statute “provides for the execution of a written contract *on behalf of the state* the case for an obligation binding upon the state is clear.” Nat'l R.R. Passenger Corp. v. Atchison Topeka & Santa Fe Ry. Co., 470 U.S. at 466 (emphasis in original) (quoting Indiana ex rel. Anderson v. Brand, 302 U.S. 95, 78 (1938)). “[A]bsent ‘an adequate expression of an actual intent’ of the State to bind itself, this Court simply will not lightly construe that which is undoubtedly a scheme of public regulation to be, in addition, a private contract to which the State is a party.” Id. at 466-67 (internal citation omitted) (quoting Wisconsin & Michigan R. Co. v. Powers, 191 U.S. 379, 386-87 (1903)).

Section 212 of the 1954 Act, as amended by Congress, and codified at D.C. Code § 34-2112, contains no such clear contractual language, and, therefore, “absent some clear indication that the legislature intends to bind itself contractually,” section 212 of the 1954 Act does not rebut “the presumption is that ‘a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.’” See Nat'l R.R. Passenger Corp. v. Atchison Topeka & Santa Fe Ry. Co., 470 U.S. at 465–66 (quoting Dodge v. Bd. of Educ., 302 U.S. at 79). Plaintiff’s attempt to label the 1954 Act as creating an implied-in-fact contract, therefore, fails. Furthermore, the United States Court of Appeals for the Federal Circuit has stated that “[t]he assertion of quantum meruit as a basis for calculating damages cannot rescue an implied-in-fact theory of recovery that is otherwise not cognizable.” Seh Ahn Lee v. United States, 895 F.3d at 1374. Therefore, because plaintiff cannot establish an implied-in-fact theory of recovery based the 1954 Act, plaintiff cannot establish a quantum meruit theory of recovery based on the 1954 Act.¹³ Aside from stating that “[t]he United States received valuable services from DC Water for AFRH,” and that “[t]he United States accepted and enjoyed these services,” plaintiff’s amended complaint in the above-captioned case does not allege any facts which could establish that the requirements giving rise to a contract have been met, namely, that there was (1) mutuality of intent to contract, (2) consideration, (3) lack of ambiguity in offer and acceptance, and (4) actual authority of

¹³ As noted above, this court does not have jurisdiction over implied-in-law contracts. See, e.g., Int'l Data Prods. Corp. v. United States, 492 F.3d at 1325-26.

the government representative whose conduct is relied upon to bind the government. See, e.g., Lewis v. United States, 70 F.3d at 600.

The court also notes that the 1938 Agreement entered into between the plaintiff and defendant's predecessors-in-interest, was not an agreement in which the United States agreed to pay for services rendered by the District. To the contrary, the 1938 Agreement, which was raised in this case as a defense for the United States, attempted to do the opposite, i.e., to release the United States from a future obligation to pay for "water from the water supply." As explained by the United States Court of Appeals for the Federal Circuit in Perri v. United States, 340 F.3d at 1344, "[w]e know of no case . . . in which either we, the Court of Claims, or the Court of Federal Claims has permitted quantum meruit recovery in the absence of some contractual arrangement between the parties." Id. The parties did not enter into any express contract or agreement in which the United States attempted to bind itself to pay for sewer services rendered by the District. Based on the above discussion, plaintiff claim for quantum meruit fails.

CONCLUSION

In sum, section 212 of the 1954 Act, as currently amended and codified in the D.C. Code at section 34-2112, obligates the United States, including the AFRH, to pay for sanitary sewer services rendered to it by the District, provided that the District properly follows the statutorily prescribed steps required by the 1954 Act, and provided the District submits its annual, prospective estimates in accordance with Paragraph 212(b)(2). This is true whether or not the 1938 Agreement is construed to have included sewer services free of charge and in perpetuity to the AFRH, because the broad and mandatory language enacted by Congress in section 212 of the 1954 Act applies equally to the AFRH as it does to every other federal entity receiving sanitary sewer services from the District. Prior to 2019, however, the District had failed to include the AFRH in its annual estimates submitted pursuant to Paragraph 212(b)(2) of the 1954 Act.

With the exception of its 2019 FCSE for the fiscal year 2021, plaintiff has not met its obligations before the defendant's payment obligations become payable for AFRH usage to the named United States Treasury account equal to such estimated amounts for sanitary sewer services rendered to the AFRH. Nor has plaintiff triggered any payments to be executed by the United States Secretary of Treasury. Plaintiff, however, did comply with the submission requirements of section 212 of the 1954 Act with respect to its 2019 FCSE, and, therefore, the District is entitled to the payments which should have been executed by the Secretary of the Treasury on October 2, 2020, January 2, 2021, April 2, 2021, and July 2, 2021, constituting the AFRH's estimated sanitary sewer service charges for the 2021 fiscal year. Plaintiff is not entitled to any adjustments, because plaintiff did not include the AFRH in any of its previous FCSE's submitted for prior years, as plaintiff concedes. Even if plaintiff had included the AFRH, plaintiff would only be entitled to the adjustment between what it would have submitted for its 2018 fiscal year estimates, and the actual cost for sanitary sewer services provided to the AFRH for the 2018 fiscal year. As stated in section 212(c) of the 1954 Act, as currently amended and codified in the D.C. Code at section 34-2112(b)(2), "[t]he District's estimates on a yearly basis shall reflect such adjustments as are necessary to (A) account for actual usage variances from the estimated amounts for the fiscal year ending on September 30th

of the calendar year preceding April 15th.” D.C. Code § 34-2112(b)(2). Because plaintiff did not include the AFRH in its FCSE for the 2018 fiscal year, or any year prior to its 2019 FCSE for the 2021 fiscal year, plaintiff is not entitled to an adjustment in the positive or negative direction. Furthermore, section 212 of the 1954 Act does not obligate an entity of the United States to compensate the District for stormwater or impervious area charges, and plaintiff has failed to allege or establish that it is entitled to such stormwater charges under 33 U.S.C. § 1323. Finally, plaintiff is not entitled to compensation for sewer services rendered to the AFRH under an alternative theory of quantum meruit, as plaintiff has not established that an implied-in-fact contract was created through section 212 of the 1954 Act.

Therefore, for the reasons stated above, defendant’s motion to dismiss under RCFC 12(b)(1) and (6) is **GRANTED IN PART** and **DENIED IN PART**, to the extent that plaintiff is entitled its 2021 estimated sanitary sewer service charges as submitted in its 2019 FCSE, but not entitled to any other damages requested. As discussed above, plaintiff’s claim for stormwater charges is **DISMISSED**, without prejudice. As also discussed above, plaintiff’s motion for summary judgment is **GRANTED IN PART** and **DENIED IN PART**. Plaintiff is entitled to the amount listed, in its 2019 FCSE submission, which was estimated to be due by the AFRH for the fiscal year 2021, less stormwater charges, and less retrospective charges for prior years. Indeed, provided that DCWS’ 2019 FCSE was properly submitted in accordance with section 212(b)(3) of the 1954 Act, as amended and codified at D.C. Code § 34-2112(b)(3), such net amount for the 2021 fiscal year was to have been executed by the Secretary of the Treasury to the AFRH “without further justification,” and regardless of whether the AFRH executed such amounts into the named Treasury account for the Secretary to subsequently execute to the District. See D.C. Code § 34-2112(b). In the July 16, 2019 FCSE submission, the District of Columbia Water and Sewer Authority provided that its estimate for the AFRH for sewer charges for the 2021 fiscal year was \$1,747,090.49, not including stormwater charges, and not including any retrospective charges. Therefore, in accordance with section 212(b)(1) of the 1954 Act, as it is currently amended and codified at D.C. Code § 34-2112(b)(1), the Secretary of Treasury was to have executed payment to DCWS, equal to one-quarter of \$1,747,090.49, or \$436,722.62, on each of October 2, 2020, January 2, 2021, April 2, 2021, and July 2, 2021, and, based on the record before the court, failed to do so,. Plaintiff’s entitlement to the amounts listed above, however, is conditioned on plaintiff not having been previously compensated.

The court will schedule future proceedings by separate Order.

IT IS SO ORDERED.

s/Marian Blank Horn
MARIAN BLANK HORN
 Judge

In the United States Court of Federal Claims

**DISTRICT OF COLUMBIA WATER
AND SEWER AUTHORITY,**

Plaintiff,

v.

THE UNITED STATES,

Defendant.

No. 18-1586

(Filed: July 3, 2024)

Emil Hirsch, Carlton Fields, P.A., Washington, D.C., for Plaintiff.

Vincent D. Phillips, Jr., Senior Trial Attorney, *Claudia Burke*, Assistant Director, *Patricia M. McCarthy*, Director, Commercial Litigation Branch, and *Brian M. Boynton*, Principal Deputy Assistant Attorney General, Civil Division, United States Department of Justice, Washington, D.C., for Defendant.

OPINION AND ORDER

HADJI, Judge.

This matter involves a dispute between the District of Columbia Water and Sewer Authority (Plaintiff or DC Water) and the Armed Forces Retirement Home of Washington, D.C. (the Government or AFRH) regarding the obligation of AFRH to pay DC Water for water and sanitary sewer services provided in fiscal year 2021.¹ Before the Court is the determination of the proper damages award pursuant to this Court's decision dated September 10, 2021 (the Entitlement Opinion), which held that DC Water is entitled to damages from the United States on behalf of AFRH. *D.C. Water and Sewer Auth. v. United States*, 156 Fed. Cl. 20, 66 (2021) (*DC Water I*). DC Water seeks \$633,150.91 in damages. Pl.'s Br. at 11, ECF 117. AFRH challenges this amount, arguing that: (1) AFRH is exempt from payment by virtue of a statutory exception not addressed in the Entitlement Opinion; and (2) in the event the Court finds that AFRH is not exempt from payment, only \$607,496.79 is directly attributable to sewer services and thus recoverable pursuant to the

¹ The Armed Forces Retirement home is "an independent establishment of the executive branch" of the United States, created to provide "residences and related services for certain retired and former members of the Armed Forces." See *D.C. Water and Sewer Auth. v. United States*, 156 Fed. Cl. 20, 26 (2021) (*DC Water I*); 24 U.S.C. § 411 (2018).

Entitlement Opinion. *See generally* Def.’s Supp. Resp., ECF 146; Def.’s Resp. at 3, ECF 119. For the reasons stated below, the Court awards DC Water \$633,150.91 in damages.

BACKGROUND

The section of the Entitlement Opinion titled “Findings of Fact” is fully incorporated herein by reference. As is relevant here, in 2018, DC Water filed a claim against AFRH in the United States District Court for the District of Columbia, which was transferred to this Court. ECF 1. In its Complaint, DC Water alleged that AFRH was required, and failed, to pay for water and sewer services that DC Water provided. Am. Compl., ECF 20. AFRH responded that it was not obligated to pay for these services pursuant to an agreement in 1938 between the parties’ predecessors in interest, which AFRH alleges granted it free water and sewer services in perpetuity in exchange for permitting DC Water to build and access a water distribution reservoir on AFRH’s property. *DC Water I*, 156 Fed. Cl. at 50. DC Water argued that this 1938 agreement did not include the provision of sewer services, and even if it had, the agreement was superseded by the District of Columbia Public Works Act of 1954 (the 1954 Act), which obligated all federal entities, including the AFRH, to pay for the services rendered by DC Water. *Id.*

AFRH filed a Motion to Dismiss pursuant to Rules 12(b)(1) and (6) of the Rules of the Court of Federal Claims.² ECF 23. Thereafter, DC Water filed a Motion for Summary Judgment. ECF 41. Subsequently, the parties stipulated to dismiss two counts of the Complaint. *DC Water I*, 156 Fed. Cl. at 42. After stipulation, the only remaining issue was nonpayment of sewer services. *Id.* On September 10, 2021, this Court (Horn, J.) issued the 2021 Entitlement Opinion, granting in part and denying in part both parties’ motions. *See id.* at 66. The Court held that the 1938 Agreement did not exempt AFRH from sanitary sewer services in perpetuity because of the “broad and mandatory” language of the 1954 Act which equally obligates the AFRH to pay for services rendered as it does for other agencies. *Id.* As such, the Court held the AFRH was obligated to pay DC Water for the sanitary sewer services it rendered to AFRH, so long as DC Water adhered to the requirements of the 1954 Act by providing AFRH with annual prospective cost estimates as outlined in Section 212 of the 1954 Act. *Id.*; D.C. Code § 34-2112(b)(2).

After carefully reviewing DC Water’s compliance with Section 212(b)(2), the Court found DC Water only complied with the statutory requirements for the 2021 fiscal year, by filing the required Federal Cost of Service Estimate (FCSE) in 2019 (2019 FCSE). *Id.* at 55-56, 66. Because the Court found that DC Water did not comply with Section 212(b)(2) in any year except for 2021, it concluded that DC Water is only entitled to payments for that year. *Id.* at 66. As such, the Court held that DC Water is “entitled to the amount listed, in its 2019 FCSE submission, which was estimated to be due by the AFRH for the fiscal

² Rules 12(b)(1) and (6) of this Court are identical to Federal Rules of Civil Procedure 12(b)(1) and (6). *Compare* Rules 12(b)(1) and (6) *with* Fed. R. Civ. P. 12(b)(1) and (6).

year of 2021, less stormwater charges....”³ *Id.* Although the parties entered into lengthy settlement negotiations, the parties were unable to resolve their differences on damages, and the Court ordered the parties to brief the issue of damages consistent with the Entitlement Opinion. ECF 111 at 2. In June 2023, the parties completed briefings on the issue of damages. ECF 117, 119, 121, 129, 131. Following these briefings, this matter was reassigned to the undersigned. ECF 139. In February 2024, the Court ordered supplemental briefing to determine whether, as argued by the Government in its damages briefing, a statutory exception exempts the AFRH from payment of water and sewer charges. ECF 142. Briefing on this issue concluded in April 2024. ECF 145, 146, 150.

DISCUSSION

The only issue before the Court is the amount of damages, if any, due under the Entitlement Opinion.⁴ The first two sections of this opinion address two distinct questions of statutory interpretation that may affect the final damages award. In the first section, the Court reaffirms its previous holding that all sanitary sewer services rendered to AFRH by the District are predicated on the value of water and water services received. In the second section, the Court addresses the applicability of a payment exception for certain water and water services furnished to the United States. Because the Court did not previously address the applicability of this exception to the relevant charges, it does so here.

The third section addresses damages—specifically, the proper amount of damages, if any, DC Water is entitled to as a result of AFRH’s nonpayment for sanitary sewer services. In total, DC Water seeks damages in the amount of \$633,150.91. Pl.’s Br. at 11, ECF 117. This amount represents charges correlated to the consumption of sewer services, in addition to metering fees, right of way (ROW) fees, and payment in lieu of taxes (PILOT) fees. Pl.’s Br. at 11, ECF 117. In disputing this amount, the Government: (1) challenges DC Water’s damages calculation and argues that DC Water may not recover the metering fees, ROW fees, and PILOT fees that it deems ancillary and impermissible pursuant to the Entitlement Opinion; (2) disputes DC Water’s apportionment of these fees; and (3) contests DC Water’s claim to fee penalties for late payment because they were not raised in the Entitlement Opinion. Def.’s Resp. at 8-14, ECF 119.

I. Construction and Operation of the Statutory Framework

As a preliminary matter, the Court will summarize the statutory framework that guides its review. In 1954, Congress passed the District of Columbia Public Works Act of

³ The Court dismissed DC Water’s claim for stormwater charges, without prejudice, after finding that: (1) Section 212 of the 1954 Act did not allow for the recovery of stormwater charges; and (2) DC Water had failed to allege or establish that it is entitled to stormwater charges under 33 U.S.C. § 1323. *DC Water I*, 156 Fed. Cl. at 66.

⁴ Without actually filing a motion for reconsideration, AFRH effectively asks the Court to reconsider its summary judgment holding and deny DC Water’s Motion for Summary Judgment. Def.’s Sur Reply at 13-14, ECF 129. For the reasons described herein, the Court sees no basis to do so.

1954, Pub. L. No. 83-364, 68 Stat. 101 (1954), as amended and codified in the Code of the District of Columbia (D.C. Code) at § 34-2101, *et. seq.* The passage of the 1954 Act marked the first time the United States was to be charged for sewer services. *DC Water I*, 156 Fed. Cl. at 33. The amended provisions of Section 212 of the 1954 Act (Section 212 or the Sewer Mandate) are incorporated into the D.C. Code at § 34-2112, titled: “Sanitary sewer service charges for United States government.” Section 212(a), in its entirety and as currently amended, reads:

The sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services furnished by the sanitary sewage works of the District through any connection thereto *for direct use* by the government of the United States or any department, independent establishment, or agency thereof, and such charges shall be *predicated on the value of water and water services* received by such facilities of the government of the United States or any department, independent establishment, or agency thereof from the District water supply system. Payment of the said sanitary sewer service charge shall be made as provided in subsection (b) of this section.

D.C. Code § 34-2112(a) (emphasis added). Section 212(b), as currently amended and codified, imposes a specific set of instructions on (1) the Secretary of the Treasury, (2) the District, and (3) each Federal entity receiving sanitary sewer services from the District to effectuate payment for rendered services. D.C. Code § 34-2112(b).

In a similar fashion, the 1954 Act requires the United States to pay for water and water services rendered to it by the District. The amended provisions of Section 106 of the 1954 Act (Section 106 or the Water Mandate) are incorporated into the D.C. Code at § 34-2401.25, titled: “Water and water service supplied for the use of the government of the United States.” Section 106(a), as currently amended and codified, reads:

All water and water services furnished from the District water supply system through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof, situated in the District, *except water and water services furnished to the United States for the maintenance, operation, and extension of the water system*, shall be paid for at the rates for the furnishing and readiness to furnish water applicable to other water consumers in the District.

D.C. Code § 34-2401.25(a) (emphasis added). Reading D.C. Code Sections 34-2112 and 34-2401.25 together—and construing the plain language—the United States is required, provided certain procedural prerequisites are met, to pay for all sanitary sewer services

rendered to it by the District, absent an applicable exception (as discussed below). The cost of such services is to be “predicated on” what DC Water charges the United States for water and water services, which is equivalent to what DC Water charges the public. This conclusion aligns with the Court’s prior holding in the Entitlement Opinion. *DC Water I*, 156 Fed. Cl. at 48.

Although the Court previously ceased its analysis there, the Court now goes one step further to analyze the statutory basis for the rates charged to the public. As Plaintiff notes, the general methodology for determining sanitary sewer charges is governed by Section 207 of the 1954 Act. Section 207(a)(1), as amended and codified in D.C. Code § 34-2107, provides as follows:

The sanitary sewer service charges established under the authority of this subchapter shall be based on the following: (1) A billing methodology which takes into account both the water consumption of, and water service to, a property and the amount of impervious surface on a property that either prevents or retards the entry of water into the ground as occurring under natural conditions, or that causes water to run off the surface in greater quantities or at an increased rate of flow, relative to flow present under natural conditions.

D.C. Code § 34-2107(a)(1). Section 207(b) further provides that:

[n]otwithstanding the provisions of subsection (a), the Council of the District of Columbia is authorized, in its discretion, from time to time to establish 1 or more sanitary sewer service charges at such amount as the Council, on the basis of a recommendation made by the Mayor, finds it necessary to meet the expense to the District of furnishing sanitary sewer services, including debt retirement.

D.C. Code § 34-2107(b). Since the enactment of the Home Rule Act in 1973, the D.C. Council has delegated to DC Water the authority to establish sanitary sewer service charges and other charges. *See* District of Columbia Home Rule Act, Pub. L. No. 93-198, 87 Stat. 774 (1973); Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, D.C. Law 11-111, § 203(11) (1996) (codified as amended at D.C. Code § 34-2202.03(11)). Rates for sewer service and other charges are currently set forth in Title 21 of the District of Columbia Municipal Regulations. *See, e.g.*, 21 DCMR § 4101 (Rates and Charges for Sewer Service).

Plaintiff seeks to relitigate the first part of this statutory interpretation scheme, maintaining that the Water Mandate has no bearing whatsoever on sanitary sewer charges. Instead, Plaintiff contends that the statutory analysis should be confined to those statutory provisions which clearly and expressly deal with sanitary sewer services, and that any provisions that address “water and water services” are immaterial to the determination of

whether Plaintiff is owed for sanitary sewer charges. Pl.’s Opp. to Sur-Reply at 6-9, ECF 131. Plaintiff argues that any valuation of sanitary sewer service charges against the United States should proceed directly to Section 207, which sets forth the general methods of determination for sanitary sewer service charges. *Id.*; Pl.’s Supp. Reply. at 5, ECF 150.

This argument fails for two reasons. First, Congress clearly repudiated this approach through later amendments. Under the original 1954 Act, Section 212(a) explicitly directed that payment of the sanitary sewer service charge be determined in the manner described in Section 207. Pub. L. No. 83-364, § 212(a), 68 Stat. 108 (1954) (amended 1989). (“*Provided*, That the aggregate amount of such sanitary sewer service charge for each fiscal year shall be determined in the manner prescribed in Section 207 hereof”). However, in 1989, Congress amended Section 212 of the 1954 Act by striking the reference to Section 207,⁵ evincing intent that the basis for sewer charges charged to the United States not rely solely on Section 207. Pub. L. No. 101-168 § 133, 103 Stat. 1280 (1989). Put another way, the rewording of Section 212 to omit reference to Section 207 is powerful evidence that Congress no longer wished to tie the Government’s sanitary sewer charges solely to the billing methodology described in Section 207.

Second, it is axiomatic that “[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one.” *Morton v. Mancari*, 417 U.S. 535, 550-51 (1974). In this case, Section 207 is of general application, addressing the basis for charges for most customers, while Section 212 is a specific provision that applies to a specific customer—the U.S. Government. As such, Section 207 cannot supersede the specific mandate in Section 212 to predicate sewer charges to the Government on the value of water and water services received, which, as discussed above, is governed by the Water Mandate and its exception. In cases where the exception does not apply, the United States is required to pay the same rates as other water consumers in the District, and Section 207’s more general methodology for determining sanitary sewer charges thus enters the calculus.

The Court likewise rejects Plaintiff’s argument that the Sewer Mandate’s language predicating sanitary sewer charges on the value of water and water services refers not to the Water Mandate, but “only as to measurement of volumetric consumption.” Pl.’s Supp. Br. at 9, ECF 145. In interpreting the meaning of a statute, a material variation in terms suggests a variation in meaning. *See Intel Corp. v. Qualcomm Inc.*, 21 F.4th 784, 793 (Fed. Cir. 2021) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law* 170 (2012)). In this case, Plaintiff’s interpretation of Section 212 is refuted by the language of the immediately preceding Section. Specifically, Section 211 considers the issue of sanitary sewer service

⁵ In relevant part, Pub. L. No. 101-168 § 133 provided: “(a) It is the purpose of this section to improve the means by which the District of Columbia is paid for water and sanitary sewer services furnished to the Government of the United States ... (c) Section 212 of the District of Columbia Public Works Act of 1954 (68 Stat. 108; D.C. Code, sec. 43-1612) is amended by—(1) striking in subsection (a) all that follows ‘: Provided, That’”.

charges for certain churches and institutions and provides that such charges “shall be predicated only on the *quantity of water* used in excess of the amount fixed by the Mayor in each case as to which no water charge is made.” D.C. Code § 34-2111 (emphasis added). Had Congress intended for Section 212 to tie the Government’s sewer charge only to the quantity of water, it presumably would have done so in the same manner as it did in the immediately preceding section. But it did not. Instead, Section 212 uses the term “value” instead of “quantity.” The Court presumes that such a choice was intentional, as “[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)).

Accordingly, the Court applied the correct statutory framework by reading the Sewer Mandate and Water Mandate together. Sanitary sewer charges due from the United States are “predicated on the value of water and water services” received by the United States, which is paid at the same rates applicable to the District’s water consumers, unless an exception applies. The Court next considers one possible exception to this general payment scheme.

II. Applicability of the Exception Clause

The Water Mandate contains an exception clause (the Exception), which excludes any charges for “water and water services furnished to the United States for the maintenance, operation, and extension of the water system.” D.C. Code § 34-2401.25. Because the Court did not address this Exception in its prior Entitlement Opinion, it does so now. As an initial matter, the Court agrees with the Government that the Exception applies to both water and sewer services. Because sewer charges against the Government are “predicated on the value of water and water services,” any exception that applies to water charges must apply to sewer charges as well.

The question remains, however, whether the Exception applies to the sewer charges in this case. The Government argues that the Exception effectively incorporates the parties’ 1938 Agreement, in which AFRH agreed to let DC Water build a reservoir on its land in exchange for free water and water services (and by extension, sanitary sewer services) in perpetuity. Def.’s Supp. Resp. at 9-16, ECF 146. According to the Government, the underground reservoir “extended” the reserve capacity of the water system through the new underground reservoir system. *Id.* at 4. Therefore, the Government argues, water and water services were and continue to be furnished to the United States for the express purpose of “extending” the water system. *Id.* at 3. In the Government’s view, “[t]he statutory language answers the question [of whether water and water services furnished to AFRH fall under the Exception] definitively” and “[t]here is no way to divorce the 1938 Agreement from the current state of affairs.” *Id.*

“As with any question of statutory interpretation, our analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). “The plainness

or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). “If the statutory language is plain, the Court must enforce it according to its terms.” *King v. Burwell*, 576 U.S. 473, 486 (2015).

It is beyond dispute that nowhere in the statute is AFRH (including any of its predecessors-in-interest) or the 1938 Agreement mentioned or even alluded to. *DC Water I*, 156 Fed. Cl. 33; D.C. Code § 34-2101, *et. seq.* Had Congress intended to incorporate the 1938 Agreement and exempt AFRH from payment entirely, it could have done so by expressly identifying AFRH by name or referencing the 1938 Agreement. *See Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001). It did not do so. As such the Government’s interpretation of the Exception runs afoul of the general maxim that Congress does not “hide elephants in mouseholes.” *See id.* The failure to articulate an explicit exception for AFRH is especially pronounced given that Congress knew how, and did, recognize exemptions in other sections of the 1954 Act. *See, e.g.*, Section 211, as currently amended in D.C. Code § 34-2111 (recognizing the District’s authority to waive water charges to churches and other institutions and providing that sanitary sewer service charges applicable to such churches and institutions “shall be predicated only on the quantity of water used in excess of the amount fixed by the Mayor”). In sharp contrast, the statutory language concerning services to the Government is devoid of any indication that Congress intended to permanently exempt any federal entity from payment. Furthermore, the Court is unaware of—and the parties have not cited—any legislative history that would indicate otherwise. Accordingly, the Court cannot find that Congress intended to exempt the AFRH from payment in perpetuity via the Exception in the 1954 Act.

Having found no express exclusion for AFRH in the statute, the Court turns to whether AFRH’s water usage meets a condition necessary to trigger the Exception—services furnished for the maintenance, operation, and extension of the water system.

In this case, the parties seemingly agree that applicability of the Exception turns on the term “extension” and whether the reservoir qualifies as such. *See* Pl.’s Supp. Reply at 2, ECF 150 (“For the Exception to apply at all ... the Reservoir would have to qualify as an ‘extension.’”); Def.’s Supp. Resp. at 2, ECF 146 (“This exception applies to the AFRH through, at a minimum, the ‘extension of the water system’ language.”); *Id.* at 7-8 (conceding Plaintiff’s interpretations of “operation” and “maintenance” are reasonable). Still, the accompanying terms “operation” and “maintenance” are nevertheless instructive. The Court applies the principle of *noscitur a sociis*, “a word is known by the company it keeps.” *Yates v. United States*, 574 U.S. 528, 543 (2015). When a word appears in a list of similar terms, each term should be read in light of characteristics shared by the entire list to “avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words.” *Id.* (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995)). Consider the context in which water is provided for the “operation” and “maintenance” of the water system. DC Water has submitted affidavits showing that it performs “periodic

flushing of the water system to remove sediment and improve water quality.” *See, e.g.*, Hughes Decl. ¶ 6, ECF 145-2. DC Water also “performs flow-testing on the water system to determine whether available water pressure is sufficient to meet water demand and to provide for fire service needs.” *Id.* ¶ 7. DC Water avers that these activities are typical examples in which water is provided for the “operation” and “maintenance” of the water system and thus not charged to consumers.⁶ Pl.’s Supp. Br. at 4, ECF 145.

It is difficult to square these relatively isolated and limited exemptions with the Government’s reading of the Exception clause, which according to the Government, memorialized the 1938 agreement in which DC Water agreed to provide free water in perpetuity in exchange for an easement to build a reservoir. It simply goes too far to say that a clause which ordinarily exempts payment for “flow-testing” and “periodic flushing” also exempts an entire Government agency or organization from charges relating to all water and water services in perpetuity through a bargained-for exchange. Ultimately, the Government’s interpretation of the Exception is divorced from “the [statutory] language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Robinson*, 519 U.S. 341.

The Government maintains that rejecting its interpretation would essentially render the term “extension” meaningless and strike it from the text. Def.’s Supp. Resp. at 7-8, ECF 146. The Court disagrees. There are clear instances where DC Water furnishes water and water services for the extension of the water system. For example, DC Water has shown that it “performs post-construction flushing when *extending* a water main or service,” such as “when new buildings are constructed or repairs are made to infrastructure.” Hughes Decl. ¶ 8, ECF 145-2 (emphasis added). In these instances of flushing, DC Water not only furnishes water for the “operation” and “maintenance” of the water system, but for its “extension” as well. In those limited circumstances, the Exception would apply and, per DC Water’s representation, the United States would presumably be under no obligation to pay for water and water services used for such purposes.

Finally, even if the Exception in some way contemplated the possibility of exempting an entire Government agency or organization from all water and water services through a bargained-for exchange, the exchange at issue here has been nullified. For the reasons outlined by the Court in the Entitlement Opinion (and incorporated in full herein), the 1954 Act nullified the 1938 Agreement’s perpetual grant of free water and water services to AFRH.⁷ *DC Water I*, 156 Fed. Cl. at 50-54 (“As currently amended by

⁶ The Court expresses no opinion on the Government’s rate of payment under an applicable exception. However, as Plaintiff acknowledges, “[i]nsofar, as section 34-2401.25(a) and other parts of Title 34 do not provide for a different rate at which water/water services within the Exception are to be paid for, the clear implication is that such water and water services within the Exception are to be provided for free. Indeed, DC Water has never charged the Government for anything within the scope of the Exception.” Pl.’s Supp. Br. at 4, ECF 145.

⁷ The parties do not dispute that Congress had the power to abrogate the parties’ 1938 Agreement via an act of Congress. *See, e.g.*, Pl.’s Supp. Br. at 10, 12, ECF 145; Def.’s Supp. Resp. at 13, ECF 146.

Congress, the AFRH, along with all other United States entities situated within the District ... are required to pay for water and sewer services received, in accordance with the express provisions of the 1954 Act.”). Once superseded by statute, the parties’ arrangement exchanging land use for free water and water services ceased to exist, effectively eviscerating any claim that any water and water services now furnished to AFRH are for the purpose of the “maintenance, operation, and extension of the water system.”⁸ For the foregoing reasons, the Exception does not affect any of the disputed charges in this matter.

III. Permissibility of the Claimed Charges

Having found that the Exception does not apply, the Court next turns to the permissibility of the claimed damages. In addition to fees derived from the direct consumption of sewer services, DC Water maintains that it is entitled to collect fifty percent of the corresponding metering fees, ROW fees, and PILOT fees (together, the ancillary fees) but concedes that the remaining fifty percent is attributable to water services, which DC Water may not recover. Pl.’s Br. at 9-10, ECF 117. Specifically, DC Water requests the following damages:

	Total Fee	Fee Request After Apportionment
Direct Cost of Sewer Services ⁹	\$607,496.79	\$607,496.79
Metering Fees ¹⁰	\$8,813.40	\$4,406.70
ROW Fees ¹¹	\$11,371.86	\$5,685.93
PILOT Fees ¹²	\$31,122.99	\$15,561.49
TOTAL REQUEST		\$633,150.91

⁸ The Court notes that the parties have raised concerns regarding the status of the reservoir on AFRH’s grounds. Such concerns are beyond the scope of this action and thus are not addressed here.

⁹ The parties agree that this total figure was reached by multiplying AFRH’s total water consumption of 59,851.9 Ccf by the sewer rate set by the DC Water of \$10.15/Ccf. ECF 83 at 2; Pl.’s Br. at 5, ECF 117.

¹⁰ According to DC Water, the metering fee listed above accounts for monthly charges attributed to three separate meters: the 10” x 2” meter at \$403.62, the 2” meter at \$7.52, and the 8” x 2” meter at \$323.29. *See* Pl.’s Br. at 8, ECF 117. Per the 2019 FCSE, the annual charge for the 2” meter totaled \$90.48, representing a monthly charge of \$7.54. The meter fees are set by the DC Water Board of Directors. *Id.*

¹¹ DC Water represents that the DC Water Board of Directors set the ROW Fee at \$0.18/Ccf for the 2019 fiscal year and \$0.19/Ccf for the 2020 fiscal year, which resulted in a rate of \$0.19/Ccf for the 2021 fiscal year. Khalil Aff. ¶¶ 20-21, ECF 90-1. The AFRH water consumption of 59,851.9 was then multiplied by the \$0.19/Ccf rate and equaled \$11,371.86 for the total ROW fee. *Id.* at ¶ 21.

¹² DC Water explains that the DC Water Board of Directors approved and adopted PILOT Fee rates for the fiscal years 2019 and 2020, which resulted in DC Water’s FCSE containing a PILOT Fee rate of \$0.52/Ccf for the 2021 fiscal year. Khalil Aff. ¶¶ 25-26, ECF 90-1. DC Water states that this fiscal year 2021 fee was multiplied by AFRH’s water consumption of 59,851.9 Ccf to get a total PILOT fee of \$31,122.99. Khalil Aff. ¶¶ 25-26, ECF 90-1.

Because the Court has found that the statutory scheme mandates that the cost of sanitary sewer services are predicated on the value of water and water services, which are to be charged at the same rate as the public, it follows that sewer services are to be charged to the public at the same rate as well. To understand the costs charged to the public for sewer services, the Court turns to the general provision governing the determination of sanitary sewer services—Section 207.

As noted above, Section 207 mandates that:

the Council of the District of Columbia is authorized, in its discretion, from time to time to establish 1 or more sanitary sewer service charges at such amount as the Council, on the basis of a recommendation made by the Mayor, finds it necessary to meet the expense to the District of furnishing sanitary sewer services, including debt retirement.

D.C. Code § 34-2107(b). Along with the fees for direct sewer services, the contested ancillary fees (Meter Fees, ROW Fees, and PILOT Fees) were all established by DC Water pursuant to authority delegated to it from the Council of the District of Columbia, and thus those fees are permitted under the broad discretionary powers granted to the Council by Section 207 or the Board’s general power to establish charges. *See* Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, D.C. Law 11-111, § 203(11) (1996) (codified as amended at D.C. Code § 34-2202.03(11)). It therefore follows that because DC Water charges these ancillary costs to the public, it may charge them to AFRH as well, so long as no other bar remains to their recovery.

AFRH presents one possible bar to recovery. While reserving its right to appeal liability and damages, AFRH acknowledges that certain costs, valued at \$607,496.79, directly correlate to sanitary sewer service charges and are thus allowable under the Court’s Entitlement Opinion. Def.’s Resp. at 9, 14, ECF 119. However, the Government argues that DC Water may not recover the ancillary fees that it deems impermissible. *Id.* at 8-14. In making this argument, the Government points to the language of the Sewer Mandate, which, as amended and codified, states that “[t]he sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services furnished by the sanitary sewage works of the District through any connection thereto for *direct* use by the government of the United States or any ... independent establishment” and that the charges “shall be predicated on the *value of water and water services* received.” D.C. Code § 34-2112(a) (emphasis added).

The parties disagree as to the meaning of the term “direct” in Section 212 and its impact on the damages calculation. According to AFRH, the term “direct” limits the amount that may be recovered to only those charges directly attributable to services provided. Def.’s Resp. at 9, ECF 119. In contrast, DC Water asserts that “direct” has no bearing on the amount of recoverable damages, but instead the term “describes the nature

of the ‘connection’ between the provision of ‘sanitary sewer services’ to the federal government and the ‘sanitary sewer works of the District’ [which] must be such as to enable ‘direct use’ by the government of such ‘sanitary sewer services.’” Pl.’s Reply at 4, ECF 121. In short, DC Water’s argument is that the word “direct” has no bearing on the recoverable damages, but rather refers to the necessarily direct relationship between DC Water and the recipient of its services, AFRH. *Id.*

DC Water has the better argument. The Court agrees that the term “direct” does not act to restrict the amount of damages that may be recovered, but rather describes the necessarily direct relationship between the utility provider and the government entity to whom services are rendered. The language of the statute supports this conclusion. When interpreting a statute, courts must first begin with “the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses legislative purpose.” *Schindler Elevator Corp. v. United States*, 563 U.S. 401, 407 (2011) (quoting *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 175 (2009)). In the Sewer Mandate, the adjective “direct” immediately precedes the noun “use.” D.C. Code § 34-2112(a). The relative positions of these words indicate that “direct” modifies the noun “use” and therefore refers to the immediate relationship of the utility provider to the beneficiary, as opposed to a relationship diverted through a third party. *See Wisconsin Cent. Ltd. v. United States*, 585 U.S. 274, 278 (2018) (holding that an adjective modified the immediately following noun in a key statutory term).

Further, this interpretation is supported by Congress’s inclusion of the next clause of the sentence which separately addresses the value of water and water services as the appropriate yardstick by which payment is measured. D.C. Code § 34-2112(a). When courts interpret the meaning of a statute, they must give meaning to every clause and word of the statute and avoid an interpretation of a word within a clause that would render other provisions of the statute inconsistent, meaningless, or superfluous. *See Setser v. United States*, 566 U.S. 231, 239 (2012); *Duncan v. Walker*, 533 U.S. 167, 174 (2001). To ensure a harmonious interpretation of all clauses of this sentence, “direct” must refer to the relationship between provider and beneficiary, not the nature of the charge, as AFRH contends. Accordingly, the Court rejects AFRH’s argument that only fees that are “directly related” to sanitary sewer services provided to the AFRH are implicated by the Entitlement Opinion.

To find otherwise would be contrary to public policy. Limiting charges for the provision of sanitary sewer services would undermine the purpose of DC Water, which is to provide an “adequate water and sewer utility system.” D.C. Code § 34-2201.01(2). DC Water has statutory obligations to pay these ancillary charges in its business of lawfully providing water and sewer services to the District and cannot be reasonably expected to absorb the cost of all of these charges incurred in the provision of water and sewer services. *See Khalil Aff.* ¶¶ 15, 18-19, 23-24, 28, ECF 90-1; *Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm’n of W. Va.*, 262 U.S. 679, 690, 692-93 (1923) (discussing the entitlement of public utilities to set rates that allow returns on business); *Pub. Serv. Comm’n for N.Y. v.*

Fed. Power Comm’n, 467 F.2d 361, 370 (D.C. Cir. 1972). Indeed, it is presumably for this reason that Section 207(b) of the 1954 Act expressly contemplates that the Council of the District of Columbia may establish charges as it deems necessary to meet the expense to the District of furnishing services. *See* D.C. Code § 34-2107(b).

Consequently, the Court finds that the statutory scheme does not limit DC Water’s recovery to “directly related” charges, as argued by the Government. All direct and “ancillary” costs that are charged to the public may be charged to AFRH as well. Accordingly, DC Water may recover the ancillary charges listed in the 2019 FSCE.¹³ The sole remaining question is whether DC Water’s apportionment of such fees is appropriate.

AFRH challenges what it calls DC Water’s arbitrary apportionment of the fees as attributed fifty percent each to both water and sanitary sewer services. Turning first to metering fees, DC Water seeks fifty percent of the metering fees listed in the 2019 FSCE. Pl.’s Br. at 8-9, ECF 117. AFRH claims that installing these meters is only required for water services. The metering fees, however, are necessary to the provision of sewer services as well. According to DC Water’s expert, “[t]he meters are used to measure the amount of water and water services used to determine the charges for sanitary sewer services provided to AFRH by the District of Columbia’s wastewater system.” Khalil Aff. ¶ 11, ECF 90-1. DC Water uses the measurements as a proxy for sewer service charges. *Id.* The expert also states that “the information provided by the meters is equally necessary to calculate the water and sewer services provided.” *Id.* Thus, while it is true that the meters are only directly used to measure water services, the meters are still the yardstick by which DC Water has decided to measure and charge sewage use. As such, they are part of sewer services because without these meters, DC Water would be unable to measure its sewer services and assess charges to its customers. Therefore, because the metering fees are necessary to both the provision of water services and sanitary sewer services, allocating fifty percent of the 2019 FCSE of \$8,813.40 to account for sanitary sewer services is reasonable within DC Water’s wide discretion to charge its customers. Therefore, the metering fee of \$4,406.70 is recoverable.

AFRH similarly challenges DC Water’s fifty percent apportionment of the ROW and PILOT fees. Def.’s Resp. at 13-14, ECF 119. However, this time AFRH points to the expert witness testimony that DC Water provided which stated that these fees

represent the cost owed to the District of Columbia for occupation of the public rights-of-way by water and sewer systems maintained and operated by DC Water, including but not limited to, water mains, separate or combined sanitary and storm sewers, tunnels, appurtenant support facilities and

¹³ While the Government challenges both the apportionment of the ancillary fees and that the ancillary fees constitute an “amount due” under the FCSE, neither party challenges that the amount requested by DC Water is correctly calculated and included in the 2019 FCSE. Def.’s Resp. at 10-14, ECF 119.

devices, instruments and structures without regard to their surface or subsurface location within the public right-of-way.

Khalil Aff. ¶ 18, ECF 90-1. AFRH argues that the listed systems are related to water services, storm drains, and sewer services, two thirds of which, pursuant to the Entitlement Opinion, DC Water is not entitled to recover. Def.'s Resp. at 13-14, ECF 119. AFRH ignores, however, the language "including but not limited to" in this statement. *Id.* at 13. In fact, the same DC Water expert continues, "I can attest that the ROW [and PILOT] fee is divided equally to represent the division of water and sewer services that occupy the District public rights of way." Khalil Aff. ¶ 22, ECF 90-1. Because it would be burdensome for DC Water to estimate the exact proportion of taxes paid based on the occupation of the public rights-of-way for water and sewer services throughout the District, especially for every individual customer, it is reasonable to divide the fees equally between water and sanitary sewer services. Based on these common-sense principles and the Khalil affidavit, the assignment and apportionment of the ROW and PILOT fees are reasonable and AFRH is obligated to pay \$5,685.93 to DC Water.

IV. Late Penalties

Finally, DC Water claims that pursuant to D.C. Code § 34-2110(a), it "is authorized to impose an additional charge of 10% for any sanitary sewer service charge remaining unpaid for more than 30 days, and impose a penalty at the rate of 1% per month compounded monthly for any sanitary sewer service charge that remains unpaid for more than 60 days." Pl.'s Br. at 2 n.3, ECF 117. However, AFRH correctly notes that the issue of additional charges for overdue bills was raised for the first time in DC Water's supplemental damages brief. Def.'s Resp. at 12, ECF 119. In the Complaint, DC Water did not seek to recover statutory late fees in its prayer for relief, and did not plead that it had, in fact, imposed such charges. *See* Am. Compl. Accordingly, the Court did not address such fees in the Entitlement Opinion, *see generally DC Water I*, 156 Fed. Cl., and the issue of liability for such fees is not before this Court. Furthermore, even assuming that consideration of these penalties is properly before this Court, Plaintiff has not established entitlement to them.

CONCLUSION

For the foregoing reasons, Plaintiff District of Columbia Water and Sewer Authority is awarded damages in the amount of \$633,150.91. The Clerk of Court is directed to enter judgment accordingly.

IT IS SO ORDERED.



PHILIP S. HADJI
Judge

court of Arkansas shall hold two terms of said court at the town of Van Buren, the county seat of Crawford county aforesaid, on the second Mondays of May and November in each and every year, and shall continue in session until all the business shall be disposed of; and he is hereby authorized and directed to hold such other special sessions as may be necessary for the despatch of the causes in said court, at such time or times as he may deem expedient, and may adjourn such special sessions to any other time previous to a stated term.

Special laws.

SEC. 3. *And be it further enacted*, That the district court of the United States for the western district of Arkansas hereby established, in addition to the ordinary jurisdiction and powers of a district court, shall, within the limits of its respective district, have jurisdiction of all causes, civil or criminal, except appeals and writs of error, which now are, or hereafter may by law be made cognizable in a circuit court, and shall proceed therein in the same manner as a circuit court; and an appeal or writ of error shall be prosecuted from the final decree or judgment of said district court to the supreme court of the United States, in the same manner that appeals and writs of error now are, by law, from a circuit court of the United States.

Jurisdiction of court for the western district.

Appeals and writs of error.

SEC. 4. *And be it further enacted*, That the President of the United States, by and with the advice and consent of the Senate, shall appoint a district attorney and marshal for said western district of Arkansas, who respectively shall receive the same salary and perquisites as the present district attorney and marshal of the State of Arkansas have by law; and the said district judge shall appoint a clerk of said court hereby established.

District attorney and marshal for the western district.

Clerk.

APPROVED, March 3, 1851.

CHAP. XXV. — *An Act to found a Military Asylum for the Relief and Support of invalid and disabled Soldiers of the Army of the United States.*

March 3, 1851.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all soldiers of the army of the United States, and all soldiers who have been, or may hereafter be, of the army of the United States, whether regulars or volunteers, and who have contributed, or may hereafter contribute, according to section seven of this act, to the support of the military asylum hereby created, shall, under the restrictions and provisions which follow, be members of the said asylum, with all the rights annexed thereto.

Who are to be members of the asylum.

SEC. 2. *And be it further enacted*, That, for the good government and attainment of the objects proposed by the institution aforesaid, the general-in-chief commanding the army, the generals commanding the eastern and western geographical military divisions, the quartermaster-general, the commissary-general of subsistence, the paymaster-general, the surgeon-general, and the adjutant-general, shall be, *ex officio*, commissioners of the same, constituting a board of commissioners, a majority of whom shall have power to establish, from time to time, regulations for the general and internal direction of the institution, to be submitted to the Secretary of War for approval; and may do any other act or acts necessary for the government and interests of the same, as authorized herein.

Government of the asylum.

Commissioners.

Their powers.

SEC. 3. *And be it further enacted*, That the officers of the institution shall consist of a governor, a deputy governor, and a secretary, for each separate site of the asylum, the latter to be also treasurer; and the said officers shall be taken from the army, and appointed or removed, from time to time, as the interests of the institution may require,

Officers of the institution.

Appointment and removal.

by the Secretary of War, on the recommendation of the board of commissioners.

Who entitled to the privileges of the asylum.

SEC. 4. *And be it further enacted*, That the following persons, members of the army asylum, according to section one, shall be entitled to the rights and benefits herein conferred, and no others, viz: every soldier of the army of the United States who shall have served, or may serve, honestly and faithfully twenty years in the same, and every soldier, and every discharged soldier, whether regular or volunteer, who shall have suffered by reason of disease or wounds incurred in the service and in the line of his duty, rendering him incapable of further military service, if such disability has not been occasioned by his own misconduct: *Provided*, That no deserter, mutineer, or habitual drunkard, shall be received without such evidence of subsequent service, good conduct and reformation of character as the commissioners shall deem sufficient to authorize his admission.

Proviso.

Discharge on recovery.

SEC. 5. *And be it further enacted*, That any soldier admitted into this institution, for disability as aforesaid, and who shall recover his health, so as to fit him again for military service, (he being under fifty years of age,) shall be discharged: *Provided*, That any pensioner on account of wounds or disability incurred in the military service, although he may not have contributed to the funds of the institution, shall be entitled to all the benefits herein provided, upon transferring his pension to said asylum, for and during the period that he may voluntarily continue to receive such benefits.

Pensioners to be entitled to the privileges of the asylum, on transferring their pensions while availing themselves of it.

Soldiers convicted of felony, or other disgraceful or infamous crime, excluded from said privileges.

SEC. 6. *And be it further enacted*, That the provisions of the foregoing sections shall not be extended to any soldier in the regular or volunteer service, who shall have been convicted of felony, or other disgraceful or infamous crimes of a civil nature since he shall have been admitted into the service of the United States.

Funds for support of the asylum.

Balance of former appropriation.

1847, ch. 35.
\$118,791.19 of the contributions levied in Mexico.

SEC. 7. *And be it further enacted*, That for the support of the said institution the following funds shall be set apart, and the same are hereby appropriated: any unexpended balance of the appropriation made March second, eighteen hundred and forty-seven, now remaining in the treasury, for the benefit of discharged soldiers disabled by wounds; the sum of one hundred and eighteen thousand seven hundred and ninety-one dollars and nineteen cents, levied by the commanding general of the army of the United States in Mexico, during the war with that republic, for the benefit of the soldiers of the United States army, regulars and volunteers, engaged in that war, but taken possession of as funds of the United States and placed in the treasury; all stoppages or fines adjudged against soldiers by sentence of courts martial, over and above any amount that may be due for the reimbursement of government, or of individuals; all forfeitures on account of desertion, all moneys, not exceeding two thirds of the balance on hand, of the hospital fund, and of the post fund of each military station, after deducting the necessary expenses of the year, and all moneys belonging to the estates of deceased soldiers, which now are, or may hereafter be unclaimed for the period of three years, subsequent to the death of said soldier or soldiers, to be repaid by the commissioners of the institution, upon the demand of the heirs or legal representatives of the deceased: *And provided, also*, That from the first day of the month, next after the passage of this act, there shall be deducted from the pay of every non-commissioned officer, musician, artificer, and private, of the army of the United States, the sum of twenty-five cents per month, which sum so deducted shall, by the pay department of the army, be passed to the credit of the commissioners of the army asylum, who are hereby also authorized to receive all donations of money or property made by any person or persons for the benefit of the institution, and hold the same for its sole and exclusive

Fines and stoppages of pay of soldiers, after certain deduction.

Forfeitures for desertion.

Part of hospital and post funds.

Unclaimed pay of deceased soldiers, subject to be reclaimed.

Deductions from pay.

Commissioners authorized to receive donations.

use: *Provided*, That the deduction of twenty-five cents per month from the pay of non-commissioned officers, musicians, artificers, and privates of regiments of volunteers, or other corps or regiments, raised for a limited period, or for a temporary purpose or purposes, shall only be made with their consent.

Proviso.

SEC. 8. *And be it further enacted*, That the commissioners of this institution, by and with the approval of the President, be, and the same are hereby authorized and required to procure for immediate use, at a suitable place or places, a site or sites for the Military Asylum, and if the necessary buildings cannot be procured with the site or sites, to have the same erected, having due regard to the health of the locations, facility of access, to economy, and giving preference to such places as, with the most convenience and least cost, will accommodate the persons provided for in this act.

Site or sites for the asylum.

Buildings.

SEC. 9. *And be it further enacted*, That the commissioners, with the approval of the Secretary of War, prepare the necessary rules and regulations for the government of said institution, and cause the same to be fitted and furnished for the immediate reception of those persons provided for in this act, and that the Secretary of War report upon the execution of this duty at the next session of Congress.

Rules and regulations to be prepared.

Asylums to be fitted and furnished.

Report to be made by Secretary of War at next session of Congress.

APPROVED, March 3, 1851.

CHAP. XXVI. — *An Act for the Settlement of certain Classes of "Private Land Claims" within the Limits of the "Baron De Bastrop Grant," and for allowing Preemptions to certain actual Settlers, in the Event of the final Adjudication of the Title of the said De Bastrop in Favor of the United States.*

March 3, 1851.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the event of a final adjudication by the court in favor of the United States, on the "Baron De Bastrop" claim in Louisiana, under the act of Congress, approved on the seventeenth June, one thousand eight hundred and forty-four, entitled "An Act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama south of the thirty-first degree of north latitude, and between the Mississippi and Perdido Rivers," the register and receiver for the Ouachita Land District, Louisiana, shall give public notice of the fact in some newspaper circulating in the vicinity of the land, and within twelve months from and after the date of the first publication of such notice, it shall and may be lawful for any original claimants of the classes hereinafter mentioned in this section of the present act, their heirs or legal representatives, to file with the aforesaid register and receiver notices descriptive of their claims, and specifying their precise localities and area, with the testimony in support of the same.

In the event of an adjudication in favor of the United States respecting the "Baron De Bastrop" claim, notice to be given, and claimants allowed to file notices.

1844, ch. 95.

First: All bona fide claimants by purchase from De Bastrop, or those holding under him, where the land has been occupied and cultivated for twenty years.

Classes of claimants.

Second: All bona fide claimants of "head rights," for not exceeding six hundred and forty acres, their heirs or legal representatives, where the original claimant came over and settled the land under the contract between the Spanish government and De Bastrop, even though the land was not actually sold or conveyed to such original claimants by the said De Bastrop.

Third: All bona fide claimants for not exceeding six hundred and forty acres, as actual settlers prior to the twentieth December, eighteen hundred and three, where they have held such continued possession as to show that they identified themselves with the ownership of the land.

- of each hospital is hereby directed, under penalty of fifty dollars, to make out the accounts against each foreign seaman that may be placed in the hospital under his direction, and render the same to the collector.
- Sale of marine hospitals.** SEC. 4806. The Secretary of the Treasury is authorized to lease, or to sell at public auction, to the highest and best bidder, for cash, after due notice in the public newspapers, such marine-hospital buildings and lands appertaining thereto as he may deem it advisable to sell, and to make, execute, and deliver all needful conveyances to the lessees or purchasers thereof respectively; and the proceeds of such leases and sales are hereby appropriated for the marine-hospital establishment. But the hospitals at Cleveland in Ohio, and Portland in Maine, shall not be sold or leased. And this section shall not be construed to authorize the Secretary of the Treasury to lease or sell any such hospital where the relief furnished to sick mariners shall show an extent of relief equal to twenty cases a day on an average for the last preceding four years, or where no other suitable and sufficient hospital accommodations can be procured upon reasonable terms for the comfort and convenience of the patients.
- Superintendence of Navy hospitals.** SEC. 4807. The Secretary of the Navy shall have the general charge and superintendence of Navy hospitals.
- Deduction from pay of seamen, &c., for Navy hospital-fund.** SEC. 4808. The Secretary of the Navy shall deduct from the pay due each officer, seaman and marine, in the Navy, at the rate of twenty cents per month for each person, to be applied to the fund for Navy hospitals.
- Appropriation of fines.** SEC. 4809. All fines imposed on navy officers, seamen, and marines shall be paid to the Secretary of the Navy, for the maintenance of Navy hospitals.
- Purchase and erection of Navy hospitals.** SEC. 4810. The Secretary of the Navy shall procure at suitable places proper sites for Navy hospitals, and if the necessary buildings are not procured with the site, shall cause such to be erected, having due regard to economy, and giving preference to such plans as with most convenience and least cost will admit of subsequent additions, when the funds permit and circumstances require; and shall provide, at one of the establishments, a permanent asylum for disabled and decrepit Navy officers, seamen, and marines.
- Government of Naval Asylum.** SEC. 4811. The asylum for disabled and decrepit Navy officers, seamen, and marines shall be governed in accordance with the rules and regulations prescribed by the Secretary of the Navy.
- Allowance of rations to Navy hospitals.** SEC. 4812. For every Navy officer, seaman, or marine admitted into a Navy hospital, the institution shall be allowed one ration per day during his continuance therein, to be deducted from the account of the United States with such officer, seaman, or marine.
- Allowance from pensions.** SEC. 4813. Whenever any Navy officer, seaman, or marine, entitled to a pension, is admitted to a Navy hospital, the pension, during his continuance in the hospital, shall be paid to the Secretary of the Navy and deducted from the account of such pensioner.

CHAPTER TWO.

THE SOLDIERS' HOME.

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| Sec. | Sec. |
| 4814. Who may become members of the Soldiers' Home. | 4820. Rights of pensioners and surrender of pensions. |
| 4815. Board of commissioners of the Soldiers' Home. | 4821. What persons are entitled to benefits of Soldiers' Home. |
| 4816. Officers. | 4822. Who are excluded. |
| 4817. Sites and buildings. | 4823. Discharge. |
| 4818. Funds for Soldiers' Home. | 4824. Inmates subject to articles of war. |
| 4819. Deduction from pay. | |

Add4

SEC. 4814. All soldiers of the Army of the United States, and all soldiers who have been, or may hereafter be, of the Army of the United States, and who have contributed, or may hereafter contribute, according to section forty-eight hundred and nineteen, to the support of the Soldiers' Home hereby created, and the invalid and disabled soldiers, whether regulars or volunteers, of the war of eighteen hundred and twelve, and of all subsequent wars, shall, under the restrictions and provisions which follow, be members of the Soldiers' Home, with all the rights annexed thereto. [See § 4821.]

Who may become members of the Soldiers' Home.

3 Mar., 1851, c. 25, s. 1, v. 9, p. 595.
3 Mar., 1859, c. 83, ss. 5, 7, v. 11, p. 434.

SEC. 4815. The Commissary-General of Subsistence, the Surgeon-General, and the Adjutant-General shall constitute a board of commissioners for the Soldiers' Home, any two of whom shall be a quorum for the transaction of business, whose duty it shall be to examine and audit the accounts of the treasurer quarter-yearly, and to visit and inspect the Soldiers' Home at least once in every month. The majority shall also have power to establish, from time to time, regulations for the general and internal direction of the institution, to be submitted to the Secretary of War for approval; and may do any other acts necessary for the government and interests of the same, as authorized by this chapter.

Board of commissioners of the Soldiers' Home.

3 Mar., 1851, c. 25, s. 2, v. 9, p. 595.
3 Mar., 1859, c. 83, s. 4, v. 11, p. 434.

SEC. 4816. The officers of the Soldiers' Home shall consist of a governor, a deputy governor, and a secretary, for each separate site of the home, the latter to be also treasurer; and the officers shall be taken from the Army, and appointed or removed, from time to time, as the interests of the institution may require, by the Secretary of War, on the recommendation of the board of commissioners. [See § 1259.]

Officers.

3 Mar., 1851, c. 25, s. 3, v. 9, p. 595.

SEC. 4817. The commissioners of the Soldiers' Home, by and with the approval of the President, shall procure for immediate use, at a suitable place or places, a site or sites for the Soldiers' Home, and if the necessary buildings cannot be procured with the sites, to have the same erected, having due regard to the health of the locations, facility of access, and economy, and giving preference to such places as, with the most convenience and least cost, will accommodate the persons entitled to the benefits of the Soldiers' Home.

Sites and buildings.

Ibid., s. 8, p. 597.

SEC. 4818. For the support of the Soldiers' Home the following funds are set apart, and are hereby appropriated: All stoppages or fines adjudged against soldiers by sentence of courts-martial, over and above any amount that may be due for the re-imbursement of Government, or of individuals; all forfeitures on account of desertion; and all moneys belonging to the estates of deceased soldiers, which are or may be unclaimed for the period of three years subsequent to the death of such soldiers, to be repaid by the commissioners of the institution, upon the demand of the heirs or legal representatives of the deceased.

Funds for Soldiers' Home.

3 Mar., 1851, c. 25, s. 7, v. 9, p. 596.
5 July, 1862, c. 133, s. 2, v. 12, p. 508.

SEC. 4819. There shall be deducted from the pay of every non-commissioned officer, musician, artificer, and private of the Army of the United States the sum of twelve and a half cents per month, which sum so deducted shall, by the Pay Department of the Army, be passed to the credit of the commissioners of the Soldiers' Home. The commissioners are also authorized to receive all donations of money or property made by any person for the benefit of the institution, and hold the same for its sole and exclusive use. But the deduction of twelve and a half cents per month from the pay of non-commissioned officers, musicians, artificers, and privates of regiments of volunteers, or other corps or regiments raised for a limited period, or for a temporary purpose or purposes, shall only be made with their consent.

Deduction from pay.

3 Mar., 1851, c. 25, s. 7, v. 9, p. 596.
3 Mar., 1859, c. 83, s. 7, v. 11, p. 434.

SEC. 4820. The fact that one to whom a pension has been granted for wounds or disability received in the military service has not contributed to the funds of the Soldiers' Home shall not preclude him from admission thereto. But all such pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits.

Rights of pensioners and surrender of pensions.

3 Mar., 1851, c. 25, s. 5, v. 9, p. 596.
3 Mar., 1859, c. 83, s. 6, v. 11, p. 434.

SEC. 4821. The following persons, members of the Soldiers' Home, according to section forty-eight hundred and fourteen, shall be entitled to the rights and benefits herein conferred, and no others:

What persons are entitled to benefits of Soldiers' Home.

3 Mar., 1851, c.
25, s. 4, v. 9, p. 596.
3 Mar., 1859, c.
83, s. 5, v. 11, p. 434.

First. Every soldier of the Army of the United States who has served, or may serve, honestly and faithfully twenty years in the same.

Second. Every soldier and every discharged soldier, whether regular or volunteer, who has suffered, or may suffer, by reason of disease or wounds incurred in the service and in the line of his duty, rendering him incapable of further military service, if such disability was not occasioned by his own misconduct.

Third. The invalid and disabled soldiers, whether regulars or volunteers, of the war of eighteen hundred and twelve and of all subsequent wars.

Who are excluded.

3 Mar., 1851, c.
25, s. 6, v. 9, p. 596.

SEC. 4822. The benefits of the Soldiers' Home shall not be extended to any soldier in the regular or volunteer service, convicted of felony or other disgraceful or infamous crimes of a civil nature after his admission into the service of the United States; nor shall any one who has been a deserter, mutineer, or habitual drunkard be received, without such evidence of subsequent service, good conduct, and reformation of character, as is satisfactory to the commissioners.

Discharge.

Ibid., s. 5.

SEC. 4823. Any soldier admitted into the Soldiers' Home for disability who recovers his health, so as to become fit again for military service, if under fifty years of age, shall be discharged.

Inmates subject
to articles of war.
3 Mar., 1859, c.
83, s. 7, v. 11, p. 434.

SEC. 4824. All persons admitted into the Soldiers' Home shall be subject to the Rules and Articles of War in the same manner as soldiers in the Army.

CHAPTER THREE.

THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS.

Sec.

4825. Organization of the National Home for Disabled Volunteer Soldiers.

4826. Election of citizen managers.

4827. Election of officers of the board of managers.

4828. Expenses of managers.

4829. Officers of the National Home.

4830. Sites for homes may be purchased and buildings erected.

Sec.

4831. Funds for support of home.

4832. What persons are entitled to benefit of National Home.

4833. Out-door relief.

4834. Duties of board of managers.

4835. Inmates subject to articles of war.

4836. Amendments, &c., of laws.

4837. Documents to be furnished to certain homes.

Organization of
the National Home
for Disabled Vol-
unteer Soldiers.

21 Mar., 1866, c.
21, s. 1, v. 14, p. 10.

23 Jan., 1873, c.
51, s. 1, v. 17, p. 417.

3 Mar., 1875, c.
129, v. 18, p. 359.

26 Feb., 1875, J.
R. No. 5, v. 18, p. 524.

Election of citi-
zen managers.

21 Mar., 1866, c.
21, s. 3, v. 14, p. 10.

12 Mar., 1867, c.
1, v. 15, p. 1.

23 Jan., 1873, c.
51, s. 1, v. 17, p. 417.

Election of offi-
cers of the board
of managers.

21 Mar., 1866, c.
21, s. 2, v. 14, p. 10.

23 Jan., 1873, c.
51, s. 1, v. 17, p. 417.

SEC. 4825. The President, Secretary of War, Chief Justice, and such other persons as have been or from time to time may be associated with them, shall constitute a board of managers of an establishment for the care and relief of the disabled volunteers of the United States Army, to be known by the name and style of "The National Home for Disabled Volunteer Soldiers," and have perpetual succession, with powers to take, hold, and convey real and personal property, establish a common seal, and to sue and be sued in courts of law and equity; and to make by-laws, rules, and regulations, not inconsistent with law, for carrying on the business and government of the home, and to affix penalties thereto.

SEC. 4826. Nine managers of the National Home for Disabled Volunteers shall be elected from time to time, as vacancies occur, by joint resolution of Congress. They shall all be citizens of the United States, and all residents of States which furnished organized bodies of soldiers to aid in suppressing the rebellion commenced in eighteen hundred and sixty-one; and no two of them shall be residents of the same State, and no person who gave aid or countenance to the rebellion shall ever be eligible. The term of office of these managers shall be for six years, and until a successor is elected.

SEC. 4827. The twelve managers of the National Home for Disabled Volunteer Soldiers shall elect from their own number a president, who shall be the chief executive officer of the board, two vice-presidents, and a secretary. Seven of the board, of whom the president or one of the vice-presidents shall be one, shall form a quorum for the transaction of business at any meeting of the board.



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sence from the departments on the part of said clerks or other employees, in excess of such leave of absence as may be granted by the heads thereof, which shall not exceed thirty days in any one year, except in case of sickness, shall be without pay.

Repeal.

SEC. 5. That all acts or parts of acts inconsistent or in conflict with the provisions of this act are hereby repealed.

Approved, March 3, 1883.

Mar. 3, 1883.

CHAP. 129.—An act authorizing the Committee on Printing to instruct the Public Printer relative to the maps, and so forth, for the Census reports.

Printing maps, and illustrations for census reports, etc.

Public Printer authorized to accept private proposals, etc.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Public Printer is hereby authorized under the direction of the Joint Committee on Public Printing or of the Senate committee on printing in case there be no committee on the part of the House, to accept private proposals for printing the required number of copies of maps and other illustrations for the Census reports from plates or stones which were engraved under special appropriations for printing and engraving for the Tenth Census prior to the act of August seventh, eighteen hundred and eighty-two, whenever it shall clearly appear that expense can be saved thereby.

Approved, March 3, 1883.

Mar. 3, 1883.

CHAP. 130.—An act prescribing regulations for the Soldiers' Home located at Washington, in the District of Columbia, and for other purposes.

Regulations prescribed for Soldiers' Home, Washington, D. C., etc.
Board of Commissioners to make annual report, etc.

Secretary of War to transmit report, etc., to Congress.

Inspector-General of Army to inspect and make report, etc.

Expenditures limited, etc., except on approval of Board.

Supplies, how purchased.

Pension inmates of Home can allot portion of pension, etc.

Pensions, etc., to be paid to treasurer.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the board of commissioners of the Soldiers' Home shall every year report in writing to the Secretary of War, giving a full statement of all receipts and disbursements of money, of the manner in which the funds are invested of any changes in the investments and the reasons therefor, of all admissions and discharges, and generally of all facts that may be necessary to a full understanding of the condition and management of the Home. The Secretary of War shall have power to call for and require any omitted facts which in his judgment should be stated to be added. This annual report shall be, by the Secretary of War, together with the report of the inspecting officer hereinafter provided for, transmitted to Congress at the first session thereafter, and he shall also cause the same to be published in orders to the Army, a copy thereof to be deposited in each garrison and post library.

SEC. 2. That the Inspector General of the Army shall, in person, once in each year thoroughly inspect the Home, its records, accounts, management, discipline, and sanitary condition, and shall report thereon in writing, together with such suggestions as he desires to make.

SEC. 3. That no new buildings shall be erected or new grounds purchased, nor shall any expenditure of more than five thousand dollars be made, until the action of the board thereon shall be approved by the Secretary of War. All supplies that can be purchased upon contract shall be so purchased, after due notice by advertisement, of the lowest responsible bidder. Such bidder shall give bond, with proper security, for the performance of his contract.

SEC. 4. That any inmate of the Home who is receiving a pension from the government, and who has a child, wife, or parent living, shall be entitled, by filing with the pension agent from whom he receives his money a written direction to that effect, to have his pension, or any part of it, paid to such child, wife, or parent. The pensions of all who now are or shall hereafter become inmates of the Home, except such as shall be assigned as aforesaid, shall be paid to the treasurer of the Home. The money thus derived shall not become a part of the funds of the Home, but shall be held by the treasurer in trust for the pen-

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sioner to whom it would otherwise have been paid, and such part of it as shall not sooner have been paid to him shall be paid to him on his discharge from the institution. The board of commissioners may from time to time pay over to any inmate such part of his pension-money as they think best for his interest and consistent with the discipline and good order of the Home, but such pensioner shall not be entitled to demand or have the same so long as he remains an inmate of the Home. In case of the death of any pensioner, any pension money due him and remaining in the hands of the treasurer shall be paid to his legal heirs, if demand is made within three years; otherwise the same shall escheat to the Home.

Pension paid in full on discharge of pensioner from the Home.

Death of pensioner; money due, etc., paid to legal heirs.

SEC. 5. That a suitable uniform shall be furnished to every inmate of the Home, without cost to him.

Uniform to be furnished inmates free of cost.

SEC. 6. That the board of commissioners are authorized to aid persons who are entitled to admission to the Home, by out-door relief, in such manner and to such an extent as they may deem proper; but such relief shall not exceed the average cost of maintaining an inmate of the Home.

Aid to persons, etc., by out-door relief.

SEC. 7. That the Governor and all other officers of the Home shall be selected by the President of the United States, and the Treasurer of the Home shall be required to give a bond in the penal sum of twenty thousand dollars for the faithful performance of his duty.

Governor and officers selected by the President of the United States. Treasurer to give bond.

SEC. 8. That all funds of the Home not needed for current use, and which are not now invested in United States registered bonds, shall, as soon as received, or as soon as present investments can be converted into money without loss, be deposited in the Treasury of the United States to the credit of the Home, as a permanent fund, and shall draw interest at the rate of three per centum per annum, which shall be paid quarterly to the treasurer of the Home; and the proceeds of such registered bonds, as they are paid, shall be deposited in like manner. No part of the principal sum so deposited shall be withdrawn for use except upon a resolution of the board of commissioners stating the necessity and approved by the Secretary of War.

Funds, etc., of the Home to be deposited in the Treasury United States as a permanent fund. Interest.

SEC. 9. That no officers of the Home shall borrow any money on the credit of the Home for any purpose, nor shall any pledge of any of its property or securities for any purpose be valid.

Principal sum to be used only by resolution of board, etc.

Borrowing money on credit of Home prohibited.

SEC. 10. That the Board of Commissioners of the Soldiers' Home shall hereafter consist of the General in Chief commanding the Army, the Surgeon General, the Commissary General, the Adjutant General, the Quartermaster General, the Judge Advocate General and the Governor of the Home, and the General in Chief shall be President of the Board, and any four of them shall constitute a quorum for the transaction of business.

Board of Commissioners to consist of, etc.

SEC. 11. That all laws and parts of laws relating to the Soldiers' Home now in force and not inconsistent with this act are continued in force, and such as are inconsistent herewith are to that extent repealed.

Repeal.

SEC. 12. That the sum of ten thousand dollars is hereby appropriated out of any money in the Treasury not otherwise appropriated to be expended by the Secretary of the Treasury in the employment of additional clerical force to be used in adjusting the accounts in the Treasury Department of those funds which under the law belong to the Soldiers' Home.

Appropriation for clerical labor in adjusting accounts, etc.

Approved, March 3, 1883.

CHAP. 131.—An act to amend sections six and seven of the act providing for the publication of the Revised Statutes and the laws of the United States, approved June twentieth, eighteen hundred and seventy-six.

Mar. 3, 1883.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act approved June twentieth, eighteen hundred and seventy-six, be so amended as to in-

Increase of number of pamphlet

PL 101-510, November 5, 1990, 104 Stat 1485

UNITED STATES PUBLIC LAWS

101st Congress - Second Session

Convening January 23, 1990

Additions and Deletions are not identified in this document.

8848

PL 101-510 (HR 4739)

November 5, 1990

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1991

An Act to authorize appropriations for fiscal year 1991 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the “National Defense Authorization Act for Fiscal Year 1991”.

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS

(a) DIVISIONS.—This Act is organized into four divisions as follows:

- (1) Division A—Department of Defense Authorizations.
- (2) Division B—Military Construction Authorizations.
- (3) Division C—Department of Energy National Security Authorizations and Other Authorizations.
- (4) Division D—Economic Adjustment, Diversification, Conversion, and Stabilization.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Organization of Act into divisions; table of contents.

Sec. 3. Congressional defense committees defined.

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(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sum as may be necessary to carry out this section.

<< 31 USCA § 5111 NOTE >>

SEC. 1493. YOSEMITE NATIONAL PARK CENTENNIAL MEDAL

(a) STRIKING AND DESIGN OF MEDALS.—In commemoration of the centennial of Yosemite National Park in 1990, the Secretary of the Treasury (hereafter in this section referred to as the “Secretary”) shall strike medals with suitable emblems, devices, and inscriptions capturing the scenic and historic significance of the park. The design of the medals shall be determined by the Secretary in consultation with the Secretary of the Interior and the Commission on Fine Arts.

(b) SALE OF MEDALS.—(1) Notwithstanding any other provision of law, the medals issued under this section shall be sold by the Secretary at a price equal to the cost of designing and issuing such medals (including labor, materials, dies, use of machinery, and overhead expenses) and the surcharge provided for in paragraph (3).

(2) The Secretary shall make bulk sales at a reasonable discount.

(3) The sale of each medal shall include a surcharge of \$2.

(c) DISTRIBUTION OF SURCHARGES.—Proceeds realized from surcharges on medals sold under this section shall be promptly paid by the Secretary to a permanent endowment fund for the benefit of Yosemite National Park. Such endowment shall be administered by the National Park Foundation. The net income from the fund shall be paid to the Secretary of the Interior for funding special supplemental projects relating to (1) back country trail development and rehabilitation, and (2) the preservation of Sequoia groves within the boundaries of Yosemite National Park.

(d) SALE OF MEDALS IN NATIONAL PARK FACILITIES.—The Secretary and the Secretary of the Interior shall enter into a memorandum of agreement to permit—

(1) the Secretary to deliver medals to the Secretary of the Interior; and

(2) the Secretary of the Interior to provide for the sale of the medals in National Park facilities.

(e) METAL CONTENT AND SIZE OF MEDALS.—The medals authorized to be struck and delivered under this section shall be struck in bronze and in the size determined by the Secretary in consultation with the Secretary of the Interior.

(f) EXAMINATION OF RECORDS.—The Comptroller General of the United States shall have the right to examine all books, documents, and other records of the National Park Foundation related to the medals authorized by this section.

<< 31 USCA § 5111 NOTE >>

SEC. 1494. NATIONAL MEDALS

The medals authorized by sections 1491, 1492, and 1493 are national medals for purposes of chapter 51 of title 31, United States Code.

TITLE XV—ARMED FORCES RETIREMENT HOME

<< 24 USCA § 401 NOTE >>

SEC. 1501. SHORT TITLE

This title may be cited as the “Armed Forces Retirement Home Act of 1991”.

<< 24 USCA § 401 >>

SEC. 1502. DEFINITIONS

For purposes of this title:

(1) The term “Retirement Home” means the Armed Forces Retirement Home established under section 1511(a).

(2) The term “Retirement Home Board” means the Armed Forces Retirement Home Board.

- (3) The term “Local Board” means a Board of Trustees established for each facility of the Retirement Home maintained as a separate establishment of the Retirement Home for administrative purposes.
- (4) The term “Director” means a Director of the Armed Forces Retirement Home appointed under section 1517(a).
- (5) The term “Fund” means the Armed Forces Retirement Home Trust Fund established under section 1519(a).
- (6) The term “Armed Forces” does not include the Coast Guard when it is not operating as a service in the Navy.
- (7) The term “chief personnel officers” means—
- (A) the Deputy Chief of Staff for Personnel of the Army;
 - (B) the Chief of Naval Personnel;
 - (C) the Deputy Chief of Staff, Manpower and Personnel of the Air Force; and
 - (D) the Deputy Chief of Staff for Manpower of the Marine Corps.
- (8) The term “senior noncommissioned officers” means the following:
- (A) The Sergeant Major of the Army.
 - (B) The Master Chief Petty Officer of the Navy.
 - (C) The Chief Master Sergeant of the Air Force.
 - (D) The Sergeant Major of the Marine Corps.

PART A—ESTABLISHMENT AND OPERATION OF RETIREMENT HOME

<< 24 USCA § 411 >>

SEC. 1511. ESTABLISHMENT OF THE ARMED FORCES RETIREMENT HOME

- (a) INCLUSION OF EXISTING HOMES.—The United States Soldiers' and Airmen's Home and the Naval Home are hereby incorporated into an independent establishment in the Executive branch of the Federal Government to be known as the Armed Forces Retirement Home.
- (b) PURPOSE.—The purpose of the Retirement Home is to provide, through the United States Soldiers' and Airmen's Home and the Naval Home, a residence and related services for certain retired and former members of the Armed Forces.
- (c) OPERATION.—Each facility of the Retirement Home maintained as a separate establishment of the Retirement Home for administrative purposes shall be operated by a Director under the overall supervision of the Armed Forces Retirement Home Board.
- (d) PROPERTY AND FACILITIES.—(1) The Retirement Home shall consist of such property and facilities as may be transferred to the Retirement Home or acquired by the Retirement Home Board for inclusion in the Retirement Home.
- (2) On the effective date specified in section 1541(a), the property and facilities known and operated as the Naval Home and the United States Soldiers' and Airmen's Home shall be transferred to, and made a part of, the Retirement Home.
- (e) ACCREDITATION.—The Retirement Home Board shall endeavor to secure for each facility of the Retirement Home maintained as a separate establishment of the Retirement Home for administrative purposes the accreditation of that facility by a nationally recognized civilian accrediting organization, such as the Continuing Care Accreditation Commission and the Joint Commission for Accreditation of Health Organizations.

<< 24 USCA § 412 >>

SEC. 1512. RESIDENTS OF RETIREMENT HOME

- (a) PERSONS ELIGIBLE TO BE RESIDENTS.—Except as provided in subsection (b), the following persons who served as members of the Armed Forces, at least one-half of whose service was not active commissioned service (other than as a warrant officer or limited-duty officer), are eligible to become residents of the Retirement Home:
- (1) Persons who—
- (A) are 60 years of age or over; and
 - (B) were discharged or released from service in the Armed Forces under honorable conditions after 20 or more years of active service.

(2) Persons who are determined under rules prescribed by the Retirement Home Board to be incapable of earning a livelihood because of a service-connected disability incurred in the line of duty in the Armed Forces.

(3) Persons who—

(A) served in a war theater during a time of war declared by Congress or were eligible for hostile fire special pay under section 310 of title 37, United States Code;

(B) were discharged or released from service in the Armed Forces under honorable conditions; and

(C) are determined under rules prescribed by the Retirement Home Board to be incapable of earning a livelihood because of injuries, disease, or disability.

(4) Persons who—

(A) served in a women's component of the Armed Forces before the enactment of the Women's Armed Services Integration Act of 1948; and

(B) are determined under rules prescribed by the Retirement Home Board to be eligible for admission because of compelling personal circumstances.

(b) PERSONS INELIGIBLE TO BE RESIDENTS.—A person described in subsection (a) who has been convicted of a felony or is not free of drug, alcohol, or psychiatric problems shall be ineligible to become a resident of the Retirement Home.

(c) ACCEPTANCE.—To apply for acceptance as a resident of a facility of the Retirement Home, a person eligible to be a resident shall submit to the Director of that facility an application in such form and containing such information as the Retirement Home Board may require.

(d) PRIORITIES FOR ACCEPTANCE.—The Retirement Home Board shall establish a system of priorities for the acceptance of residents so that the most deserving applicants will be accepted whenever the number of eligible applicants is greater than the Retirement Home can accommodate.

(e) EFFECT OF DEPARTURE.—A resident of the Retirement Home who leaves the Retirement Home for more than 45 consecutive days (other than for inpatient medical care) shall be required to reapply for acceptance as a resident.

(f) APPLICATION OF ELIGIBILITY REQUIREMENTS TO CURRENT RESIDENTS OF THE NAVAL HOME AND THE SOLDIERS' AND AIRMEN'S HOME.—Residents of the Naval Home and the United States Soldiers' and Airmen's Home as of the effective date specified in section 1541(a)—

(1) shall not be required to apply for acceptance as residents of the Retirement Home; and

(2) shall become residents of the Retirement Home on that date.

<< 24 USCA § 413 >>

SEC. 1513. SERVICES PROVIDED RESIDENTS

(a) SERVICES PROVIDED.—Except as provided in subsection (b), a resident of the Retirement Home shall receive the services authorized by the Retirement Home Board.

(b) MEDICAL AND DENTAL CARE.—The Retirement Home shall provide for the overall health care needs of residents in a high quality and cost-effective manner, including on site primary care, medical care, and a continuum of long-term care services. Secondary and tertiary hospital care for residents that is not available at the Retirement Home shall be obtained through agreements with facilities administered by the Secretary of Veterans Affairs or the Secretary of Defense or at private facilities. The Retirement Home may not construct an acute care facility.

<< 24 USCA § 414 >>

SEC. 1514. FEES PAID BY RESIDENTS

(a) MONTHLY FEES.—The Directors shall collect from each resident of the Retirement Home a monthly fee.

(b) DEPOSIT OF FEES.—The Directors shall deposit fees collected under subsection (a) in the Armed Forces Retirement Home Trust Fund.

(c) FIXING FEES.—(1) The Retirement Home Board shall from time to time fix the fee required by subsection (a) on the basis of the financial needs of the Retirement Home and the ability of the residents to pay.

(2) The fee shall be fixed as a percentage of Federal payments made to a resident, including monthly retired or retainer pay, monthly civil service annuity, monthly compensation or pension paid to the resident by the Secretary of Veterans Affairs, and Social Security payments. Residents who do not receive such Federal payments shall be required to pay a monthly fee that is equivalent to the average monthly fee paid by residents who receive Federal payments, subject to such adjustments in the fee as the Retirement Home Board may make. The percentage shall be the same for each establishment of the Retirement Home.

(d) APPLICATION OF FEES TO CURRENT RESIDENTS OF THE NAVAL HOME AND THE SOLDIERS' AND AIRMEN'S HOME.—(1) Each resident of the Naval Home who becomes a resident of the Retirement Home on the effective date specified in section 1541(a) shall begin paying a monthly fee that is equal to 12.5 percent of the Federal payments made to the resident. Each year thereafter, the fee for such resident under this subsection shall be increased 2.5 percent until the percentage fixed under subsection (c) has been reached. Such percentage increase may be adjusted so that the conversion to the fee fixed under subsection (c) is accomplished under this subsection within six years after such effective date.

(2) A resident of the United States Soldiers' and Airmen's Home who becomes a resident of the Retirement Home on such date and who received Federal payments referred to in subsection (c) that were not considered for purposes of determining the resident's monthly fee for the United States Soldiers' and Airmen's Home shall have that fee increased by an amount that is equal to 12.5 percent of the monthly equivalent of those payments for the first year and 2.5 percent of the monthly equivalent of those payments each year thereafter until the percentage fixed pursuant to subsection (c) has been reached.

(e) APPLICATION OF FEES FOR NEW RESIDENTS.—A person who becomes a resident of the Retirement Home after the effective date specified in section 1541(a) shall be required to pay a monthly fee that is equal to 25 percent of Federal payments made to the resident, subject to such adjustments in the fee as may be made under subsection (c).

<< 24 USCA § 415 >>

SEC. 1515. COMPOSITION AND OPERATION OF RETIREMENT HOME BOARD

(a) ESTABLISHMENT.—There is hereby established the Armed Forces Retirement Home Board. The Retirement Home Board shall exercise policy oversight over the Retirement Home and oversee the activities of any local boards of trustees.

(b) MEMBERS.—The Retirement Home Board shall consist of not less than 16 members who shall be appointed by the Secretary of Defense, unless otherwise indicated, as follows:

- (1) One representative from the office of the Assistant Secretary of Defense (Force Management and Personnel).
- (2) One representative from the Department of Defense Comptroller's office.
- (3) One representative from the office of the Assistant Secretary of Defense (Health Affairs).
- (4) One representative from the office of the General Counsel of the Department of Defense.
- (5) Two persons who are experts in the operations of retirement homes and who are not officers or employees of the United States.
- (6) Two persons who are gerontologists and who are not officers or employees of the United States.
- (7) Two persons who are personnel chiefs of the Armed Forces.
- (8) Two persons who are senior noncommissioned officers of the Armed Forces.
- (9) One representative from the Office of Management and Budget who shall be designated by the Director of the Office of Management and Budget.
- (10) One representative from a national noncommissioned officer association or a military retiree council who shall be a nonvoting member of the Board.
- (11) One representative of the Secretary of Veterans Affairs who shall be designated by that Secretary.
- (12) One officer or employee of the Department of Health and Human Services who shall be designated by the Secretary of Health and Human Services.

(c) LOCAL BOARDS.—Each establishment of the Retirement Home shall have a Board of trustees which shall exercise operational oversight over the respective facility and provide reports to the Retirement Home Board at least twice annually. Each Local Board shall consist of at least 11 members appointed by the Secretaries of the military departments. The local boards shall consist of the following:

- (1) One person who is a civilian expert in nursing home or retirement home administration and financing from the geographical area of each facility.

- (2) One person who is a civilian expert in gerontology from the geographical area of each facility.
 - (3) One person who is a service expert in financial management.
 - (4) One representative from the Department of Veterans Affairs regional office nearest in proximity to each facility who shall be designated by the Secretary of Veterans Affairs.
 - (5) One representative from the resident advisory committee or council of the respective facility who shall be a nonvoting member.
 - (6) One enlisted representative of the Services' Retiree Advisory Council.
 - (7) The senior noncommissioned officer of an Armed Force.
 - (8) One senior representative from the military hospital nearest in proximity to each facility.
 - (9) One senior representative from the Judge Advocate General's Corps from one of the Armed Services.
 - (10) The director of the respective facility who shall be a nonvoting member.
 - (11) One senior representative of one of the chief personnel officers of the Armed Services.
- (d) CHAIRMEN.—(1) The Secretary of Defense shall select one of the members of the Retirement Home Board to serve as chairman. The term of office of the chairman of the Retirement Home Board shall be five years.
- (2) The Secretaries of the military departments shall select the chairman for each Local Board from the members of that board. The term of office of the chairman of a Local Board shall be three years.
- (e) TERMS.—(1) Except as provided in subsection (f), the term of office of each member of the Retirement Home Board and each Local Board shall be five years.
- (2) A member whose term of office has expired may continue to serve until the successor for the member is appointed or designated.
- (f) FIRST APPOINTMENT AND DESIGNATION.—Not later than the effective date specified in section 1541(a), members of the Retirement Home Board and the members of each Local Board shall be first appointed to staggered terms.
- (g) VACANCIES.—(1) A vacancy in the Retirement Home Board or a Local Board shall be filled in the manner in which the original appointment or designation was made.
- (2) A member appointed or designated to fill a vacancy occurring before the end of the term of the predecessor of the member shall be appointed or designated, as the case may be, for the remainder of the term for which the predecessor was appointed.
- (3) A vacancy in the Retirement Home Board or a Local Board shall not affect its authority to perform its duties.
- (h) COMPENSATION.—(1) Except as provided in paragraph (2), members of the Retirement Home Board and members of the Local Boards shall—
- (A) be provided a stipend consistent with the daily government consultant fee for each day in which the member is engaged in the performance of services for the Retirement Home Board or a Local Board; and
 - (B) while away from home or regular place of business in the performance of services for the Retirement Home Board or a Local Board, be allowed travel expenses (including per diem in lieu of subsistence) in the same manner as a person employed intermittently in Government under sections 5701 through 5707 of title 5, United States Code.
- (2) A member of the Retirement Home Board or a Local Board who is a member of the Armed Forces on active duty or a full-time officer or employee of the United States shall receive no additional pay by reason of service on the Retirement Home Board or a Local Board.
- (i) MEETINGS.—(1) The Retirement Home Board shall meet twice a year, or at more frequent intervals, at the call of the chairman or a majority of the members.
- (2) The first meeting of the Retirement Home Board shall be held during the 30-day period beginning on the later of—
- (A) the effective date specified in section 1541(a); and
 - (B) the date on which the last of the five members required by subsection (b) to be appointed is first appointed.

<< 24 USCA § 416 >>

SEC. 1516. DUTIES OF RETIREMENT HOME BOARD

(a) OVERALL OPERATION OF THE RETIREMENT HOME.—The Retirement Home Board shall be responsible for the overall operation of the Retirement Home. As part of such responsibilities, the Retirement Home Board shall perform the following duties:

- (1) Issue and ensure compliance with appropriate rules for the operation of the Retirement Home.
- (2) Periodically visit, and inspect the operation of, the facilities of the Retirement Home.
- (3) Periodically examine and audit the accounts of the Retirement Home.
- (4) Establish such advisory bodies as the Retirement Home Board considers to be necessary.
- (b) SPECIAL DUTIES OF SPECIFIC MEMBERS.—The Retirement Home Board shall assign specific members of the Retirement Home Board appointed under section 1515(b) to oversee the operations of each facility of the Retirement Home maintained as a separate establishment of the Retirement Home for administrative purposes.
- (c) ACQUISITION OF REAL PROPERTY.—The Retirement Home Board may acquire, for the benefit of the Retirement Home, property and facilities for inclusion in the Retirement Home.
- (d) LIMITATION ON THE DISPOSAL OF REAL PROPERTY.—(1) Real property of the Retirement Home may not be disposed of by the Retirement Home Board by sale or otherwise unless the disposal of the property is specifically authorized by law.
- (2) In any case in which any real property is sold by the Retirement Home Board, the Board shall deposit moneys received from the sale of the property in the Armed Forces Retirement Home Trust Fund.
- (e) GIFTS.—(1) The Retirement Home Board may accept gifts of money, property, and facilities on behalf of the Retirement Home.
- (2) Monies received as gifts, or realized from the disposition of property and facilities received as gifts, shall be deposited in the Fund.
- (f) ANNUAL REPORT.—Not later than 90 days after the end of each fiscal year, the Retirement Home Board shall submit to the Secretary of Defense, for transmission to Congress, a report describing the financial and other affairs of the Retirement Home for that fiscal year.

<< 24 USCA § 417 >>

SEC. 1517. DIRECTORS AND STAFF

- (a) APPOINTMENT AND QUALIFICATIONS.—(1) The Secretary of Defense shall appoint a Director for each separate establishment of the Retirement Home.
- (2) Each Director shall be appointed from among persons recommended by the Retirement Home Board who—
 - (A) are not officers of the Armed Forces on active duty; and
 - (B) have appropriate leadership and management skills, an appreciation and understanding of the culture and norms associated with military service, and a significant military background.
- (3) Each Director shall be required to pursue a course of study to receive certification as a retirement facilities director by an appropriate civilian certifying organization if the Director is not so certified at the time of appointment.
- (b) APPLICATION OF CIVIL SERVICE LAWS TO APPOINTMENT AND FIXING PAY.—The Secretary of Defense may appoint the Director referred to in subsection (a) and Deputy Directors for the Retirement Home without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.
- (c) TERM OF DIRECTOR.—The term of office of a Director shall be five years. A Director may be reappointed for one additional term upon the completion of the first term of office unless the Director has failed to successfully complete a course of study to receive certification as a retirement facilities director.
- (d) DUTIES OF DIRECTORS.—(1) A Director shall be responsible for the day-to-day operation of the facility of the Retirement Home for which the Director is appointed, including the acceptance of applicants to be residents of that facility.
- (2) The Director shall keep accurate and complete records of the operations of that facility of the Retirement Home.
- (e) STAFF.—(1) A Director, subject to the approval of the Retirement Home Board, may appoint and fix the pay of such principal staff as the Director considers appropriate to assist the Director in operating the facility of the Retirement Home for which the Director is appointed.
- (2) The staff shall include persons with experience and expertise in the operation and management of retirement homes and in the provision of long-term medical care for older persons.
- (3) The Director may exempt four physicians employed at the Retirement Home from the provisions of subsections (a), (b), and (c) of section 5532 of title 5, United States Code, if the Director determines that the exemption is necessary to recruit or

retain well-qualified physicians for the Retirement Home. An exemption granted under this section shall apply to the retired pay of the physician payable for the first month after the month in which the exemption is granted and shall terminate upon any break in employment with the Retirement Home of three days or more.

(f) INITIAL OPERATION.—(1) Until the date on which the Secretary of Defense first appoints the Director for the establishment of the Retirement Home known as the Naval Home, the Governor of the Naval Home shall operate that facility consistent with this Act and other laws applicable to the Retirement Home.

(2) Until the date on which the Secretary of Defense first appoints the Director for the facility of the Retirement Home known as the United States Soldiers' and Airmen's Home, the Governor of the United States Soldiers' and Airmen's Home shall operate that establishment consistent with this Act and other laws applicable to the Retirement Home.

<< 24 USCA § 418 >>

SEC. 1518. INSPECTION BY INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

The Inspector General of the Department of Defense shall—

(1) conduct, not later than three years after the effective date specified in section 1541(a) (and at six-year intervals thereafter), an inspection of the Retirement Home and the records of the Retirement Home;

(2) cause the Inspector Generals of the military departments to conduct an inspection of the Retirement Home and its records at six-year intervals alternating with the inspections by the Inspector General of the Department of Defense so that each home is inspected every three years; and

(3) submit to the Retirement Home Board, the Secretary of Defense, and Congress a report describing the results of the inspection and containing such recommendations as the Inspector General considers appropriate.

<< 24 USCA § 419 >>

SEC. 1519. RETIREMENT HOME TRUST FUND

(a) ESTABLISHMENT.—There is hereby established in the Treasury of the United States a trust fund to be known as the Armed Forces Retirement Home Trust Fund. The Fund shall consist of the following:

(1) Such amounts as may be transferred to the Fund.

(2) Moneys deposited in the Fund by the Retirement Home Board realized from gifts or from the disposition of property and facilities.

(3) Amounts deposited in the Fund as monthly fees paid by residents of the Retirement Home under section 1514.

(4) Amounts of fines and forfeitures deposited in the Fund under section 2772 of title 10, United States Code.

(5) Amounts deposited in the Fund as deductions from the pay of enlisted members, warrant officers, and limited duty officers under section 1007(i) of title 37, United States Code.

(6) Interest from investments made under subsection (c).

(b) AVAILABILITY AND USE OF FUND.—Amounts in the Fund shall be available solely for the operation of the Retirement Home.

(c) INVESTMENTS.—The Secretary of the Treasury may invest in obligations issued or guaranteed by the United States any monies in the Fund that the Director determines are not currently needed to pay for the operation of the Retirement Home.

(d) TRANSITIONAL ACCOUNTS.—(1) During the period beginning on the date of the enactment of this Act and ending on September 30, 1994, the Fund shall contain a separate account for each establishment of the Retirement Home. During that period, contributions shall be collected under subsection (a) for the account of the Naval Home for the purpose of achieving a trust fund five times the estimated annual operating budget of the Naval Home.

(2) Beginning on the date of the enactment of this Act, funds required for the operation of the United States Soldiers' and Airmen's Home shall be drawn from the appropriate account. Beginning on October 1, 1991, funds required for the operation of the Naval Home shall be drawn from the account of the Naval Home.

(3) During the period beginning on the date of the enactment of this Act and ending on September 30, 1994—

(A) amounts collected as monthly fees paid by residents of the Naval Home and amounts referred to in subsections (a)(4) and (a)(5) derived from enlisted members, warrant officers, and limited duty officers of the Navy, Marine Corps, and Coast Guard shall be credited to the account relating to that establishment; and

(B) amounts collected as monthly fees paid by residents of the United States Soldiers' and Airmen's Home and amounts referred to in subsections (a)(4) and (a)(5) derived from members and warrant officers of the Army and Air Force shall be credited to the account relating to that establishment.

<< 24 USCA § 420 >>

SEC. 1520. DISPOSITION OF EFFECTS OF DECEASED PERSONS; UNCLAIMED PROPERTY

(a) EFFECTS OF DECEASED PERSONS.—The Directors of the establishments of the Retirement Home shall safeguard and dispose of the effects of a deceased person delivered to the Retirement Home under section 4712(f) or 9712(f) of title 10, United States Code, and the estate and effects of a deceased resident of the Armed Forces Retirement Home as follows:

(1) A will or other paper involving property rights shall be promptly delivered to the proper court of record.

(2) If the heirs or legal representative of the deceased cannot sooner be ascertained, the Directors shall retain the remaining effects until three years after the death of the deceased, and then, if a right to the effects is established to the satisfaction of the Directors, shall deliver the effects to the living person highest on the following list who can be found:

(A) The surviving spouse or legal representative.

(B) A child of the deceased.

(C) A parent of the deceased.

(D) A brother or sister of the deceased.

(E) The next-of-kin of the deceased.

(F) A beneficiary named in the will of the deceased.

(b) SALE OF EFFECTS.—(1) After three years from the date of death of the deceased, the Directors may sell the effects to which a right has not been established under subsection (a) (except decorations, medals, and citations) by public or private sale, as the Directors consider most advantageous.

(2) After five years from the date of death of the deceased, the Directors shall dispose of effects that were not sold under paragraph (1) (including decorations, medals, and citations) and to which a right has not been established under subsection (a). The sale shall be made in the manner that the Directors consider most appropriate in the public interest. Disposal may include—

(A) retaining the effects for the use of the Retirement Home;

(B) delivering the effects to the Secretary of Veterans Affairs, to a State or other military home, to a museum, or to any other appropriate institution; or

(C) destroying the effects if the Retirement Home Board determines that they are valueless.

(c) TRANSFER OF PROCEEDS TO THE FUND.—The net proceeds received by the Directors from the sale of effects under subsection (b) shall be deposited in the Fund.

(d) SUBSEQUENT CLAIM.—(1) A claim for the net proceeds of the sale under subsection (b) of the effects of a deceased may be filed with the Comptroller General of the United States at any time within six years after the death of the deceased, for action under section 2771 of title 10, United States Code.

(2) A claim referred to in paragraph (1) may not be considered by a court or the Comptroller General unless the claim is filed within the time period prescribed in such paragraph.

(3) A claim allowed by the Comptroller General under paragraph (1) shall be certified to the Secretary of the Treasury for payment from the Fund in the amount found due, including any interest relating to the amount. No claim may be allowed or paid in excess of the net proceeds of the estate deposited in the Fund under subsection (c) plus interest.

(e) UNCLAIMED PROPERTY.—In the case of property delivered to the Retirement Home under section 2575 of title 10, United States Code, the Directors shall deliver the property to the owner, the heirs or next of kin of the owner, or the legal representative of the owner, if a right to the property is established to the satisfaction of the Directors within two years after the delivery.

PART B—TRANSITIONAL PROVISIONS

<< 24 USCA § 431 >>

SEC. 1531. TRANSFER OF TRUST FUNDS RELATING TO THE NAVAL HOME AND THE SOLDIERS' AND AIRMEN'S HOME

(a) INITIAL TRANSFER.—(1) On the date of the enactment of this Act, all monies in the funds named in paragraph (2) shall be transferred to the appropriate account in the Armed Forces Retirement Home Trust Fund, and those funds shall terminate.

(2) The funds referred to in paragraph (1) are the following:

(A) Soldiers' Home, permanent fund, referred to in paragraph (59) of section 1321(a) of title 31, United States Code.

(B) Soldiers' Home, interest fund, referred to in paragraph (81) of such section.

(C) Personal funds of deceased inmates, Naval Home, referred to in paragraph (5) of such section.

(D) Any new category of funds created for the Naval Home or the United States Soldiers' and Airmen's Home before that date.

(b) SUBSEQUENT TRANSFERS.—After the termination of the funds referred to in subsection (a), any monies that would be deposited into one of those funds but for the termination of that fund under subsection (a) shall be deposited into the Armed Forces Retirement Home Trust Fund.

SEC. 1532. REPEAL OF PROVISIONS RELATING TO THE NAVAL HOME AND THE UNITED STATES SOLDIERS' AND AIRMEN'S HOME

(a) LAWS RELATING TO THE NAVAL HOME.—The following provisions of law are repealed:

<< 24 USCA § 21a >>

(1) Section 11 of the Act of August 2, 1946 (60 Stat. 854; 24 U.S.C. 21a).

<< 24 USCA § 21b >>

(2) Section 9 of the Act of June 26, 1934 (48 Stat. 1229; 24 U.S.C. 21b).

<< 24 USCA §§ 22, 23 >>

(3) The second, third, fourth, and fifth provisos relating to the maintenance of the Naval Home under the heading “BUREAU OF NAVIGATION” in the Act of June 30, 1914 (38 Stat. 398; 24 U.S.C. 22, 23).

<< 24 USCA § 24 >>

(4) The proviso relating to the maintenance of the Naval Home under the heading “BUREAU OF NAVIGATION” in the Act of March 4, 1917 (39 Stat. 1175; 24 U.S.C. 24).

<< 24 USCA § 25 >>

(5) The first proviso relating to miscellaneous expenses of the Naval Home under the heading “BUREAU OF NAVIGATION” of the Act of August 22, 1912 (37 Stat. 334; 24 U.S.C. 25).

(b) LAWS RELATING TO THE SOLDIERS' AND AIRMEN'S HOME.—The following provisions of law are repealed:

<< 24 USCA §§ 41, 43, 45, 49, 50, 54 >>

(1) Chapter 2 of title LIX of the Revised Statutes of the United States (24 U.S.C. 41, 43, 45, 49, 50).

<< 24 USCA §§ 41, 43, 46, 48, 59 >>

(2) The Act entitled “An Act prescribing regulations for the Soldiers' Home located at Washington in the District of Columbia, and for other purposes”, approved March 3, 1883 (22 Stat. 564; 24 U.S.C. 41, 43, 46, 48, 59).

<< 24 USCA §§ 41, 42 >>

(3) The proviso relating to the military prison at Fort Leavenworth, Kansas, under the heading “MISCELLANEOUS OBJECTS, WAR DEPARTMENT” in the Act of March 4, 1909 (35 Stat. 1004; 24 U.S.C. 42).

<< 24 USCA § 44b >>

(4) Section 1 of Public Law 94–454 (90 Stat. 1518; 24 U.S.C. 44b).

<< 24 USCA § 46a >>

(5) The proviso under the heading “UNITED STATES SOLDIERS' HOME” in title II of the Act of April 9, 1935 (49 Stat. 147; 24 U.S.C. 46a).

<< 24 USCA § 46b >>

(6) The proviso under the heading “UNITED STATES SOLDIERS' HOME” in the Act of July 19, 1937 (50 Stat. 519; 24 U.S.C. 46b).

SEC. 1533. CONFORMING AMENDMENTS

(a) TITLE 10.—Title 10, United States Code, is amended as follows:

<< 10 USCA § 1089 >>

(1) Section 1089 is amended—

(A) in subsection (a) by striking out “United States Soldiers' and Airmen's Home” and inserting in lieu thereof “Armed Forces Retirement Home”; and

(B) in subsection (g), by striking out paragraph (3) and inserting in lieu thereof the following:

“(3) the Armed Forces Retirement Home Board, in the case of an employee of the Armed Forces Retirement Home; and”.

<< 10 USCA § 2575 >>

(2) Section 2575 is amended—

(A) in subsection (a), by striking out “section 4712, 4713, 6522, 9712, or 9713” and inserting in lieu thereof “section 4712, 6522, or 9712”; and

(B) in subsection (c)—

(i) by striking out “United States Soldiers' and Airmen's Home” and inserting in lieu thereof “Armed Forces Retirement Home”;

(ii) by striking out “the Secretary of the Army or the Secretary of the Air Force,” and inserting in lieu thereof “the Secretary of a military department,”; and

(iii) by striking out the last sentence of such subsection.

<< 10 USCA § 2772 NOTE >>

(3) Effective on the date of the enactment of this Act, section 2772 is amended—

<< 10 USCA § 2772 >>

(A) by inserting “and forfeitures” after “fines” both places it appears; and

(B) by striking out “or warrant officer” each place it appears and inserting in lieu thereof “, warrant officer, or limited duty officer”.

(4)(A) Section 2772 is amended to read as follows:

“§ 2772. Share of fines and forfeitures to benefit Armed Forces Retirement Home

“(a) DEPOSIT REQUIRED.—The Secretary of the military department concerned shall deposit in the Armed Forces Retirement Home Trust Fund a percentage (determined under subsection (b)) of the following amounts:

“(1) The amount of forfeitures and fines adjudged against an enlisted member, warrant officer, or limited duty officer of the armed forces by sentence of a court martial or under authority of section 815 of this title (article 15) over and above any amount that may be due from the member, warrant officer, or limited duty officer for the reimbursement of the United States or any individual.

“(2) The amount of forfeitures on account of the desertion of an enlisted member, warrant officer, or limited duty officer of the armed forces.

“(b) DETERMINATION OF PERCENTAGE.—The Armed Forces Retirement Home Board shall determine, on the basis of the financial needs of the Armed Forces Retirement Home, the percentage of the amounts referred to in subsection (a) to be deposited in the trust fund referred to in such subsection.

“(c) APPLICATION TO COAST GUARD.—In this section, the term ‘armed forces’ does not include the Coast Guard when it is not operating as a service in the Navy.”.

<< 10 USCA Ch. 165 >>

(B) The item relating to such section in the table of sections at the beginning of chapter 165 is amended by striking out “retirement homes” and inserting in lieu thereof “Retirement Home”.

<< 10 USCA § 4624 >>

(5)(A) Section 4624(c) is amended by striking out “United States Soldiers' and Airmen's Home” and inserting in lieu thereof “Armed Forces Retirement Home”.

(B) The heading of such section is amended to read as follows:

“§ 4624. Medical supplies: civilian employees of the Army; American National Red Cross; Armed Forces Retirement Home”.

<< 10 USCA Ch. 439 >>

(C) The item relating to such section in the table of sections at the beginning of chapter 439 is amended to read as follows: “4624. Medical supplies: civilian employees of the Army; American National Red Cross; Armed Forces Retirement Home.”.

<< 10 USCA § 4712 >>

(6) Section 4712 is amended—

(A) in subsection (a)(2), by striking out “an inmate of the United States Soldiers' and Airmen's Home” and inserting in lieu thereof “a resident of the Armed Forces Retirement Home”; and

(B) in subsection (f)—

(i) by striking out “for transmission to the United States Soldiers' and Airmen's Home”; and

(ii) by adding at the end the following: “The Secretary of the Army shall deliver to the Armed Forces Retirement Home all items received by the executive part of the Department of the Army under this subsection.”.

<< 10 USCA § 4713 >>

(7)(A) Section 4713 is repealed.

<< 10 USCA Ch. 445 >>

(B) The table of sections at the beginning of chapter 445 is amended by striking out the item relating to such section.

<< 10 USCA § 9624 >>

(8)(A) Section 9624(c) is amended by striking out “United States Soldiers' and Airmen's Home” and inserting in lieu thereof “Armed Forces Retirement Home”.

(B) The heading of such section is amended to read as follows:

“§ 9624. Medical supplies: civilian employees of the Air Force; American National Red Cross; Armed Forces Retirement Home”.

<< 10 USCA Ch. 939 >>

(C) The item relating to such section in the table of sections at the beginning of chapter 939 is amended to read as follows: “9624. Medical supplies: civilian employees of the Air Force; American National Red Cross; Armed Forces Retirement Home.”.

<< 10 USCA § 9712 >>

(9) Section 9712 is amended—

(A) in subsection (a)(2), by striking out “an inmate of the United States Soldiers' and Airmen's Home” and inserting in lieu thereof “a resident of the Armed Forces Retirement Home”; and

(B) in subsection (f)—

(i) by striking out “for transmission to the United States Soldiers' and Airmen's Home”; and

(ii) by adding at the end the following: “The Secretary of the Air Force shall deliver to the Armed Forces Retirement Home all items received by the executive part of the Department of the Air Force under this subsection.”

<< 10 USCA § 9713 >>

(10)(A) Section 9713 is repealed.

<< 10 USCA Ch. 945 >>

(B) The table of sections at the beginning of chapter 945 is amended by striking out the item relating to section 9713.

<< 37 USCA § 1007 >>

(b) TITLE 37.—Section 1007(i) of title 37, United States Code, is amended—

(1) in paragraphs (1), (2)(B), and (3), by striking out “and warrant officer” and inserting in lieu thereof “, warrant officer, and limited duty officer”;

(2) by striking out paragraph (2) and inserting in lieu thereof the following:

“(2) Amounts deducted under paragraph (1) shall be deposited in the Armed Forces Retirement Home Trust Fund.”;

(3) in paragraph (3)—

(A) by striking out “the Governor” and all that follows through “Airmen's Home,” and inserting in lieu thereof “the Armed Forces Retirement Home Board,”; and

(B) by striking out “the homes” and inserting in lieu thereof “the Armed Forces Retirement Home”; and

(4) in paragraph (5), by striking out “or warrant officer” and inserting in lieu thereof “, warrant officer, or limited duty officer”.

<< 31 USCA § 1321 >>

(c) OTHER LAWS.—(1) Section 1321 of title 31, United States Code, is amended—

(A) in subsection (a)—

(i) by striking out paragraph (5) and inserting in lieu thereof the following:

“(5) Armed Forces Retirement Home Trust Fund.”; and

(ii) by striking out paragraphs (59) and (81); and

(B) in subsection (b), by striking out “Soldiers' Home, Permanent Fund” both places it appears and inserting in lieu thereof “Armed Forces Retirement Home Trust Fund”.

<< 24 USCA § 6a >>

(2) Section 3 of the Act of June 15, 1943 (chapter 125; 57 Stat. 153; 24 U.S.C. 6a) is amended by striking out “naval home or”.

<< 44 USCA § 906 >>

(3) Section 906 of title 44, United States Code, is amended in the undesignated subparagraph relating to the provision of the Congressional Record to the United States Soldiers' Home by striking out “the United States Soldiers' Home and” and inserting in lieu thereof “each separate establishment of the Armed Forces Retirement Home,”.

PART C—EFFECTIVE DATE AND AUTHORIZATION OF APPROPRIATIONS

<< 10 USCA §§ 1089 nt, 2575 nt, 2772 nt, 4624 nt, 4712 nt, 4713 nt, 9624 nt, 9712 nt, 9713 nt >>

<< 24 USCA §§ 6a nt, 21a nt, 21b nt, 22 nt, 23 nt, 24 nt, 25 nt, 41 nt, 42 nt, 43 nt,
44b nt, 45 nt, 46 nt, 46a nt, 46b nt, 48 nt, 49 nt, 50 nt, 54 nt, 59 nt, 401 NOTE, 411 nt,
412 nt, 413 nt, 414 nt, 415 nt, 416 nt, 417 nt, 418 nt, 419 nt, 420 nt, 431 nt, 441 nt >>

<< 31 USCA § 1321 nt >>

<< 37 USCA § 1007 nt >>

<< 44 USCA § 906 nt >>

SEC. 1541. EFFECTIVE DATE

(a) IN GENERAL.—Except where otherwise specified, this title and the amendments made by this title shall take effect one year after the date of the enactment of this Act.

(b) ESTABLISHMENT OF FUND.—Sections 1519, 1531, and 1533(c)(1) shall take effect on the date of the enactment of this Act.

(c) APPOINTMENT OF BOARD.—The provisions of section 1515 relating to the appointment and designation of members of the Retirement Home Board and Local Boards shall take effect on October 1, 1991.

<< 24 USCA § 441 >>

SEC. 1542. AUTHORIZATION OF APPROPRIATIONS FOR THE UNITED STATES SOLDIERS' AND AIRMEN'S HOME

There is authorized to be appropriated for fiscal year 1991 from the Soldiers' Home, Permanent Fund, the sum of \$53,999,000 for the operation of the United States Soldiers' and Airmen's Home. This section shall take effect on the date of the enactment of this Act.

TITLE XVI—CHARTER FOR 82ND AIRBORNE DIVISION ASSOCIATION, INCORPORATED

<< 36 USCA § 4801 >>

SEC. 1601. CHARTER

The 82nd Airborne Division Association, Incorporated, a nonprofit corporation organized under the laws of the State of Illinois, is recognized as such and is granted a Federal charter.

<< 36 USCA § 4802 >>



72d CONGRESS. SESS. I. CHS. 194-197. MAY 20, 1932.

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shall be the same as in the United States district courts and all cases coming within the admiralty jurisdiction of said tribunals shall be determined in accordance with the general admiralty laws of the United States of America.

Approved, May 20, 1932.

[CHAPTER 195.]

AN ACT

To authorize the sale of interest in lands devised to the United States under the will of Sophie Chanquet.

May 20, 1932.
[S. 694.]

[Public, No. 141.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Administrator of Veterans' Affairs is hereby authorized to sell all right, title, and interest acquired by the United States under the will of Sophie Chanquet, deceased, in lands situate in the counties of Alameda and San Francisco, State of California, upon such terms and after such public notice by advertisement as he may deem best for the public interest, and to make, execute, and deliver all needful conveyances. The net proceeds of such sale shall be paid into the Treasury of the United States as miscellaneous receipts.

Sophie Chanquet.
Sale of interest in
lands acquired under
will of, authorized.

Proceeds covered in-
to Treasury.

Approved, May 20, 1932.

[CHAPTER 196.]

AN ACT

To remove the limitation upon the filling of vacancy of district judge for the district of New Jersey.

May 20, 1932.
[S. 1335.]

[Public, No. 142.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, authorized and directed, by and with the advice and consent of the Senate, to appoint a judge to fill a vacancy in the District Court of the United States for the District of New Jersey, occasioned by the death of Honorable William A. Runyon, who was appointed as additional judge in said district under the provisions of the Act of Congress entitled "An Act for the appointment of an additional circuit judge for the fourth judicial circuit, for the appointment of additional district judges for certain districts, providing for an annual conference of certain judges, and for other purposes," approved September 14, 1922 (U. S. C., title 28, sec. 3). A vacancy occurring at any time in the office of district judge referred to in this Act is authorized to be filled.

New Jersey judicial
district.
Filling vacancy of
additional judge, au-
thorized.

Vol. 42, p. 837; U. S.
C., p. 864, amended.

Vacancy hereafter to
be filled.

Approved, May 20, 1932.

[CHAPTER 197.]

AN ACT

To authorize the transfer of jurisdiction over public land in the District of Columbia.

May 20, 1932.
[S. 2498.]

[Public, No. 143.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Federal and District authorities administering properties within the District of Columbia owned by the United States or by the said District are hereby authorized to transfer jurisdiction over parts or all of such properties among or between themselves for purposes of administration and maintenance under such conditions as may be mutually

District of Colum-
bia.
Administration, etc.,
of public lands.

Provisos.
Recommendation by
National Capital Park
and Planning Com-
mission.
Report to Congress.

Existing laws not
affected.

agreed upon: *Provided*, That prior to the consummation of any transfer hereunder such proposed transfer shall be recommended by the National Capital Park and Planning Commission: *Provided further*, That all such transfers and agreements shall be reported to Congress by the authorities concerned.

SEC. 2. Nothing in this Act shall be construed to repeal the provisions of any existing law or laws authorizing the transfer of jurisdiction of certain lands between and among Federal and District authorities, but all such laws shall remain in full force and effect.

Approved, May 20, 1932.

[CHAPTER 198.]

AN ACT

May 20, 1932.
[S. 4148.]
[Public, No. 144.]

To permit the United States to be made a party defendant in certain cases.

Lenawee County,
Mich.
Consent given to
name United States
party defendant in
clearing title, etc., to
certain lands in.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of the United States is given to be named a party in any suit which is now pending, or which may hereafter be brought in the courts of the State of Michigan having jurisdiction of the subject matter, for the purpose of clearing the title to, and removing liens from, all those pieces or parcels of land situate and being in the county of Lenawee and State of Michigan, described as follows, to wit:

Description.

The west half northwest quarter section 35, township 5 south, range 4 east, containing eighty acres of land, be the same more or less. Also that tract beginning at the northwest corner of Maumee and Boughton Streets in the village of Tecumseh, thence along the west line of said Maumee Street north to the corner of Lave Baxter, junior's, land, thence west along said Baxter's land to the mill pond, thence southwardly along the east side of said mill pond to said Boughton Street, thence along the north line of said Boughton Street to the place of beginning, containing about thirty acres of land, be the same more or less. Also village lot 130; and also that tract of land beginning at the southwest corner of said village lot 130 and on the east line of Mill Street; thence along the east line of said last-mentioned street southwardly to the line between village lots 126 and 127, thence along the said line last mentioned eastwardly to the east line of said lots; thence eastwardly to the line between village lots 139 and 140; thence along said lots to Maumee Street; thence north along the west line of said street to the line between village lots 133 and 134; thence along the south line of said lot 133 and of lots 132, 131, and 130 to the place of beginning, containing about ten acres of land, be the same more or less.

Service of process.

SEC. 2. Service upon the United States shall be made by serving the process of the court, with a copy of the bill of complaint, upon the United States attorney for the eastern district of Michigan, and by sending copies of the process and bill, by registered mail, to the Attorney General of the United States, at Washington, District of Columbia. The United States shall have thirty days after service as above provided, or such further time as the court may allow, within which to appear and answer, disclaim, plead, or demur.

Notice to Attorney
General.

Force and effect of
court decree.

SEC. 3. The final judgment or decree of the court in any suit brought under this Act shall have the same effect respecting the discharge of a purported mortgage given by Joseph W. Brown and Cornelia T. Brown, his wife, of the first part, to United States of America of the second part, dated November 21, 1835, and recorded on December 30, 1835, in the register of deeds' office of Lenawee County, Michigan, in Liber B of Mortgages, at page 447, as may be provided with respect to such matters by the law of the State of Michigan.

72D CONGRESS } HOUSE OF REPRESENTATIVES } REPORT
1st Session } } No. 679

TRANSFER OF JURISDICTION OVER PUBLIC LAND IN THE DISTRICT OF COLUMBIA

MARCH 3, 1932.—Committed to the Committee of the Whole House on the state
of the Union and ordered to be printed

Mr. DALLINGER, from the Committee on Public Buildings and
Grounds, submitted the following

REPORT

[To accompany S. 2498]

The Committee on Public Buildings and Grounds, to whom was referred the bill (S. 2498) to authorize the transfer of jurisdiction over public land in the District of Columbia, having considered the same, reports favorably thereon and recommends that the bill do pass.

The purpose of this bill is to give the Federal and District authorities who have charge of public land in the District of Columbia the power to transfer jurisdiction over such properties, either in whole or in part, among or between themselves, whenever it appears to be in the best interests of administration and maintenance.

At present, whenever such transfers are necessary or advisable, action by Congress is required in each instance and at each session of Congress a considerable number of special bills to transfer jurisdiction over particular parcels of public land in the District are acted upon. In view of the present comprehensive building program for the District of Columbia the authorities expect the number of such special bills to greatly increase unless this bill is enacted.

To illustrate this point it may be said that at this time a number of exchanges have been proposed between the park office and the school board, as for instance, to provide better sites for a Northern High School and the Taft Junior High School in Brookland, and to avoid the purchase of additional land for a new building at the Keene School at Blair and Riggs Roads. For each of these exchanges separate special bills are now contemplated by the District commissioners, each of which will require separate action by congressional committees.

Furthermore, a number of exchanges of property are contemplated between two or more Federal and District agencies as that between the Soldiers' Home, War Department, and the District of Columbia for straightening the road south of the Soldiers' Home between

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Harvard Street and First Street NW. Another of the same nature is that for rounding out the property of the National Arboretum by transfer by the District of Columbia of areas of land to the Department of Agriculture in exchange for transfers from the arboretum for street purposes. A bill (S. 3547) has already been reported in the Senate for an exchange of properties between the park office, the District commissioners, and the War Department at Bolling Field.

The foregoing instances clearly show that the enactment of this bill is desirable as a means of obviating unnecessary legislation and thereby lessening the work of Congress.

Moreover, it can not be doubted but that the enactment of this bill would result in a substantial saving of public funds. In the first place it would make easier the most efficient use of land already owned by the Government, and, secondly, it would avoid the purchase of additional lands when property now owned by the Government might be transferred to a desired use.

The bill can in no way be construed as an unwarranted delegation of the authority of Congress. The National Capital Park and Planning Commission, with representatives of a large number of Federal and District interests, including two Members of Congress, would in every case have to approve a transfer before it was consummated, and, besides this approval, the exchange would have to be agreeable to all the departments concerned.

In cases of land for streets and parks, the District Commissioners and the Director of Public Buildings and Public Parks already have the power to transfer jurisdiction without recourse to Congress. This bill provides that, in the future, the National Capital Park and Planning Commission shall recommend all such transfers and it also provides that all transfers shall be reported to Congress.

The bill meets with the approval of the District Commissioners, the National Capital Park and Planning Commission, and the Office of Public Buildings and Public Parks. The committee feels that the legislation is both desirable and necessary.

Attached hereto as parts of this report are a letter from the executive and disbursing officer of the National Capital Park and Planning Commission requesting the introduction of this legislation and a letter from the president of the Board of Commissioners of the District of Columbia urging its enactment. Also attached is a letter from the Director of the Public Buildings and Public Parks of the National Capital indorsing H. R. 425 and H. R. 5863, which are practically identical with S. 2498.

NATIONAL CAPITAL PARK AND PLANNING COMMISSION,
Washington, D. C., December 21, 1931.

HON. ARTHUR CAPPER,
United States Senate, Washington, D. C.

MY DEAR SENATOR CAPPER: Shortly before the last Congress adjourned this office took up with you the question of introducing a bill to authorize the transfer of jurisdiction over public lands in the District of Columbia. Such a bill had already been introduced in the House by Congressman Robert Luce. You expressed your entire willingness to introduce such a measure, but felt that the time was too short to accomplish anything and therefore it was mutually agreed to postpone introduction of this bill in the Senate until the Seventy-second session of Congress.

Inclosed you will find the bill modified and redrafted so as to be mutually satisfactory to the National Capital Park and Planning Commission, the Office of Public Buildings and Public Parks, and the Commissioners of the District of Columbia.

TRANSFER JURISDICTION OVER PUBLIC LAND

3

This bill gives the administrative authorities in the National Capital permission to reach agreements among themselves for the best use of land without the necessity for specific authority of Congress in such cases. Quite a number of such special bills are now acted upon at each session of Congress and it is expected that the number will increase as the public land is more and more crowded and the uses for it multiply.

This office feels very strongly the need for such legislation. In the specific case of land for streets and parks, the District Commissioners and the Director of Public Buildings and Public Parks already have such authority of law; that is, upon certification of the commissioners of the District that a certain edge of a park or triangle is needed for street purposes, the Director of Public Buildings and Public Parks may, under authority of the act of July 1, 1898 (30 Stat. 570), transfer jurisdiction over the required strip to the commissioners; similarly the commissioners may transfer to the Director of Public Buildings and Public Parks any land acquired for street purposes not immediately needed, with the assurance that the same land may be recovered by them for street purposes. The law has worked so satisfactorily and simplified procedure in so many cases in the public interest, without a case of abuse or unwise action having been taken under this authority, that I feel the method can be advantageously extended.

There are many cases in which such authority, if lodged in the administrative officers by Congress, would result in an economical saving to the Government.

Respectfully yours,

U. S. GRANT 3d,
Executive and Disbursing Officer.

COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
Washington, January 19, 1932.

Hon. ARTHUR CAPPER,
*Chairman Committee on the District of Columbia,
United States Senate, Washington, D. C.*

MY DEAR SENATOR CAPPER: The Commissioners of the District of Columbia recommend the enactment of Senate 2498, Seventy-second Congress, first session, entitled "A bill to authorize the transfer of jurisdiction over public land in the District of Columbia," which you referred to them for consideration and report.

The commissioners believe the proposed legislation is meritorious.

Very sincerely yours,

BOARD OF COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
L. H. REICHELDERFER, *President.*

PUBLIC BUILDINGS AND PUBLIC PARKS OF THE NATIONAL CAPITAL,
Washington, D. C., January 26, 1932.

Hon. FRITZ G. LANHAM,
*Chairman Committee on Public Buildings and Grounds,
House of Representatives, Washington, D. C.*

MY DEAR MR. LANHAM: In reply to your inquiry of January 13, I wish to express my personal indorsement of H. R. 425 and H. R. 5863, and to advise you that this legislation is also strongly recommended by the National Capital Park and Planning Commission. Either measure will effect considerable economy for the District of Columbia, and relieve the committees of Congress of the burden of handling a very considerable number of individual special bills.

The two bills are alternatives, only one of which should be passed. H. R. 425 is the form in which the bill was originally written by Mr. Luce, and the form in which it was recommended by the National Capital Park and Planning Commission at the last session of Congress.

H. R. 5863 is a new draft revised to comply with what is understood to be the wishes of the District Commissioners. It is perfectly satisfactory to the National Capital Park and Planning Commission and myself.

(In case you can arrange a hearing of either of these bills before your committee, I would appreciate an opportunity to present a full statement of the need for it and the advantages to be derived from it.)

Respectfully yours,

U. S. GRANT 3d, *Director.*

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PUBLIC LAW 364—MAY 18, 1954

101

Control Act approved May 17, 1950, as amended by Public Law 75, Eighty-third Congress, approved June 22, 1953, is hereby further amended by striking out "\$150,000,000" and substituting in lieu thereof "\$166,000,000".

64 Stat. 179; 67 Stat. 77.

Approved May 17, 1954.

Public Law 364

CHAPTER 218

AN ACT

To authorize the financing of a program of public works construction for the District of Columbia, and for other purposes.

May 18, 1954
[H. R. 8097]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act, divided into titles and sections, may be cited as the "District of Columbia Public Works Act of 1954".

District of Co-
lumbia Public
Works Act of 1954.

(b) As used in this Act—

(1) The word "Commissioners" means the Board of Commissioners of the District of Columbia or their designated agent or agents.

(2) The word "District" means the District of Columbia.

(3) The word "person" includes any individual corporation, partnership, firm, organization, association, group, trust, estate, or other entity.

(4) The term "Highway Fund" means the fund in the Treasury of the United States created by the Act approved August 17, 1937 (50 Stat. 676 and 681), as amended (secs. 40-103 (d) and 47-1901, D. C. Code, 1951 edition).

(c) Wherever any officer or agency of the District, other than the Commissioners, is mentioned in this Act, such officer or agency shall be deemed to be the officer or agency so mentioned, or the officer, officers, agency, or agencies succeeding to the functions of the officer or agency so mentioned, pursuant to Reorganization Plan Numbered 5 of 1952.

66 Stat. 824.
D. C. Code title
1 app.

TITLE I—ADJUSTMENT OF WATER RATES

SEC. 101. The Commissioners are authorized, in their discretion, to fix from time to time, the rates charged by the District for water and water services furnished by the District water supply system. Such rates so fixed, whether involving one or more changes in rate, or one or more changes in the basic quantity of water to be supplied at a given rate, or the combined effect of both such changes, shall not, in any event, result in increasing by more than 33 $\frac{1}{3}$ per centum the rates in effect on the day preceding the effective date of this section. In computing the charge for the consumption of water in excess of the minimum amount allowed for metered service, if such charge is for a period beginning prior to so fixing such rates and ending thereafter, the charge for such excess consumption shall be prorated on a monthly basis, in accordance with the rates prevailing in the respective periods. Nothing in this title shall be construed to modify the provisions of the Act approved April 14, 1932 (47 Stat. 79, ch. 100; sec. 43-1530, D. C. Code) relating to the delivery of water from the District water supply system to the Washington Suburban Sanitary Commission.

Fixed charges.

SEC. 102. An additional charge of 10 per centum shall be added to any water charge remaining unpaid after the expiration of thirty days from the date of rendition of a bill for such charge.

Charge for un-
paid bills.

Collection.

SEC. 103. The Commissioners are authorized to provide for the collection of water charges, in advance or otherwise, from the owner or occupant of any building, establishment, or other place furnished water or water service by the District, and to shut off the water supply to any such building, establishment, or other place upon failure of the owner or occupant thereof to pay such water charges within thirty days from the date of rendition of the bill therefor. Such authority to shut off the water supply may be exercised by the Commissioners regardless of any change in ownership or occupancy of such building, establishment, or other place. When the water supply to any such building, establishment, or other place has been shut off for failure to pay such water charges, whether the water supply to such building, establishment, or other place was shut off before or after the enactment of this title, the Commissioners shall not again supply such building, establishment, or other place with water until all arrears of water charges, together with penalties and the costs actually incurred in shutting off and restoring the water supply, are paid.

Continuing lien.

SEC. 104. The District shall have a continuing lien for water charges upon any land and the improvements thereon to which water or water service is or has been furnished. Such lien shall have priority over all other liens except liens for District taxes. If any water charges shall remain unpaid after the expiration of two years from the date of rendition of the bill for such charges, or two years from the effective date of this title, whichever is later, the property which has been furnished such water or water service may be sold for such unpaid water charges, together with penalties thereon and costs, at the next ensuing tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if such water charges, together with penalties thereon and costs, shall not have been paid in full prior to said sale. So much of the proceeds of said sale as represents said unpaid water charges shall be credited to the water fund of the District.

Applicability.

SEC. 105. The remedies set forth in sections 102, 103, and 104 of this title are hereby declared to be cumulative and not exclusive.

Services to Government.

SEC. 106. (a) All water and water services furnished from the District water supply system through any connection thereto for direct use by the Government of the United States or any department, independent establishment, or agency thereof, situated in the District, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for at the rates for the furnishing and readiness to furnish water applicable to other water consumers in the District. All water and water services furnished from the District water supply system through any connection thereto for direct use by the Government of the United States or any department, independent establishment, or agency thereof, situated outside the District in the States of Maryland or Virginia, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for at rates comparable to those which may be in effect and charged to State, municipal, or county agencies or other political authorities or jurisdictions within the respective States wherein said Federal facilities may be situated for similar water service from the District water supply system: *Provided*, That conditions as to water pressure, quantity, rates of demand, and points of connection available or permissible at any time for service outside the District, if any, shall be fixed by the Commissioners so as to fully protect the prior interests of water consumers within the District: *Provided further*, That as a condition of service, at each point of Federal connection to the water system of the District for service outside the District there shall be installed and maintained at the expense of the

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department, independent establishment, or agency of the United States which is to use water therefrom a suitable meter or meters and incidental vaults, valves, piping and recording devices, and such other equipment as the Commissioners in their discretion deem necessary to control and record the use of water through each such connection. Payment shall be made as provided in subsection (b) of this section. Whenever any payment authorized by this section is made, such payment shall be in lieu of so much of the annual payment authorized by article VI of the Act approved July 16, 1947 (61 Stat. 328, 361), as pertains to the Water Fund of the District. The provisions of sections 102, 103, and 104 of this title, relating, respectively, to enforcement of payment for water charges by penalty charge for late payment, by shutting off of the water supply for nonpayment, and the imposition of lien and sale of property, shall not apply in any case where water or water service is furnished to a building, establishment, or other place owned by the Government of the United States and occupied by a department, independent establishment, or agency thereof.

(b) For the purpose of effectuating the provisions of subsection (a) of this section, there shall be included annually in the budget estimates of the Commissioners the value, as determined by the Commissioners, of the water and water services furnished to the United States during the most recent preceding fiscal year for which such value can be determined, based on the water rates prevailing during the period of consumption, and there shall be appropriated annually for the District to the credit of the said Water Fund, out of any money in the Treasury not otherwise appropriated (to be advanced on July 1 of each fiscal year beginning July 1, 1954), a sum corresponding to the value of the water and water services furnished the United States.

SEC. 107. The first proviso of section 2 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, eighteen hundred and eighty-three, and for other purposes", approved July 1, 1882 (22 Stat. 144; sec. 43-1504, D. C. Code, 1951 edition), is amended by striking the word "annually" and inserting in lieu thereof the following: "at least once every twelve months, or whenever practicable in the judgment of the Commissioners, at least once every six months".

SEC. 108. (a) Subsection (a) of section 2 of the Act entitled "An Act authorizing loans from the United States Treasury for the expansion of the District of Columbia water system", approved June 2, 1950 (64 Stat. 195; sec. 43-1540, D. C. Code, 1951 edition), is amended by striking the figures "23,000,000", and inserting in lieu thereof the figures "35,000,000".

(b) Subsections (c) and (d) of section 2 of such Act approved June 2, 1950, are amended to read as follows:

"(c) Any loan advanced pursuant to this section shall be repaid to the Secretary of the Treasury in substantially equal annual payments, including principal and interest, within a period of thirty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to the Water Fund: *Provided*, That any such loan advanced prior to the effective date of this amendatory section shall, for the purpose of determining the time when repayment thereof shall begin, be deemed to have been credited to the Water Fund on such effective date, and interest accrued on any such loan advanced prior to the effective date of this amendatory section shall be paid at such time and in such manner as the Secretary of the Treasury shall determine: *Provided further*, That the Commissioners may, in their discretion, make repayments in larger amounts at any

Nonapplicability.

Budget estimates.

Fiscal year.

Water system expansion, Loans.

D. C. Code 43-1540.

Repayment.

time during the life of any loan advanced pursuant to this section. Interest on such loans shall begin to accrue as of the dates the respective advancements are credited to the Water Fund.

Interest.

“(d) Loans advanced pursuant to this section during any six-month period (beginning with the six-month period ending June 30, 1953) shall be at a rate of interest determined by the Secretary of the Treasury as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowings at a maturity approximately equal to one-half of the period of time the loan is outstanding.”

D. C. Code 43-1540.

(c) Subsection (e) of section 2 of such Act approved June 2, 1950, is amended by striking therefrom “beginning with the budget estimates for fiscal year 1961”.

Effective date.

SEC. 109. Sections 101 to 105, inclusive, of this title shall take effect on the first day of the third month following its enactment.

TITLE II—SANITARY SEWAGE WORKS

Definitions.

SEC. 201. For the purposes of this title—

(a) The term “sanitary sewage” means (1) domestic sewage with storm and surface water limited; (2) sewage discharging from sanitary conveniences; (3) commercial or industrial wastes; and (4) water supply after it has been used.

(b) The term “stormwater sewage” means liquid flowing in sewers resulting directly from precipitation.

(c) The term “combined sewage” means sewage containing both sanitary sewage and stormwater sewage.

(d) The term “sewer” means a pipe or conduit carrying sewage.

(e) The term “sanitary sewer” means a sewer which carries sanitary sewage.

(f) The term “stormwater sewer” means a sewer which carries stormwater sewage.

(g) The term “combined sewer” means a sewer which carries both sanitary sewage and stormwater sewage.

(h) The term “sanitary sewage works” means a system of sanitary and combined sewers, appurtenances, pumping stations, and treatment works for conveying, treating, and disposing of sanitary sewage.

(i) The term “stormwater sewer system” means a system of sewers, appurtenances, and pumping stations for conveying and disposing of stormwater sewage.

(j) The term “combined sewer system” means a system of sewers and appurtenances conveying both sanitary sewage and stormwater sewage.

D. C. Sanitary Sewage Works Fund.

SEC. 202. There is hereby created in the Treasury of the United States a special fund which shall be known as the D. C. Sanitary Sewage Works Fund, and which shall be composed of such sums as shall be deposited to the credit of such fund, including, but not limited to, sums received by the Commissioners under the provisions of the Act entitled “An Act authorizing the laying of water mains and service sewers in the District of Columbia, the levying of assessments therefor, and for other purposes”, approved April 22, 1904 (33 Stat. 244; secs. 43-1510 to 43-1517, D. C. Code, 1951 edition), on account of assessments levied for the construction of sewers and including any payment made to the District by any governmental agency of the States of Maryland or Virginia on account of any sewer service furnished any such agency by the District.

Use of Fund.

SEC. 203. Subject to appropriations, the D. C. Sanitary Sewage Works Fund shall be available for use by or under the direction and control of the Commissioners for—

(a) the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District, including all expenses;

(b) payment of a portion of such administrative expenses as may not be wholly allocated to the sanitary sewage works or to any other sewage works of the District, but which expenses are incurred in connection with the operation of the sanitary sewage works and either or both the stormwater sewer system and the combined sewer system. The portion of such expenses to be paid from the D. C. Sanitary Sewage Works Fund shall be fixed from time to time by the Commissioners at such a percentage of the total of such expenses for the said sewer systems as the Commissioners, in their discretion, may determine;

(c) payment of such portion of all expenses for the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the combined sewer system of the District as the Commissioners, in their discretion, determine to be attributable to the sanitary sewage function of such combined sewer system;

(d) payment of the District's contribution to the expenses of the Interstate Commission on the Potomac River Basin;

(e) payments by the District to agencies in the State of Maryland providing services to the District for conveying, treating, or disposing of sanitary sewage: *Provided*, That the said fund shall not be available to pay the cost of providing sewage service to institutions of the District located in the State of Maryland;

(f) payments to the General Fund and other funds of the District for such expenses or estimated expenses as are or may be incurred in the administration of this title;

(g) payment to the United States Treasury of the interest, in accordance with the provisions of this title, on loans to the District for such Sanitary Sewage Works Fund;

(h) repayment to the United States Treasury of the principal amount of each loan made to the District in accordance with the provisions of this title, and of any advancements made to the District in accordance with the provisions of section 204 of this title; and

(i) refund of part or all of any sanitary sewer service charges erroneously paid: *Provided*, That application for refund shall be made within two years after such erroneous payment.

SEC. 204. The Secretary of the Treasury, notwithstanding the provisions of the District of Columbia Appropriation Act, approved June 29, 1922 (42 Stat. 668), is authorized and directed to advance, on the requisition of the Commissioners, made in the manner now prescribed by law, out of any money in the Treasury of the United States not otherwise appropriated, such sums as may be necessary, from time to time, to meet the expenses of the District in connection with the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District, as authorized by Congress, and such amounts so advanced shall be reimbursed by the said Commissioners to the Treasury out of the moneys deposited to the credit of the D. C. Sanitary Sewage Works Fund.

Construction,
maintenance, etc.,
expenses.

SEC. 205. Notwithstanding the provisions of this title, any current appropriation available to the District for the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District shall remain available for the purposes for which appropriated.

Current appro-
priation.

Service charges.

SEC. 206. The Commissioners are authorized to establish charges for the provision of sanitary sewer service, such charges to be collected in the same manner and at the same time as water charges are collected, and to be paid into the D. C. Sanitary Sewage Works Fund.

Basis for charges.

SEC. 207. The sanitary sewer service charges established under the authority of this title shall be based on the water consumption of, and water service to, the properties served, and be determined by one of the following methods:

(a) Where water is supplied from the District water supply system at meter rates, the Commissioners shall establish the sanitary sewer service charge as a percentage of the water charge applicable in the District, but such percentage shall not exceed 60 per centum of the water charge.

(b) Where water is supplied from the District water supply system, which water is not measured by meter, but is supplied at special business and miscellaneous rates, the Commissioners shall establish the sanitary sewer service charge at a percentage of such special business and miscellaneous rates, but such percentage shall not exceed 60 per centum of such rates.

(c) For each property using water, all or part of which is from a source or sources other than the District water supply system, the Commissioners shall establish a sanitary sewer service charge separate from and in addition to any sanitary sewer service charge levied under paragraph (a) or (b) of this section. Such separate or additional sanitary sewer service charge shall be measured by the quantity of water from the source or sources other than the District water supply system discharged into the District sanitary sewer system from said property. The owner or occupant of each such property shall install and maintain, without cost to the District, a meter or meters to measure the quantity of water received from other than the water supply system of the District, and the sanitary sewer service charge based upon water received from other than the water supply system of the District shall be the same in amount as would be paid by the owner of a metered property receiving the same quantity of water from the water supply system of the District. No meter shall be installed or be used for such purpose without the approval of the Commissioners. In the event the owner or occupant of property fails or refuses to furnish and properly maintain such meter or meters as are prescribed herein in the manner required by the Commissioners, then the supply of water from the District water supply system to the property or premises may be suspended by the Commissioners and the said supply shall not be restored until the metering of such supplementary water source has been accomplished by the owner or occupant to the satisfaction of the Commissioners, and any costs devolving upon the District as a result of the suspension of service from the District water supply system shall be paid to the District prior to the restoration of water service from the District water supply system.

(d) Wherever a property upon which a sanitary sewer service charge is imposed uses water from the water supply system of the District for an industrial or commercial purpose in such manner that the water so used is not discharged into the sanitary sewage works of the District, the quantity of water so used and not discharged into the sanitary sewage works of the District may be excluded in determining the sanitary sewer service charge on such property, if such exclusion is previously requested in writing by the owner or occupant thereof. Upon such request, the quantity of water so used and not discharged into the sanitary sewage works of the District shall be measured by a device or devices approved by the Commissioners, installed and maintained without cost to the District, and the sanitary

sewer service charge to be imposed on such property shall be not more than 60 per centum of the water charge which would have been charged such property if the amount of water so used and not discharged into the sanitary sewage works of the District had not been included in the amount of water used by such property: *Provided*, That all water from the water supply system of the District used by such property shall be paid for at established rates, whether or not such water is discharged into the sanitary sewage works of the District. Where, in the opinion of the Commissioners, it is not practicable to install a measuring device to determine continuously the quantity of water used for such industrial or commercial purposes and not discharged into the sanitary sewage works of the District, the Commissioners shall determine periodically, in such manner and by such methods as the Commissioners may prescribe, the quantity of water from the water supply system of the District discharged into the sanitary sewage works of the District, and the sanitary sewer service charge shall be based on such estimated quantity of water at the percentage authorized by this paragraph. Any dispute as to such estimated amount shall be decided by the Commissioners and such decision shall be final; and in the event the owner or occupant fails to furnish and maintain such measuring devices or to facilitate the periodic determinations by the Commissioners as prescribed herein, then the privilege of excluding some portion of the water used from the District water supply system from the charges for sanitary sewer service shall be forfeited and the charges for sanitary sewer service shall be based on the full amount of the water used from the District water supply system.

SEC. 208. (a) The owner or occupant of each building, establishment, or other place in the District connected with any District sewer conducting sanitary sewage shall pay the sewer service charge authorized by this title.

(b) If the sanitary sewer service charge imposed by this title is based on a water charge any part of which is for a period beginning prior to the imposition of the sanitary sewer service charge and ending thereafter, the sanitary sewer service charge shall be prorated, on a monthly basis, on so much of such water charge as shall have accrued subsequent to the effective date of this title.

SEC. 209. All meters or other measuring devices installed or required to be used under the provisions of this title shall be under the control of the Commissioners, who shall promulgate all regulations necessary in their judgment to effectuate the purposes of this title. The owner or occupant of the property upon which any such measuring device is installed shall be responsible for its maintenance and safekeeping, and all repairs thereto shall be made at the owner's cost, whether such repairs are made necessary by ordinary wear and tear or other causes. Bills for such repairs, if made by the District, shall be due and payable when rendered, and the Commissioners are authorized to provide for stopping the supply of water to any building or establishment upon the failure to pay such charge for meter repairs.

SEC. 210. The Commissioners are hereby authorized, in order to encourage the prompt payment of the sanitary sewer service charge imposed by this title, to impose an additional charge of 10 per centum for any sanitary sewer service charge remaining unpaid for more than thirty days, to shut off the water of premises for which such charge is not paid within thirty days, and to have and enforce a continuing lien for such charge upon the land and any improvements thereon furnished such sanitary sewer service, in the same manner and to the same extent as if sections 102, 103, 104, and 105 of title I of this Act were set forth in this title, and such sections shall be deemed to be

Payment.

Proration of charge.

Meters, etc.

Charge for unpaid bills.

Continuing lien.

applicable in every particular to the sanitary sewer service charge imposed by this title: *Provided*, That whenever said lien is enforced by the sale of property against which it has been assessed, so much of the proceeds of such sale as represents said unpaid sanitary sewer service charges shall be credited to the D. C. Sanitary Sewage Works Fund.

Churches and
institutions.

SEC. 211. The sanitary sewer service charges applicable to such churches and institutions as may under existing law be furnished water without charge by the Commissioners shall be predicated only on the quantity of water used in excess of the amount fixed by the Commissioners in each case as to which no water charge is made.

Services to Gov-
ernment.

SEC. 212. (a) The sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services furnished by the sanitary sewage works of the District through any connection thereto for direct use by the Government of the United States or any department, independent establishment, or agency thereof, and such charges shall be predicated on the value of water and water services received by such facilities of the Government of the United States or any department, independent establishment, or agency thereof from the District water supply system. Payment of the said sanitary sewer service charge shall be made as provided in subsection (b) of this section: *Provided*, That the aggregate amount of such sanitary sewer service charge for each fiscal year shall be determined in the manner prescribed in section 207 hereof: *Provided further*, That the obligation to pay for sanitary sewer services received by the Government of the United States or any department, independent establishment, or agency thereof shall be with respect to such service furnished on and after July 1, 1954.

Budget esti-
mates.

(b) For the purpose of effectuating the provisions of subsection (a) of this section there shall be included annually in the budget estimates of the Commissioners beginning with the estimates for the fiscal year ending June 30, 1955, the value as determined by the Commissioners of the sanitary sewer service furnished to the United States or to any department, independent establishment, or agency thereof during the most recent preceding fiscal year for which such value can be determined based on the rates for such charges prevailing during the period of such service, and there shall be appropriated annually for the D. C. Sanitary Sewage Works Fund out of any money in the Treasury not otherwise appropriated (to be advanced on July 1 of each fiscal year beginning July 1, 1954) a sum corresponding to the said value of charges for sanitary sewer service furnished the United States.

Construction,
etc.
Loans.

SEC. 213. The Commissioners are hereby authorized to accept loans for the District from the United States Treasury to finance the construction, expansion, relocation, replacement, or renovation of (1) the sanitary sewer system of the District or (2) the combined sewer system of the District; and the Secretary of the Treasury is authorized to advance such sums as may be appropriated for such purposes.

Limitation.

SEC. 214. The total principal amount of loans made in connection with the construction, expansion, relocation, replacement, or renovation of the sanitary and combined sewer systems of the District shall not exceed \$5,000,000. Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in full in the Treasury of the United States to the credit of the D. C. Sanitary Sewage Works Fund.

SEC. 215. Nothing herein contained shall prohibit the use of funds deposited to the credit of the D. C. Sanitary Sewage Works Fund from being used for the construction, expansion, relocation, replacement, or renovation of any sewer in the combined sewer system of the District, but the Commissioners, prior to authorizing the use of moneys from such fund for such work, shall determine the percentage of the cost to be borne by the D. C. Sanitary Sewage Works Fund and the percentage to be borne by the General Fund.

SEC. 216. The loans authorized by this title shall be advanced to the Commissioners on their requisitions therefor, shall be available to the Commissioners for the construction, expansion, relocation, replacement, or renovation of all parts of the sanitary sewage works of the District, and shall be available until expended.

SEC. 217. Any loan advanced under this title shall be repaid to the Secretary of the Treasury in substantially equal annual payments, including principal and interest, within a period of thirty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to the D. C. Sanitary Sewage Works Fund: *Provided*, That the Commissioners may, in their discretion, make repayments in larger amounts at any time during the life of any such loan. Interest on such loans shall begin to accrue as of the dates the respective advancements are credited to the D. C. Sanitary Sewage Works Fund.

SEC. 218. Loans advanced pursuant to this title during any six-month period (beginning with the six-month period ending December 31, 1954) shall be at a rate of interest determined by the Secretary of the Treasury as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowings at a maturity approximately equal to one-half of the period of time the loan is outstanding.

SEC. 219. The provisions of sections 206 to 211, inclusive, of this title shall become effective on the first day of the third month following the enactment of this Act.

TITLE III—ASSESSMENTS FOR WATER MAINS AND SEWERS

SEC. 301. That so much of the first sentence of section 2 of the Act entitled "An Act authorizing the laying of water mains and service sewers in the District of Columbia, the levying of assessments therefor, and for other purposes", approved April 22, 1904 (33 Stat. 244), as amended (sec. 43-1511, D. C. Code, 1951 edition), as precedes the first proviso of the said sentence is amended to read as follows: "That for laying or constructing water mains in the District of Columbia assessments shall be levied at the rate of \$3 per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a water main shall be laid, and that for laying or constructing service sewers in the District of Columbia assessments shall be levied at the rate of \$4 per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a sewer shall be laid."

SEC. 302. The provisions of this title shall be applicable to water mains and service sewers completed after June 30, 1954, or after the date of approval of this Act, whichever is later.

Use of funds.

Availability.

Loan repayment.

Interest.

Effective date.

Effective date.

TITLE IV—HIGHWAY CONSTRUCTION

Authorization.

SEC. 401. A program of construction projects to meet immediate capital needs for highways in the District is hereby authorized.

Loans.

SEC. 402. (a) To assist in financing such program of construction, the Commissioners are hereby authorized to accept loans for the District from the United States Treasury and the Secretary of the Treasury is hereby authorized to lend to the Commissioners such sums as may hereafter be appropriated: *Provided*, That the total principal amount of loans advanced pursuant to this section shall not exceed \$50,250,000: *Provided, further*, That any loan for use in any fiscal year must first be specifically requested of the Congress in connection with the budget submitted for the District for such fiscal year, with a full statement of the work contemplated to be done and the need thereof, and such work must be approved by the Congress: *And provided further*, That such approval shall not be construed to alter or to eliminate the procedures for consultation, advice, and recommendation provided in the National Capital Planning Act of 1952 (66 Stat. 781). Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in full in the Treasury of the United States to the credit of the Highway Fund.

Budget estimate.

D. C. Code 1-1001 to 1-1013.

Availability.

(b) The loans authorized under this section, or any parts thereof, shall be advanced to the Commissioners on their requisitions therefor, shall be available to the Commissioners for carrying out the said construction program, and shall be available until expended.

Repayment.

(c) Any loan advanced pursuant to this section shall be repaid to the Secretary of the Treasury in substantially equal annual payments, including principal and interest, within a period of thirty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to the Highway Fund: *Provided*, That the Commissioners may, in their discretion, make repayments in larger amounts at any time during the life of any such loan. Interest on such loans shall begin to accrue as of the dates the respective advancements are credited to the Highway Fund.

Interest.

(d) Loans advanced pursuant to this section during any six-month period (beginning with the six-month period ending December 31, 1954) shall be at a rate of interest determined by the Secretary of the Treasury as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowings at a maturity approximately equal to one-half of the period of time the loan is outstanding.

Budget estimates.

(e) Moneys for the payments to the United States Treasury herein required shall be included in the budget estimates of the Commissioners and shall be payable from the Highway Fund.

TITLE V—PAYMENT INTO HIGHWAY FUND OF RENTS FOR VAULTS IN PUBLIC SPACE

SEC. 501. Section 7 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes", approved September 1, 1916 (39 Stat. 716; sec. 7-901, D. C. Code, 1951 edition), is amended by inserting immediately before the period at the end thereof the following: "and such rent shall be deposited to the credit of the Highway Fund".

TITLE VI—MOTOR VEHICLE REGISTRATION FEES AND REPEAL OF PERSONAL PROPERTY TAX ON CERTAIN MOTOR VEHICLES

SEC. 601. Section 2 of title IV of the Act entitled "An Act to provide additional revenue for the District of Columbia, and for other purposes", approved August 17, 1937 (50 Stat. 673, 680), as amended (sec. 40-102, D. C. Code, 1951 edition), is amended by striking the second sentence of subsection (d) of said section.

SEC. 602. Subsection (b) of section 3 of title IV of the Act entitled "An Act to provide additional revenue for the District of Columbia, and for other purposes", approved August 17, 1937 (50 Stat. 681), as amended (sec. 40-103, D. C. Code, 1951 edition), is amended (a) by striking clause (1) of class A, and inserting in lieu thereof "(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of which is less than three thousand five hundred pounds, \$22; three thousand five hundred pounds or more, \$32."; (b) by striking clause (1) of class B and inserting in lieu thereof "(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of the chassis, plus the weight of the cab and body, is less than three thousand pounds, \$40; three thousand pounds or more but less than four thousand pounds, \$44; four thousand pounds or more but less than five thousand pounds, \$52; five thousand pounds or more but less than six thousand pounds, \$60; six thousand pounds or more but less than seven thousand pounds, \$68; seven thousand pounds or more but less than eight thousand pounds, \$74; eight thousand pounds or more but less than nine thousand pounds, \$84; nine thousand pounds or more but less than ten thousand pounds, \$96; ten thousand pounds or more but less than twelve thousand pounds, \$122; twelve thousand pounds or more but less than fourteen thousand pounds, \$142; fourteen thousand pounds or more but less than sixteen thousand pounds, \$172; sixteen thousand pounds or more, \$202: *Provided*, That in determining the total weight of a vehicle subject to the provisions of this clause, there shall be excluded, in computing such weight, the weight of any special equipment which is subject to taxation as tangible personal property under subsection (e) of this section."; (c) class C is amended to read "class C. For each trailer, when the manufacturer's shipping weight of the chassis plus the weight of the body is less than three hundred pounds, \$12; three hundred pounds or more but less than five hundred pounds, \$16; five hundred pounds or more but less than one thousand pounds, \$26; one thousand pounds or more but less than two thousand five hundred pounds, \$36; two thousand five hundred pounds or more but less than three thousand five hundred pounds, \$46; three thousand five hundred pounds or more but less than six thousand pounds, \$60; six thousand pounds or more but less than eight thousand pounds, \$74; eight thousand pounds or more but less than ten thousand pounds, \$92; ten thousand pounds or more but less than twelve thousand pounds, \$122; twelve thousand pounds or more but less than sixteen thousand pounds, \$152; sixteen thousand pounds or more, \$182: *Provided*, That in determining the total weight of a trailer subject to the provisions of this class C, there shall be excluded, in computing such weight, the weight of any special equipment which is subject to taxation as tangible personal property under subsection (e) of this section."; (d) class D is amended by striking the figure "5" and inserting in lieu thereof the figure "12"; and (e) by striking therefrom "Class E. Motor vehicles not propelled by gasoline, double the fees for similar vehicles propelled by gasoline."

Registration.

Fees.

Proceeds from
fees, etc.; use.
50 Stat. 681.
D. C. Code 40-
103.

SEC. 603. Subsection (d) of section 3 of title IV of such Act, as amended, is amended by striking "All proceeds from fees payable under this title and", and inserting in lieu thereof "Proceeds from fees payable under this title shall be divided between the General Fund and the Highway Fund. The Commissioners are authorized and empowered to determine the percentage of all proceeds from fees payable under this title which shall be deposited to the credit of the General Fund of the District of Columbia: *Provided*, That the percentage of proceeds deposited to the credit of the General Fund shall be not less than sixty-four per centum or more than seventy-four per centum of all proceeds from fees payable under this title. The remainder of such proceeds payable under this title."

Mounted equip-
ment.
Fees.

SEC. 604. Section 3 of title IV of such Act, as amended, is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding the provisions of this Act, special equipment mounted on a motor vehicle or trailer and not used primarily for the transportation of persons or property shall be taxed as tangible personal property as provided by law. For the purpose of determining the fees authorized by clause 1 of class B and class C of subsection (b) of this section, the weight of special equipment taxed in accordance with the provisions of this subsection (e) shall be excluded in computing the weight of the vehicle or trailer on which it is mounted."

Personal prop-
erty taxes.

SEC. 605. Paragraph ten of section six of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes", approved July 1, 1902 (32 Stat. 620), as amended (sec. 47-1208, D. C. Code, 1951 edition), is amended by adding at the end of said paragraph the following:

Exemption.

"Fifth. Any motor vehicle or trailer registered in accordance with the provisions of title IV of the District of Columbia Revenue Act of 1937, as amended (title 40, ch. 1, D. C. Code, 1951 edition), and not comprising any part of the stock in trade of a merchant: *Provided*, That any motor vehicle or trailer comprising all or part of the stock in trade of any merchant shall continue to be taxed as provided by law: *Provided further*, That special equipment mounted on a motor vehicle or trailer and not used primarily for the transportation of persons or property shall be taxed as tangible personal property as provided by law."

50 Stat. 679.

Exception.

Payment.

SEC. 606. Section 5 of the Act approved July 3, 1926 (44 Stat. 833), as amended (sec. 47-1209, D. C. Code, 1951 edition), is amended by striking "excepting the tax on motor vehicles as herein provided,".

Returns.

SEC. 607. Section 6 of the Act approved July 3, 1926 (44 Stat. 833), as amended (sec. 47-1206, D. C. Code, 1951 edition), is amended by striking "other than automobiles".

Repeals.

SEC. 608. Section 3 of the Act approved February 18, 1929 (45 Stat. 1226), as amended (sec. 47-1210, D. C. Code, 1951 edition), is hereby repealed.

SEC. 609. Section 4 of title IV of the Act approved July 26, 1939 (53 Stat. 1108; sec. 47-1211, D. C. Code, 1951 edition), is hereby repealed.

Effective date.

SEC. 610. This title shall become effective on and after the 1st day of April following the enactment of this Act by ninety days or more.

TITLE VII—FEDERAL PAYMENT OF PART OF THE COST OF MAINTAINING AND OPERATING THE DISTRICT OF COLUMBIA

Article VI of the District of Columbia Revenue Act of 1947, approved July 16, 1947 (61 Stat. 361), as amended (sec. 47-2501a, D. C. Code, 1951 edition), is amended by inserting "SECTION 1." at the beginning of such article, and by adding at the end thereof the following new section:

"SEC. 2. (a) For the fiscal year ending June 30, 1955, and for each fiscal year thereafter there is hereby authorized to be appropriated, in addition to the sums appropriated under section 1 of this article, an annual payment by the United States toward defraying the expenses of the government of the District of Columbia in the sum of \$9,000,000: *Provided*, That so much of the aggregate annual payments by the United States appropriated under this article to the credit of the General Fund as is in excess of \$13,000,000 shall be available for capital outlay only, and then on a cumulative total basis only to the extent of not more than 50 per centum of the cumulative total of capital outlay appropriations payable from such general fund which becomes available for expenditure on or after July 1, 1954.

"(b) If in any fiscal year or years a deficiency exists between the amount appropriated and the amount of \$20,000,000 authorized by this article to be appropriated, additional appropriations are hereby authorized for subsequent fiscal years to pay such deficiency or deficiencies.

"(c) The payments authorized by this section shall be credited to the General Fund of the District of Columbia."

TITLE VIII—AMENDMENTS TO THE DISTRICT OF COLUMBIA ALCOHOLIC BEVERAGE CONTROL ACT

SEC. 801. Subsection (a) of section 23 of the District of Columbia Alcoholic Beverage Control Act, approved January 24, 1934 (48 Stat. 319, 332), as amended (sec. 25-124, D. C. Code 1951), is further amended to read as follows:

"SEC. 23. (a) There shall be levied, collected, and paid on all of the following-named beverages manufactured by a holder of a manufacturer's license and on all of the said beverages imported or brought into the District by a holder of a wholesaler's license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this Act, and on all beverages imported or brought into the District by a holder of a retailer's license, a tax at the following rates to be paid by the licensee in the manner hereinafter provided: (1) a tax of 20 cents on every wine-gallon of wine containing more than 14 per centum of alcohol by volume, except champagne or sparkling wine or any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (2) a tax of 30 cents on every wine-gallon of champagne or sparkling wine or any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (3) a tax of \$1 on every wine-gallon of spirits and a proportionate tax at a like rate on all fractional parts of such gallon; (4) and a tax of \$1.25 on every wine-gallon of alcohol and a proportionate tax at a like rate on all fractional parts of such gallon."

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Retailer.

SEC. 802. Within ten days after the effective date of this title, every holder of a retailer's license under said District of Columbia Alcoholic Beverage Control Act shall file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind and denomination of stamps denoting the payment of beverage taxes held or possessed by such licensee or anyone for him on the day on which this title becomes effective, or on the following day if the effective date be a Sunday, other than stamps affixed to the containers of beverages manufactured in or imported into the District prior to the effective date of this title, and shall, within fifteen days after the effective date of his title, pay to the Collector of Taxes, the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act as amended by this title, represented by such stamps.

Payment.

D. C. Code 25-101.
Manufacturer or wholesaler.

SEC. 803. Within ten days after the effective date of this title, every holder of a manufacturer's license, class A, and every holder of a wholesaler's license under the District of Columbia Alcoholic Beverage Control Act shall file with the Alcoholic Beverage Control Board a sworn statement on a form prescribed by the Commissioners showing the amount and kind of all beverages, except (1) beer, (2) wine containing 14 per centum or less of alcohol by volume other than champagne and wine artificially carbonated, and (3) beverages upon which required stamps have been affixed, held, or possessed by him in the District at the beginning of the day this title becomes effective and shall state the number of each kind and denomination of stamps necessary for the stamping of such beverages so held or possessed. Every such licensee, within ten days after the effective date of this title, shall also file with the Alcoholic Beverage Control Board a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind and denomination of stamps denoting the payment of beverage taxes (other than stamps denoting the payment of beverage taxes on alcohol and other than stamps affixed to the containers of beverages manufactured in or imported into the District prior to the effective date of this title) held or possessed by such licensee or anyone for him at the beginning of the day on which title becomes effective. Every such licensee shall within fifteen days after the effective date of this title pay to the Collector of Taxes for all stamps not necessary for the stamping of beverages shown on the sworn statement hereinbefore required to be filed with the Alcoholic Beverage Control Board the difference between the amount of tax represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title, represented by such stamps. Should the number of any kind of denomination of stamps so held by a licensee be less than the number necessary for the stamping of the beverages shown on said sworn statement, the Collector of Taxes is authorized and directed to sell to such licensee, at the rates prescribed for such stamps prior to the effective date of this title, such stamps as may be necessary for the stamping of such beverages. In the event any of the beverages shown on said sworn statement are sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under the Alcoholic Beverage Control Act, such sale shall, within ten days thereafter, be reported to the Alcoholic Beverage Control Board and within said ten days such licensee shall pay to the Collector of Taxes on all stamps held by him for the stamping of such beverages the difference between the amount of tax

Payment.

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represented by such stamps at the time of purchase from the Collector of Taxes and the amount of tax imposed by the Alcoholic Beverage Control Act, as amended by this title, represented by such stamps.

SEC. 804. Subsection (a) of section 40 of said Act, as amended (sec. 25-138, D. C. Code 1951), is hereby further amended by striking out "\$1" and inserting in lieu thereof "\$1.25".

SEC. 805. Any violation of the provisions of this title shall constitute a violation under the Alcoholic Beverage Control Act and regulations promulgated pursuant thereto.

SEC. 806. The provisions of this title shall become effective on the day following the approval of this Act.

Beer tax.
63 Stat. 136.

Violation.

Effective date.

TITLE IX—AMENDMENTS TO THE DISTRICT OF COLUMBIA CIGARETTE TAX ACT

SEC. 901. Subsection (a) of section 603 of the District of Columbia Cigarette Tax Act (63 Stat. 136, ch. 146, title VI, sec. 47-2802, D. C. Code 1951), is amended by striking out the figure and word "1 cent" and inserting in lieu thereof the figure and word "2 cents".

Tax rate.
63 Stat. 137.

SEC. 902. Within ten days after the effective date of this title, every holder of a wholesaler's, retailer's, or vending machine operator's license under said Act shall file with the Collector of Taxes a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind of stamps denoting payment of cigarette taxes affixed to packages of cigarettes held or possessed by such licensee or anyone for him at the beginning of the day on which this title becomes effective, and shall, within fifteen days after the effective date of this title, pay to the Collector of Taxes the difference between the amount of tax represented by such stamps and the amount of tax imposed by the District of Columbia Cigarette Tax Act as amended by this title.

Cigarette tax
payment.

SEC. 903. Within ten days after the effective date of this title, every holder of a wholesaler's, retailer's, or vending machine operator's license under said Act shall file with the Collector of Taxes a sworn statement on a form to be prescribed by the Commissioners showing the number of each kind of stamps held or possessed by such licensee or anyone for him which were not affixed to packages of cigarettes at the beginning of the day on which this title becomes effective, and shall, within fifteen days after the effective date of this title, surrender such stamps to the Collector of Taxes. The Collector of Taxes shall credit the amount of tax represented by the stamps surrendered against new stamps purchased by such licensees. In lieu of the credit allowed for surrendering stamps as provided in this section, the licensee shall be entitled to a refund of the amount of tax represented by the stamps surrendered as an overpayment of tax in the same manner and to the same extent as provided in section 4 of the Act of July 10, 1952 (66 Stat. 543, 546, ch. 649): *Provided*, That the requirement that the amount of refund shall not exceed the portion of tax paid during the two years immediately preceding the filing of the claim for refund shall not be applicable.

Overpayment
refund.

SEC. 904. Any violation of the provisions of this title shall constitute a violation under the District of Columbia Cigarette Tax Act and regulations promulgated pursuant thereto.

Violation.
D. C. Code 47-
2801 note.

SEC. 905. The provisions of this title shall become effective on the first day of the first month succeeding the thirtieth day after the approval of this Act.

Effective date.

TITLE X—AMENDMENTS TO PERSONAL PROPERTY TAX LAW

Exemptions.

SEC. 1001. Subparagraph numbered "Second" of paragraph numbered 10 of section 6 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes", approved July 1, 1902 (32 Stat. 590, 620, ch. 1352), as amended (sec. 47-1208, D. C. Code 1951), is amended to read as follows:

Household belongings.

"Second. Libraries of nonprofit organizations and household belongings located in any dwelling house or other place of abode, or in storage, and boats (to the extent of the first \$1,000 of their value), not held for sale or rent and not held for use or used in any trade or business. For the purposes of this section, the words 'household belongings' shall include all libraries, schoolbooks, wearing apparel, family portraits, pictures, furniture, furnishings, rugs, silverware, china, glassware, musical instruments, radios, television sets, refrigerators, food, photographic equipment, bicycles, tools, clocks, watches, jewelry, and other articles of personal adornment, and other tangible personal property (excluding automobiles and other motor vehicles) ordinarily kept and used or held for use by the occupant of any dwelling house or other place of abode for the ordinary purposes of life. For the purposes of this section, the words 'trade or business' shall include the engaging in or carrying on of any trade, business, profession, vocation, calling, rental of property, commercial activity, and any other activity carried on or engaged in for livelihood or profit."

Repeal.

D. C. Code 47-1208.

SEC. 1002. Subparagraphs numbered "Third" and "Fourth" of paragraph numbered 10 of section 6 of said Act, as amended, are hereby repealed.

32 Stat. 617.
Assessment forms.

SEC. 1003. The fourth subparagraph of the first paragraph of section 6 of said Act, as amended (sec. 47-1203, D. C. Code 1951), is amended as follows:

(a) By striking so much of the first sentence as reads "together with the rate of tax prescribed,";

(b) By striking the words "an affidavit" where they appear in the first sentence and inserting in lieu thereof the words "a form";

(c) By striking therefrom so much as reads "and make and sign an affidavit to the truth thereof, as aforesaid, before the assessor or one of the other members of the said board of personal-tax appraisers, and the members of the said board are hereby authorized to administer such and all oaths in connection with their duties as assessor and appraisers without charge, or before any person authorized by law to administer oaths; and the address in the District of Columbia of the person, corporation, or company making affidavit shall in each case be given below his, its, or their signature," and inserting in lieu thereof the following: "which statement shall also contain, or be verified by, a written declaration that it is made under the penalties of perjury, such declaration to be signed by, and over the address in the District of Columbia of, said person, association, corporation, firm, company, executor, administrator, guardian, or trustee making the statement required hereby,";

(d) By striking the word "sworn" in the second proviso; and

(e) By striking the word "affidavit" in the third proviso and inserting in lieu thereof the word "statement".

Effective date.

SEC. 1004. The provisions of this title shall become effective on July 1 next following the date of approval of this Act.

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TITLE XI—INCREASE IN MOTOR-VEHICLE FUEL TAX

SEC. 1101. The first sentence of the first section of the Act entitled "An Act to provide for a tax on motor-vehicle fuels sold within the District of Columbia, and for other purposes", approved April 23, 1924 (43 Stat. 106; title 47, ch. 19, D. C. Code, 1951), as amended, is amended by striking the figure "5" and inserting in lieu thereof the figure "6".

66 Stat. 100.
D. C. Code 47-
1901.

SEC. 1102. Section 14 of said Act is amended by striking the figure "5" and inserting in lieu thereof the figure "6".

66 Stat. 100.
D. C. Code 47-
1912.
Effective date.

SEC. 1103. This title shall become effective on the first day of the first month following approval of this Act.

TITLE XII—AMENDMENTS TO DISTRICT OF COLUMBIA INCOME AND FRANCHISE TAX ACT OF 1947

SEC. 1201. Section 3 of title VI of the District of Columbia Income and Franchise Tax Act of 1947 (61 Stat. 331, 344, ch. 258), as amended (sec. 47-1567b, D. C. Code, 1951), is amended as follows:

Income tax in-
crease.

(a) By striking the words "One and one-half per centum" and inserting in lieu thereof the words "Two and one-half per centum";

63 Stat. 132.
First \$5000.

(b) By striking the words "Two per centum" and inserting in lieu thereof the words "Three per centum";

Next \$5000.

(c) By striking the words "Two and one-half per centum" and inserting in lieu thereof the words "Three and one-half per centum"; and

Next \$5000.

(d) By striking the words "Three per centum" and inserting in lieu thereof the words "Four per centum".

Excess of
\$15,000.

SEC. 1202. The provisions of this title shall be applicable to taxable years beginning after December 31, 1953.

Effective date.

TITLE XIII—AMENDMENTS TO DISTRICT OF COLUMBIA SALES TAX ACT AND DISTRICT OF COLUMBIA USE TAX ACT

SEC. 1301. Section 107 of the District of Columbia Sales Tax Act (63 Stat. 112, ch. 146; paragraph 7 of sec. 47-2601 D. C. Code, 1951 edition) is amended by striking "bottled" preceding "soft drinks"; by striking "when used for household consumption" after "ice"; and by changing the proviso to read: "Provided, however, That the word 'food' shall not include spirituous or malt liquors and beer."

Definitions.

SEC. 1302. Subsection (a) (1) of section 114 of said District of Columbia Sales Tax Act (paragraph 14 (a) (1) of sec. 47-2601, D. C. Code 1951 edition) is amended to read as follows:

"(1) The sale of any meals, food or drink or other like tangible personal property for a consideration."

SEC. 1303. Section 125 of said District of Columbia Sales Tax Act (sec. 47-2602, D. C. Code 1951 edition) is amended by changing the period at the end of the section to a colon and adding the following:

Gross sales tax.

"Provided, That the rate of tax with respect to sales of food for human consumption off the premises where such food is sold shall be 1 per centum of the gross receipts from such sales, and that the rate of tax with respect to sales or charges for any room or rooms, lodgings, or accommodations, furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients shall be 3 per centum of the gross receipts from such sales."

Food consumed
off premises.

Transients,
lodgings, etc.

**Vendors' reimbursement.
Rates.**

SEC. 1304. Subsections (a), (b), and (c) of section 127 of said District of Columbia Sales Tax Act (sec. 47-2604, D. C. Code, 1951 edition) are amended to read as follows:

General sales.

"(a) On each sale, other than sales of food for human consumption off the premises where such food is sold, and other than sales or charges for rooms, lodgings, or accommodations furnished to transients, where the sales price is from 14 cents to 63 cents, both inclusive, 1 cent; on each such sale where the sales price is from 64 cents to \$1.13, both inclusive, 2 cents; and on each 50 cents of sales price or fraction thereof of such sale in excess of \$1.13, 1 cent.

Food consumed off premises.

"(b) On each sale of food for human consumption off the premises where such food is sold where the sales price is from 28 cents to \$1.27, both inclusive, 1 cent; on each such sale where the sales price is from \$1.28 to \$2.27, both inclusive, 2 cents; and on each \$1 of sales price or fraction thereof of such sale in excess of \$2.27, 1 cent.

Transients' lodgings, etc.

"(c) On each sale or charge for rooms, lodgings, or accommodations, furnished to transients, 3 per centum of the sales price."

Exemptions.

SEC. 1305. Subsection (a) of section 128 of said District of Columbia Sales Tax Act (sec. 47-2605, D. C. Code, 1951 edition) is amended to read as follows:

"(a) Sales to the United States or the District or any instrumentality thereof except sales to national banks and Federal savings and loan associations."

Subsection (d) (1) of said section 128 is repealed.

Subsection (d) (2) of said section 128 is amended by striking "\$1.25" wherever it appears and inserting in lieu thereof "50 cents".

Use tax.

63 Stat. 124.

SEC. 1306. Subsection (a) of section 201 of the District of Columbia Use Tax Act (66 Stat. 124, ch. 146; paragraph 1 (a) of sec. 47-2701, D. C. Code, 1951 edition) is amended by adding at the end thereof the following:

"Retail sale".

"(5) The sale of any meals, food or drink, or other like tangible personal property for a consideration."

63 Stat. 126.

Rate.

SEC. 1307. Section 212 of said District of Columbia Use Tax Act (sec. 47-2702, D. C. Code, 1951 edition) is amended by changing the period at the end of the section to a comma and adding the following: "except that the rate of tax with respect to sales of food for human consumption off the premises where such food is sold shall be 1 per centum of the sales price of such sales."

Payment.

63 Stat. 127.

SEC. 1308. Section 215 of said District of Columbia Use Tax Act (sec. 47-2705, D. C. Code, 1951 edition) is amended by striking "2 per centum of the total" and inserting in lieu thereof "a tax at the rates provided in section 125 of title I of this Act on the".

Effective date.

SEC. 1309. The provisions of this title shall become effective on and after the first day of the first month succeeding the sixtieth day after the approval of this Act.

TITLE XIV—AMENDMENTS TO GROSS RECEIPTS AND MILEAGE TAXES ON TRANSPORTATION COMPANIES

SEC. 1401. Paragraph numbered 5 of section 6 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes", approved July 1, 1902 (32 Stat. 590, 619, ch. 1352), as amended (sec. 47-1701, D. C. Code, 1951), is amended by striking out the second and third sentences and inserting in lieu thereof the following: "And in addition thereto the real estate owned by each national or other incorporated bank, and each trust, gas, electric-lighting, and telephone

company in the District of Columbia shall be taxed as other real estate in said District. Each company operating a street railroad or both a street railroad and bus services in the District of Columbia shall pay 2 per centum per annum on their gross receipts: *Provided*, That any such company operating both a street railroad and bus services shall pay the vehicle-mileage tax for the period beginning with the first day of November and ending with the last day of June of the year next preceding the effective date of this amendatory sentence and shall be allowed a credit for any vehicle-mileage tax paid in advance for the four-month period beginning with the first day of July of the year next succeeding the effective date of this amendatory sentence. Each gas, electric-lighting, and telephone company, and each company operating a street railroad or both a street railroad and bus services in the District of Columbia, shall pay, in addition to the taxes herein mentioned, the franchise tax imposed by the District of Columbia Income and Franchise Tax Act of 1947 (61 Stat. 331, ch. 258), as amended (ch. 15, title 47, D. C. Code, 1951), and the tax imposed upon stock in trade of dealers in general merchandise under paragraph numbered 2 of section 6 of said Act approved July 1, 1902 (32 Stat. 590, 618, ch. 1352), as amended."

SEC. 1402. Subparagraph (b) of paragraph 31 of section 7 of the Act approved July 1, 1902 (32 Stat. 590, 622), as amended (sec. 47-2331 (b), D. C. Code, 1951 edition), is amended (a) by striking the period at the end of the first sentence thereof and adding the following: "*Provided*, That the provisions of this subparagraph shall not apply to companies operating both street railroad and bus services in the District of Columbia which pay taxes to the District of Columbia on their gross receipts: *Provided further*, That nothing contained in the preceding proviso shall be construed to require such companies to comply with the provisions of the Act approved June 29, 1938 (52 Stat. 1233; sec. 44-301, D. C. Code, 1951 edition)."; (b) by striking from the third sentence thereof "franchise,"; and (c) by striking from the third sentence thereof "eight-tenths of 1 cent for each vehicle-mile" and inserting in lieu thereof "1 cent for each vehicle-mile".

SEC. 1403. The first section of this title shall become effective on the 1st day of July 1954. The second section of this title shall become effective on the 1st day of November 1954.

TITLE XV—MINIMUM RATE OF TAXATION ON REAL PROPERTY

SEC. 1501. For each fiscal year after approval of this Act the rate of taxation on real property in the District of Columbia shall not be less than 2.20 per centum on the assessed value of such property.

TITLE XVI—COLLECTION OF TAXES BY DISTRAINT AND JEOPARDY ASSESSMENTS

SEC. 1601. In addition to any other methods or devices or both provided by law or regulation for the collection of various taxes (except real property taxes) due the District, any tax imposed by any law applicable to District taxes, and penalties and interest thereon, when such tax has become due and payable, may be collected in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection; and liens for all such taxes, penalties, and interest may be acquired in the same manner that liens for personal property taxes are acquired.

D. C. Code 47-
1207.
Public vehicles.
License require-
ment.
47 Stat. 555-

Exception.

Mileage tax.

Effective dates.

SEC. 1602. If the assessing authority of the District believes that the collection of any tax imposed by any law applicable to the District Government (except real property taxes) will be jeopardized by delay, the assessing authority shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all the interest and penalties the assessment of which is provided for by law). Such tax, penalties, and interest, shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Collector of Taxes for the District for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful. For the purposes of this section the word "assessing authority" means the Assessor, the Board of Personal Tax Appraisers or any member thereof, and any other official or officials of the District, or their duly authorized representatives, having the duty to assess District taxes.

Applicability.

SEC. 1603. This title shall be applicable with respect to taxes assessed within three years prior to the date of the approval of this Act.

TITLE XVII—GENERAL PROVISIONS

SEC. 1701. REGULATIONS.—The Commissioners are authorized to make rules and regulations to carry out the provisions of this Act.

SEC. 1702. SEPARABILITY CLAUSE.—If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Approved May 18, 1954.

Public Law 365

CHAPTER 222

AN ACT

May 25, 1954
[S. 2305]

To promote safe driving, to eliminate the reckless and financially irresponsible driver from the highways, and to provide for the giving of security and proof of financial responsibility by persons driving or owning vehicles of a type subject to registration under the laws of the District of Columbia.

Motor Vehicle
Safety Responsibility
Act of the
District of Colum-
bia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Motor Vehicle Safety Responsibility Act of the District of Columbia."

ARTICLE I

WORDS AND PHRASES DEFINED

SEC. 2. DEFINITIONS.—The following words and phrases used in this Act shall, for the purpose of this Act, have the meanings respectively ascribed to them in this article except in those instances where the context clearly indicates a different meaning.

(a) COMMISSIONERS.—The Board of Commissioners of the District of Columbia, or their designated agent or agents.

(b) DRIVER OR OPERATOR.—Every person who drives or is in actual physical control of a motor vehicle upon a public highway or who is exercising control over or steering a vehicle being pushed or towed by a motor vehicle upon a public highway.

(c) LICENSE.—Any operator's permit or any other license or permit to operate a motor vehicle issued under the laws of the District of Columbia including—

**PUBLIC WORKS CONSTRUCTION FOR
THE DISTRICT OF COLUMBIA**

HEARINGS
BEFORE THE
JOINT SUBCOMMITTEE ON FISCAL AFFAIRS
OF THE HOUSE AND SENATE
COMMITTEES ON THE DISTRICT OF COLUMBIA
CONGRESS OF THE UNITED STATES
EIGHTY-THIRD CONGRESS
SECOND SESSION
ON
H. R. 7389
TO AUTHORIZE AND FINANCE A PROGRAM OF PUBLIC WORKS
CONSTRUCTION FOR THE DISTRICT OF COLUMBIA
AND FOR OTHER PURPOSES

**Printed for the use of the Joint Subcommittee on Fiscal Affairs
of the Committees on the District of Columbia**



UNITED STATES
GOVERNMENT PRINTING OFFICE
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PUBLIC WORKS CONSTRUCTION FOR THE
DISTRICT OF COLUMBIA

TUESDAY, JANUARY 26, 1954

UNITED STATES SENATE,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
FISCAL AFFAIRS SUBCOMMITTEE,
HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
FISCAL AFFAIRS SUBCOMMITTEE,
Washington, D. C.

The subcommittees met at 10:14 a. m., pursuant to call, in the hearing room in the Capitol, Senator Francis Case, chairman of the Senate Committee on the District of Columbia; Representative Joseph P. O'Hara, presiding.

Present: Senators Francis Case (chairman of the Senate Committee) and Thomas A. Burke; Representatives Joseph P. O'Hara, Howard W. Smith, Oren Harris, and Henry O. Talle.)

Also present: Robert C. Albrook, clerk; William P. Gullledge, assistant counsel, Senate Committee on the District of Columbia; William N. McLeod, Jr., clerk, House of Representatives Committee on the District of Columbia.

(H. R. 7389 follows:)

[H. R. 7389, 83d Cong., 2d sess.]

A BILL To authorize and finance a program of public works construction for the District of Columbia, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act, divided into titles and sections, may be cited as the "District of Columbia Public Works Act of 1954".

(b) As used in this Act—

(1) The word "Commissioners" means the Board of Commissioners of the District of Columbia or their designated agent or agents.

(2) The word "District" means the District of Columbia.

(3) The word "person" includes any corporation, partnership, firm, organization, association, group, trust, estate, or other entity.

(4) The term "Highway Fund" means the fund in the Treasury of the United States created by the Act approved August 17, 1937 (50 Stat. 676 and 681), as amended (secs. 40-103 (d) and 47-1901, D. C. Code, 1951 edition).

(c) Wherever any officer or agency of the District, other than the Commissioners, is mentioned in this Act, such officer or agency shall be deemed to be the officer or agency so mentioned, or the officer, officers, agency, or agencies succeeding to the functions of the officer or agency so mentioned, pursuant to Reorganization Plan Numbered 5 of 1952.

TITLE I—ADJUSTMENT OF WATER RATES

SEC. 101. The Commissioners are authorized, in their discretion, to fix, from time to time, the rates charged by the District for water and water services

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furnished by the District water supply system. Such rates so fixed, whether involving one or more changes in a rate, or one or more changes in the basic quantity of water to be supplied at a given rate, or the combined effect of both such changes, shall not, in any event, result in increasing by more than 33 $\frac{1}{3}$ per centum the rates in effect on the day preceding the effective date of this section. In computing the charge for the consumption of water in excess of the minimum amount allowed for metered service, if such charge is for a period beginning prior to so fixing such rates and ending thereafter, the charge for such excess consumption shall be prorated on a monthly basis, in accordance with the rates prevailing in the respective periods. Nothing in this title shall be construed to modify the provisions of the Act approved April 14, 1932 (47 Stat. 79, ch. 100; sec. 43-1530, D. C. Code) relating to the delivery of water from the District water supply system to the Washington Suburban Sanitary Commission.

SEC. 102. An additional charge of 10 per centum shall be added to any water charge remaining unpaid after the expiration of thirty days from the date of rendition of a bill for such charge.

SEC. 103. The Commissioners are authorized to provide for the collection of water charges, in advance or otherwise, from the owner or occupant of any building, establishment, or other place furnished water or water service by the District, and to shut off the water supply to any such building, establishment, or other place upon failure of the owner or occupant thereof to pay such water charges within thirty days from the date of rendition of the bill therefor. Such authority to shut off the water supply may be exercised by the Commissioners regardless of any change in ownership or occupancy of such building, establishment, or other place. When the water supply to any such building, establishment, or other place has been shut off for failure to pay such water charges, whether the water supply to such building, establishment, or other place was shut off before or after the enactment of this title, the Commissioners shall not again supply such building, establishment, or other place with water until all arrears of water charges, together with penalties and the costs actually incurred in shutting off and restoring the water supply, are paid.

SEC. 104. The District shall have a continuing lien for water charges upon any land and the improvements thereon to which water or water service is or has been furnished. Such lien shall have priority over all other liens except real estate, special assessment, and other such District general property liens. If any water charges shall remain unpaid after the expiration of two years from the date of rendition of the bill for such charges, or two years from the effective date of this title, whichever is later, the property which has been furnished such water or water service may be sold for such unpaid water charges, together with penalties thereon and costs, at the next ensuing tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if such water charges, together with penalties thereon and costs, shall not have been paid in full prior to said sale. So much of the proceeds of said sale as represents said unpaid water charges shall be credited to the water fund of the District.

SEC. 105. The remedies set forth in sections 102, 103, and 104 of this title are hereby declared to be cumulative and not exclusive.

SEC. 106. (a) All water and water services furnished from the District water supply system through any connection thereto for direct use by the Government of the United States or any department, independent establishment, or agency thereof, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for at the rates for the furnishing and readiness to furnish water applicable to other water consumers in the District. Payment shall be made as provided in subsection (b) of this section. Whenever any payment authorized by this section is made, such payment shall be in lieu of so much of the annual payment authorized by article VI of the Act approved July 16, 1947 (61 Stat. 328, 361), as pertains to the Water Fund of the District. The provisions of sections 102, 103, and 104 of this title, relating, respectively, to enforcement of payment for water charges by penalty charge for late payment, by shutting off of the water supply for nonpayment, and the imposition of lien and sale of property, shall not apply in any case where water or water service is furnished to a building, establishment, or other place owned by the Government of the United States and occupied by a department, independent establishment, or agency thereof.

(b) For the purpose of effectuating the provisions of subsection (a) of this section, there shall be included annually in the budget estimates of the Com-

PUBLIC WORKS CONSTRUCTION, DISTRICT OF COLUMBIA 3

missioners the value, as determined by the Commissioners, of the water and water services furnished to the United States during the most recent preceding fiscal year for which such value can be determined, based on the water rates prevailing during the period of consumption, and there shall be appropriated annually for the District to the credit of the said Water Fund, out of any money in the Treasury not otherwise appropriated (to be advanced on July 1 of each fiscal year beginning July 1, 1954), a sum corresponding to the value of the water and water services furnished the United States.

SEC. 107. The first proviso of section 2 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, eighteen hundred and eighty-three, and for other purposes", approved July 1, 1882 (22 Stat. 144; sec. 43-1504, D. C. Code, 1951 edition), as amended by striking the word "annually" and inserting in lieu thereof the following: "at least once every twelve months, or whenever practicable in the judgment of the Commissioners, at least once every six months."

SEC. 108. (a) Subsection (a) of section 2 of the Act entitled "An Act authorizing loans from the United States Treasury for the expansion of the District of Columbia water system", approved June 2, 1950 (64 Stat. 195; sec. 43-1540, D. C. Code, 1951 edition), is amended by striking the figures "23,000,000", and inserting in lieu thereof the figures "35,000,000."

(b) Subsections (c) and (d) of section 2 of such Act approved June 2, 1950, are amended to read as follows:

"(c) Any loan advanced pursuant to this section shall be repaid to the Secretary of the Treasury in substantially equal annual payments, including principal and interest, within a period of thirty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to the Water Fund: *Provided*, That any such loan advanced prior to the effective date of this amendatory section shall, for the purpose of determining the time when repayment thereof shall begin, be deemed to have been credited to the Water Fund on such effective date, and interest accrued on any such loan advanced prior to the effective date of this amendatory section shall be paid at such time and in such manner as the Secretary of the Treasury shall determine: *Provided further*, That the Commissioners may, in their discretion, make repayments in larger amounts at any time during the life of any loan advanced pursuant to this section. Interest on such loans shall begin to accrue as of the dates the respective advancements are credited to the Water Fund.

"(d) Loans advanced pursuant to this section during any six-month period (beginning with the six-month period ending June 30, 1953) shall be at a rate of interest determined by the Secretary of the Treasury as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowings at a maturity approximately equal to one-half of the period of time the loan is outstanding."

(c) Subsection (e) of section 2 of such Act approved June 2, 1950, is amended by striking therefrom "beginning with the budget estimates for fiscal year 1961."

SEC. 109. Sections 101 to 105, inclusive, of this title shall take effect on the first day of the third month following its enactment.

TITLE II—SANITARY SEWAGE WORKS

SEC. 201. For the purposes of this title—

(a) The term "sanitary sewage" means (1) domestic sewage with storm and surface water limited; (2) sewage discharging from sanitary conveniences; (3) commercial or industrial wastes; and (4) water supply after it has been used.

(b) The term "stormwater sewage" means liquid flowing in sewers resulting directly from precipitation.

(c) The term "combined sewage" means sewage containing both sanitary sewage and stormwater sewage.

(d) The term "sewer" means a pipe or conduit carrying sewage.

(e) The term "sanitary sewer" means a sewer which carries sanitary sewage.

(f) The term "stormwater sewer" means a sewer which carries stormwater sewage.

(g) The term "combined sewer" means a sewer which carries both sanitary sewage and stormwater sewage.

4 PUBLIC WORKS CONSTRUCTION, DISTRICT OF COLUMBIA

(h) The term "sanitary sewage works" means a system of sanitary and combined sewers, appurtenances, pumping stations, and treatment works for conveying, treating, and disposing of sanitary sewage.

(i) The term "stormwater sewer system" means a system of sewers, appurtenances, and pumping stations for conveying and disposing of stormwater sewage.

(j) The term "combined sewer system" means a system of sewers and appurtenances conveying both sanitary sewage and stormwater sewage.

SEC. 202. There is hereby created in the Treasury of the United States a special fund which shall be known as the D. C. Sanitary Sewage Works Fund, and which shall be composed of such sums as shall be deposited to the credit of such fund, including, but not limited to, sums received by the Commissioners under the provisions of the Act entitled "An Act authorizing the laying of water mains and service sewers in the District of Columbia, the levying of assessments therefor, and for other purposes," approved April 22, 1904 (33 Stat. 244; secs. 43-1510 to 43-1517, D. C. Code, 1951 edition), on account of assessments levied for the construction of sewers and including any payment made to the District by any governmental agency of the States of Maryland or Virginia on account of any sewer service furnished any such agency by the District.

SEC. 203. Subject to appropriations, the D. C. Sanitary Sewage Works Fund shall be available for use by or under the direction and control of the Commissioners for—

(a) the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District, including all expenses;

(b) payment of a portion of such administrative expenses as may not be wholly allocated to the sanitary sewage works or to any other sewage works of the District, but which expenses are incurred in connection with the operation of the sanitary sewage works and either or both the stormwater sewer system and the combined sewer system. The portion of such expenses to be paid from the D. C. Sanitary Sewage Works Fund shall be fixed from time to time by the Commissioners at such a percentage of the total of such expenses for the said sewer systems as the Commissioners, in their discretion, may determine;

(c) payment of such portion of all expenses for the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the combined sewer system of the District as the Commissioners, in their discretion, determine to be attributable to the sanitary sewage function of such combined sewer system;

(d) payment of the District's contribution to the expenses of the Interstate Commission on the Potomac River Basin;

(e) payments by the District to agencies in the State of Maryland providing services to the District for conveying, treating, or disposing of sanitary sewage: *Provided*, That the said fund shall not be available to pay the cost of providing sewage service to institutions of the District located in the State of Maryland;

(f) payments to the General Fund and other funds of the District for such expenses or estimated expenses as are or may be incurred in the administration of this title;

(g) payment to the United States Treasury of the interest, in accordance with the provisions of this title, on loans to the District for such Sanitary Sewage Works Fund;

(h) repayment to the United States Treasury of the principal amount of each loan made to the District in accordance with the provisions of this title, and of any advancements made to the District in accordance with the provisions of section 204 of this title; and

(i) refund of part or all of any sanitary sewer service charges erroneously paid: *Provided*, That application for refund shall be made within two years after such erroneous payment.

SEC. 204. The Secretary of the Treasury, notwithstanding the provisions of the District of Columbia Appropriation Act, approved June 29, 1922 (42 Stat. 668), is authorized and directed to advance, on the requisition of the Commissioners, made in the manner now prescribed by law, out of any money in the Treasury of the United States not otherwise appropriated, such sums as may be necessary, from time to time, to meet the expenses of the District in connection with the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the Dis-

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trict, as authorized by Congress, and such amounts so advanced shall be reimbursed by the said Commissioners to the Treasury out of the moneys deposited to the credit of the D. C. Sanitary Sewage Works Fund.

Sec. 205. Notwithstanding the provisions of this title, any current appropriation available to the District for the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District shall remain available for the purposes for which appropriated.

Sec. 206. The Commissioners are authorized to establish charges for the provision of sanitary sewer service, such charges to be collected in the same manner and at the same time as water charges are collected, and to be paid into the D. C. Sanitary Sewage Works Fund.

Sec. 207. The sanitary sewer service charges established under the authority of this title shall be based on the water consumption of, and water service to, the properties served, and be determined by one of the following methods:

(a) Where water is supplied from the District water supply system at meter rates, the Commissioners shall establish the sanitary sewer service charge as a percentage of the water charge applicable in the District, but such percentage shall not exceed 60 per centum of the water charge.

(b) Where water is supplied from the District water supply system, which water is not measured by meter, but is supplied at special business and miscellaneous rates, the Commissioners shall establish the sanitary sewer service charge at a percentage of such special business and miscellaneous rates, but such percentage shall not exceed 60 per centum of such rates.

(c) For each property using water, all or part of which is from a source or sources other than the District water supply system, the Commissioners shall establish a sanitary sewer service charge separate from and in addition to any sanitary sewer service charge levied under paragraph (a) or (b) of this section. Such separate or additional sanitary sewer service charge shall be measured by the quantity of water from the source or sources other than the District water supply system discharged into the District sanitary sewer system from said property. The owner or occupant of each such property shall install and maintain, without cost to the District, a meter or meters to measure the quantity of water received from other than the water supply system of the District, and the sanitary sewer service charge based upon water received from other than the water supply system of the District shall be the same in amount as would be paid by the owner of a metered property receiving the same quantity of water from the water supply system of the District. No meter shall be installed or be used for such purpose without the approval of the Commissioners. In the event the owner or occupant of property fails or refuses to furnish and properly maintain such meter or meters as are prescribed herein in the manner required by the Commissioners, then the supply of water from the District water supply system to the property or premises may be suspended by the Commissioners and the said supply shall not be restored until the metering of such supplementary water source has been accomplished by the owner or occupant to the satisfaction of the Commissioners, and any costs devolving upon the District as a result of the suspension of service from the District water supply system shall be paid to the District prior to the restoration of water service from the District water supply system.

(d) Wherever a property upon which a sanitary sewer service charge is imposed uses water from the water supply system of the District for an industrial or commercial purpose in such manner that the water so used is not discharged into the sanitary sewage works of the District, the quantity of water so used and not discharged into the sanitary sewage works of the District may be excluded in determining the sanitary sewer service charge on such property, if such exclusion is previously requested in writing by the owner or occupant thereof. Upon such request, the quantity of water so used and not discharged into the sanitary sewage works of the District shall be measured by a device or devices approved by the Commissioners, installed and maintained without cost to the District, and the sanitary sewer service charge to be imposed on such property shall be not more than 60 per centum of the water charge which would have been charged such property if the amount of water so used and not discharged into the sanitary sewage works of the District had not been included in the amount of water used by such property: *Provided*, That all water from the water supply system of the District used by such property shall be paid for at established rates, whether or not such water is discharged into the sanitary sewage works of the District. Where, in the opinion of the Commissioners, it is not

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practicable to install a measuring device to determine continuously the quantity of water used for such industrial or commercial purposes and not discharged into the sanitary sewage works of the District, the Commissioners shall determine periodically, in such manner and by such methods as the Commissioners may prescribe, the quantity of water from the water supply system of the District discharged into the sanitary sewage works of the District, and the sanitary sewer service charge shall be based on such estimated quantity of water at the percentage authorized by this paragraph. Any dispute as to such estimated amount shall be decided by the Commissioners and such decision shall be final; and in the event the owner or occupant fails to furnish and maintain such measuring devices or to facilitate the periodic determinations by the Commissioners as prescribed herein, then the privilege of excluding some portion of the water used from the District water supply system from the charges for sanitary sewer service shall be forfeited and the charges for sanitary sewer service shall be based on the full amount of the water used from the District water supply system.

SEC. 208. (a) The owner or occupant of each building, establishment, or other place in the District connected with any District sewer conducting sanitary sewage shall pay the sewer service charge authorized by this title.

(b) If the sanitary sewer service charge imposed by this title is based on a water charge any part of which is for a period beginning prior to the imposition of the sanitary sewer service charge and ending thereafter, the sanitary sewer service charge shall be prorated, on a monthly basis, on so much of such water charge as shall have accrued subsequent to the effective date of this title.

SEC. 209. All meters or other measuring devices installed or required to be used under the provisions of this title shall be under the control of the Commissioners, who shall promulgate all regulations necessary in their judgment to effectuate the purposes of this title. The owner or occupant of the property upon which any such measuring device is installed shall be responsible for its maintenance and safekeeping, and all repairs thereto shall be made at the owner's cost, whether such repairs are made necessary by ordinary wear and tear or other causes. Bills for such repairs, if made by the District, shall be due and payable when rendered, and the Commissioners are authorized to provide for stopping the supply of water to any building or establishment upon the failure to pay such charge for meter repairs.

SEC. 210. The Commissioners are hereby authorized, in order to encourage the prompt payment of the sanitary sewer service charge imposed by this title, to impose an additional charge of 10 per centum for any sanitary sewer service charge remaining unpaid for more than thirty days, to shut off the water of premises for which such charge is not paid within thirty days, and to have and enforce a continuing lien for such charge upon the land and any improvements thereon furnished such sanitary sewer service, in the same manner and to the same extent as if sections 102, 103, 104, and 105 of title I of this Act were set forth in this title, and such sections shall be deemed to be applicable in every particular to the sanitary sewer service charge imposed by this title: *Provided*, That whenever said lien is enforced by the sale of property against which it has been assessed, so much of the proceeds of such sale as represents said unpaid sanitary sewer service charges shall be credited to the D. C. Sanitary Sewage Works Fund.

SEC. 211. The sanitary sewer service charges applicable to such churches and institutions as may under existing law be furnished water without charge by the Commissioners shall be predicated only on the quantity of water used in excess of the amount fixed by the Commissioners in each case as to which no water charge is made.

SEC. 212. (a) The sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services furnished by the sanitary sewage works of the District through any connection thereto for direct use by the Government of the United States or any department, independent establishment, or agency thereof, and such charges shall be predicated on the value of water and water services received by such facilities of the Government of the United States or any department, independent establishment, or agency thereof from the District water supply system. Payment of the said sanitary sewer service charge shall be made as provided in subsection (b) of this section: *Provided*, That the aggregate amount of such sanitary sewer service charge for each fiscal year shall be determined in the manner prescribed in section 207 hereof: *Provided further*, That the obligation to pay for sanitary sewer services received by the Government of the United States or any department, independent establishment, or

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agency thereof shall be with respect to such service furnished on and after July 1, 1954.

(b) For the purpose of effectuating the provisions of subsection (a) of this section there shall be included annually in the budget estimates of the Commissioners beginning with the estimates for the fiscal year ending June 30, 1955, the value as determined by the Commissioners of the sanitary sewer service furnished to the United States or to any department, independent establishment or agency thereof during the most recent preceding fiscal year for which such value can be determined based on the rates for such charges prevailing during the period of such service, and there shall be appropriated annually for the D. C. Sanitary Sewage Works Fund out of any money in the Treasury not otherwise appropriated (to be advanced on July 1 of each fiscal year beginning July 1, 1954) a sum corresponding to the said value of charges for sanitary sewer service furnished the United States.

SEC. 213. The Commissioners are hereby authorized to accept loans for the District from the United States Treasury to finance the construction, expansion, relocation, replacement, or renovation of (1) the sanitary sewer system of the District or (2) the combined sewer system of the District; and the Secretary of the Treasury is authorized to advance such sums as may be appropriated for such purposes.

SEC. 214. The total principal amount of loans made in connection with the construction, expansion, relocation, replacement, or renovation of the sanitary and combined sewer systems of the District shall not exceed \$5,000,000. Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in full in the Treasury of the United States to the credit of the D. C. Sanitary Sewage Works Fund.

SEC. 215. Nothing herein contained shall prohibit the use of funds deposited to the credit of the D. C. Sanitary Sewage Works Fund from being used for the construction, expansion, relocation, replacement, or renovation of any sewer in the combined sewer system of the District, but the Commissioners, prior to authorizing the use of moneys from such fund for such work, shall determine the percentage of the cost to be borne by the D. C. Sanitary Sewage Works Fund and the percentage to be borne by the General Fund.

SEC. 216. The loans authorized by this title shall be advanced to the Commissioners on their requisitions therefor, shall be available to the Commissioners for the construction, expansion, relocation, replacement, or renovation of all parts of the sanitary sewage works of the District, and shall be available until expended.

SEC. 217. Any loan advanced under this title shall be repaid to the Secretary of the Treasury in substantially equal annual payments, including principal and interest, within a period of thirty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to the D. C. Sanitary Sewage Works Fund: *Provided*, That the Commissioners may, in their discretion, make repayments in larger amounts at any time during the life of any such loan. Interest on such loans shall begin to accrue as of the dates the respective advancements are credited to the D. C. Sanitary Sewage Works Fund.

SEC. 218. Loans advanced pursuant to this title during any six-month period (beginning with the six-month period ending December 31, 1954) shall be at a rate of interest determined by the Secretary of the Treasury as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowings at a maturity approximately equal to one-half of the period of time the loan is outstanding.

SEC. 219. The provisions of sections 206 to 211, inclusive, of this title shall become effective on the first day of the third month following the enactment of this Act.

TITLE III—ASSESSMENTS FOR WATER MAINS AND SEWERS

SEC. 301. That so much of the first sentence of section 2 of the Act entitled "An Act authorizing the laying of water mains and service sewers in the District of Columbia, the levying of assessments therefor, and for other purposes", approved April 22, 1904 (33 Stat. 244), as amended (sec. 43-1511, D. C. Code, 1951 edition), as precedes the first proviso of the said sentence is amended to read as follows: "That for laying or constructing water mains in the District of Columbia assessments shall be levied at the rate of \$3 per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or

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alley in which a water main shall be laid, and that for laying or constructing service sewers in the District of Columbia assessments shall be levied at the rate of \$4 per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a sewer shall be laid."

SEC. 302. The provisions of this title shall be applicable to water mains and service sewers laid or constructed after June 30, 1954, or after the date of approval of this Act, whichever is later.

TITLE IV—HIGHWAY CONSTRUCTION

SEC. 401. A program of construction projects to meet immediate capital needs for highways in the District is hereby authorized.

SEC. 402. (a) To assist in financing such program of construction, the Commissioners are hereby authorized to accept loans for the District from the United States Treasury and the Secretary of the Treasury is hereby authorized to lend to the Commissioners such sums as may hereafter be appropriated: *Provided*, That the total principal amount of loans advanced pursuant to this section shall not exceed \$50,250,000: *Provided, further*, That any loan for use in any fiscal year must first be specifically requested of the Congress in connection with the budget submitted for the District for such fiscal year, with a full statement of the work contemplated to be done and the need thereof, and such work must be approved by the Congress: *And provided further*, That such approval shall not be construed to alter or to eliminate the procedures for consultation, advice, and recommendation provided in the National Capital Planning Act of 1952 (66 Stat. 781). Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in full in the Treasury of the United States to the credit of the Highway Fund.

(b) The loans authorized under this section, or any parts thereof, shall be advanced to the Commissioners on their requisitions therefor, shall be available to the Commissioners for carrying out the said construction program, and shall be available until expended.

(c) Any loan advanced pursuant to this section shall be repaid to the Secretary of the Treasury in substantially equal annual payments, including principal and interest, within a period of thirty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to the Highway Fund: *Provided*, That the Commissioners may, in their discretion, make repayments in larger amounts at any time during the life of any such loan. Interest on such loans shall begin to accrue as of the dates the respective advancements are credited to the Highway Fund.

(d) Loans advanced pursuant to this section during any six-month period (beginning with the six-month period ending December 31, 1954) shall be at a rate of interest determined by the Secretary of the Treasury as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowings at a maturity approximately equal to one-half of the period of time the loan is outstanding.

(e) Moneys for the payments to the United States Treasury herein required shall be included in the budget estimates of the Commissioners, and shall be payable from the Highway Fund.

TITLE V—PAYMENT INTO HIGHWAY FUND OF RENTS FOR VAULTS IN PUBLIC SPACE

SEC. 501. Section 7 of the Act entitled "An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes", approved September 1, 1916 (39 Stat. 716; sec. 7-901, D. C. Code, 1951 edition), is amended by inserting immediately before the period at the end thereof of the following: ", and such rent shall be deposited to the credit of the Highway Fund."

TITLE VI—MOTOR VEHICLE REGISTRATION FEES AND REPEAL OF PERSONAL PROPERTY TAX ON CERTAIN MOTOR VEHICLES

SEC. 601. Subsection (b) of section 3 of title IV of the Act entitled "An Act to provide additional revenue for the District of Columbia, and for other purposes", approved August 17, 1937 (50 Stat. 681), as amended (sec. 40-103, D. C.

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10 years—mayor of the city of Cleveland, Ohio, having served there for 4½ terms, I believe.

The fact of his election and reelection speaks eloquently of the grasp he must have of municipal affairs and of the problems which he encountered in Cleveland, Ohio, which is very comparable in size to the city of Washington.

We have a tendency to feel that Washington has grown in the last few years, and so have many other cities, and the city of Cleveland is one of those which has experienced this period of a growing city.

For myself, I welcome his membership on the committee, and I want to commend the interest he has taken in this particular committee because, as a matter of fact, he is new to the committee and we have not yet assigned him to a subcommittee, and the fact that he has come here to get this background picture of the city.

I am pleased to have him here and to introduce to you Senator Burke, our new member on the District of Columbia Committee.

Senator BURKE. Thank you. I understand, though, that that is an invitation to go to work.

Representative O'HARA of Minnesota. Our next witness is Mr. Bartholomew, Chairman of the National Capital Planning Commission.

We will be glad to hear from you and your presentation, Mr. Bartholomew.

STATEMENT OF HARLAND BARTHOLOMEW, CHAIRMAN, NATIONAL CAPITAL PLANNING COMMISSION

MR. BARTHOLOMEW. Mr. Chairman, my statement will be very brief.

The National Capital Planning Commission on December 12 endorsed a program of public works construction for the District of Columbia, and passed a particular resolution which I won't read but which I will file for the record.

Representative O'HARA of Minnesota. All right.

(The resolution referred to is as follows:)

STATEMENT OF HARLAND BARTHOLOMEW, CHAIRMAN, NATIONAL CAPITAL PLANNING COMMISSION

The National Capital Planning Commission on December 12, 1952, endorsed a program of public works construction for the District of Columbia in accordance with the following resolution:

"Motion duly carried adopting the following resolution:

"Whereas the sound planning, development, and operation of the District of Columbia and its environs are vital to the proper functioning of the Nation's Capital as the seat of the Federal Government, as prescribed in article 1 of the Constitution of the United States; and

"Whereas population changes, material and financial shortages resulting from the war and the defense program, rising costs and other factors have combined to delay needed construction until today a backlog of essential public works has accumulated; and

"Whereas an accelerated construction program of considerable magnitude is urgently required effectively to service the Federal establishment, residents, and visitors, and to achieve a balanced local economy; and

"Whereas responsibility for developing, maintaining, and operating the Federal City is a joint responsibility of the Federal Government and local citizens: Therefore be it

Resolved, That the National Capital Planning Commission endorses an immediately accelerated public works program conforming to the adopted comprehensive plan and financed jointly by the Federal and local governments."

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The orderly development of any city requires the coordination of public works construction. The customary procedure is for the city planning commission to select from the comprehensive city plan a 5- or 6-year advance program of public works from which there would be selected those projects which are of first priority and which should constitute the program for the immediately ensuing year. This is the procedure provided for in the National Capital Planning Act of 1952 (66 Stat. 781).

Washington is now confronted with an emergency situation so far as public works are concerned because of the many delays encountered as a result of the war. Other factors, such as extraordinary population growth, have created an unusual backlog of much needed public improvements. The Board of District Commissioners and the Citizens Advisory Committee on Public Works have performed a much needed public service in devising the plan which has now been presented to you.

Since there is a joint Federal and city responsibility for the construction of public works, the National Capital Planning Commission believes that a comprehensive long-range program is particularly urgent and desirable at this time. While the Commission has not made an exhaustive study of the program as a whole, it is assumed that the proposals for individual projects will be considered in the customary way as provided by law and as the location and design for specific projects are proposed.

While certain differences may arise from time to time with respect to some projects, which differences should and can be resolved, these should in no way impair the validity of the overall program. It is the impression of the Commission that the program coincides in large measure with the comprehensive city plan for which this Commission is responsible. We are pleased, therefore, to urge most respectfully an early approval and authorization.

Mr. BARTHOLOMEW. The orderly development of any city requires the coordination of public works construction.

The customary procedure in most cities is for the city planning commission to select from the comprehensive city plan a 5- or 6-year advanced program of public works from which there would be selected those projects which are of first priority and which should constitute the program for the immediately ensuing year.

This is the procedure provided for in the National Capital Planning Act of 1952. That applies to our Commission.

Washington, however, is now confronted with an emergency situation so far as public works are concerned because of the many delays encountered as a result of the war. Other factors, such as extraordinary population growth, have created an unusual backlog of much-needed public improvements.

The Board of District Commissioners and the Citizens Advisory Committee on Public Works have performed a much-needed public service in devising the plan which has now been presented to you.

Since there is a joint Federal and city responsibility for the construction of public works, the National Capital Planning Commission believes that a comprehensive, long-range program is particularly urgent and desirable at this time.

While the Commission has not made an exhaustive study of the program as a whole, it is assumed that the proposals for the individual projects will be considered in the customary way, as provided by law and as the location and design for specific projects are proposed.

While certain differences may arise from time to time with respect to certain projects, which differences can and should be resolved, these in no way should impair the validity of an overall program.

It is the belief of the Commission that the program coincides in large measure with the comprehensive city plan for which our Commission is responsible.

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We are pleased, therefore, to urge most respectfully an early approval and authorization.

Thank you.

Representative O'HARA of Minnesota. Are there any questions, gentlemen?

If not, thank you, Mr. Bartholomew.

Mr. Spencer, is it the desire that Mr. Auld be heard now?

Mr. SPENCER. Yes.

Representative O'HARA of Minnesota. Mr. D. V. Auld, Director of the Department of Sanitary Engineering.

I presume, Mr. Auld, your testimony deals strictly with that part of the program dealing with the general subject of sanitation; is that correct?

Mr. AULD. Yes, sir; it does.

**STATEMENT OF DAVID V. AULD, DIRECTOR, DEPARTMENT OF
SANITARY ENGINEERING**

Mr. AULD. I have a statement which I would like to put in your hands. I do not intend to read it. However, I will try to be much briefer about it.

Representative O'HARA of Minnesota. Would you like at this point in the record, Mr. Auld, that your statement appear in full?

Don't you think it would be wise for the purpose of the record that that be done?

Mr. AULD. Yes, sir.

Representative O'HARA of Minnesota. Without objection, it may appear at this point in the record.

(The prepared statement of Mr. Auld is as follows:)

STATEMENT OF DAVID V. AULD, DIRECTOR, DEPARTMENT OF SANITARY ENGINEERING

In 1941, the Congress directed that engineering studies be undertaken for the development of a plan to insure an adequate future water supply for the District of Columbia. This action resulted in a joint report which on February 18, 1946, was transmitted to the Congress by the Board of Commissioners and the Chief of Engineers (H. Doc. 480, 79th Cong.). This report included a review of existing water facilities, an analysis of future water requirements of the District and environs, and a determination of the various works to be built in order to meet the water requirements through the year 2000. The resulting construction program was approved by Congress in 1950.

Since publication of the joint report substantial progress has been made through the construction of many of the needed facilities. The 10-year program now presented constitutes the segment of the water system expansion next to be undertaken if water requirements are to be satisfied.

The total works for the 10-year period 1955 through 1964 are divided as follows:

Collection and purification facilities (aqueduct)	\$21, 289, 000
Distribution facilities	14, 499, 000
Total	35, 788, 000

The water-construction program put forward in 1946 was predicated on gradually increasing water demands. The works proposed were scheduled to become progressively available to meet these growing water requirements. Experience since that time has shown the estimates to have been surprisingly accurate since maximum summer requirements have consistently borne out or exceeded expectations. There appears, therefore, no alternative to continuing with expansion of water facilities on about the scale initially contemplated and as approved by the Congress.

trucks, and motor vehicles such as are now owned, and the replacement by purchase and exchange of the following motor-propelled vehicles: Twelve one and one-half ton trucks at not to exceed \$750 each; purchase of fuel, oils, waste, and other materials, and the employment of all labor necessary for the proper execution of this work; and for contingent expenses, including books, blanks, stationery, printing and binding not to exceed \$2,500; postage, purchase of technical reference books and periodicals not to exceed \$275, and other necessary items, \$7,500; in all for maintenance, \$367,700, of which not exceeding \$5,000 shall be available for operation of pumps at Bryant Street pumping station upon interruption of service from Dalecarlia pumping station.

Extension of distribution system.

For extension of the water-department distribution system, laying of such service mains as may be necessary under the assessment system, \$250,000.

Meters.

For installing and repairing water meters on services to private residences and business places as may not be required to install meters under existing regulations, as may be directed by the Commissioners; said meters at all times to remain the property of the District of Columbia, \$220,000.

Hydrants.

For installing fire and public hydrants, \$22,500.

Replacement of old mains, etc.

For replacement of old mains and divide valves in various locations, on account of inadequate size and bad condition of pipe on account of age, and laying mains in advance of pavements, \$135,000.

Reservoir, Soldiers' Home grounds, construction.

For the construction of a reservoir of approximately fifteen million gallons capacity on the grounds of the United States Soldiers' Home, District of Columbia, including necessary appurtenances and auxiliaries, and including not to exceed \$12,000 for the employment, by contract or otherwise, and without reference to section 3709 of the Revised Statutes (41 U. S. C. 5) or the Classification Act of 1923, as amended, of engineering and other professional services, \$400,000, to continue available until June 30, 1940.

R. S. § 3709.
41 U. S. C. § 5.
6 U. S. C. §§ 601-674;
Supp. III, §§ 673, 673a.

Investment of water funds.

The Treasurer of the United States is authorized to invest in United States securities for the account of the water fund of the District of Columbia such funds as may be determined by the Commissioners to be available for that purpose during the fiscal year 1939, and such funds are appropriated for this purpose from the revenues of the Water Department.

Refund of erroneous charges.

For the refunding of water rents and other water charges erroneously paid in the District of Columbia, to be refunded in the manner prescribed by law for the refunding of erroneously paid taxes, \$3,500: *Provided*, That this appropriation shall be available for such refunds of payments made within the past two years.

Proviso.
Availability.

Construction work, etc., under Commissioners.

SEC. 2. That the services of draftsmen, assistant engineers, levelers, transitmen, rodmen, chainmen, computers, copyists, overseers, and inspectors temporarily required in connection with sewer, water, street, street-cleaning, or road work, or construction and repair of buildings and bridges, or any general or special engineering or construction work authorized by appropriations may be employed exclusively to carry into effect said appropriations when specifically and in writing ordered by the Commissioners, and all such necessary expenditures for the proper execution of said work shall be paid from and equitably charged against the sums appropriated for said work; and the Commissioners in their Budget estimates shall report the number of such employees performing such services, and their *Provided*, That the expenditures hereunder shall not exceed \$42,000 during the fiscal year 1939: *Provided further*, That, excluding inspectors in the sewer department and one inspector in the electrical

Proviso.
Limitation.
Maximum period of employment.



Council of the **DISTRICT OF COLUMBIA**

Code of the District of Columbia

§ 34-2401.25. Water and water service supplied for the use of the government of the United States.

(a) All water and water services furnished from the District water supply system through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof, situated in the District, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for at the rates for the furnishing and readiness to furnish water applicable to other water consumers in the District. All water and water services furnished from the District water supply system through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof, situated outside the District in the States of Maryland or Virginia, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for at rates comparable to those which may be in effect and charged to state, municipal, or county agencies or other political authorities or jurisdictions within the respective states wherein said federal facilities may be situated for similar water service from the District water supply system; provided, that conditions as to water pressure, quantity, rates of demand, and points of connection available or permissible at any time for service outside the District, if any, shall be fixed by the Mayor of the District of Columbia so as to fully protect the prior interests of water consumers within the District; provided further, that as a condition of service, at each point of federal connection to the water system of the District for service outside the District there shall be installed and maintained at the expense of the department, independent establishment, or agency of the United States which is to use water therefrom a suitable meter or meters and incidental vaults, valves, piping and recording devices, and such other equipment as the Mayor in his discretion deems necessary to control and record the use of water through each such connection. As an additional condition of service, the department, agency, or establishment which is responsible for the maintenance of any such meter shall provide the Mayor (acting through the District of Columbia Water and Sewer Authority) with such access to the meter as the Mayor may require to measure the actual usage of the department, agency, or establishment (including any entity under the jurisdiction of the department, agency, or establishment) for purposes of making the

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adjustments to annual estimates required under [§ 34-2401.25a\(1\)](#). Payment shall be made as provided in subsection (b) of this section.

(b)(1) Beginning in the second quarter of fiscal year 1990, the government of the District of Columbia shall receive payment for water services from funds appropriated or otherwise available to the Federal departments, independent establishments, or agencies. In accordance with the provisions of paragraphs (2) and (3) of this subsection, one-fourth (25 percent) of the annual estimate prepared by the District government shall be paid, not later than the second day of each fiscal quarter, to the District government by the Secretary of the Treasury from funds deposited by said departments, establishments, or agencies in a United States Treasury account entitled "Federal Payment for Water and Sewer Services". In the absence of sufficient funds in said account, payment shall be made by the Secretary of the Treasury from funds available to the respective user agencies. Payments shall be made to the District government by the Secretary of the Treasury without further justification, and shall be equal to one-fourth (25 percent) of the annual estimate prepared by the District government pursuant to paragraph (2) of this subsection.

(2) By April 15 of each calendar year the District shall provide the Office of Management and Budget, the Secretary of the Treasury, and the head of each of the respective Federal departments, independent establishments, and agencies, for inclusion in the President's budget of the respective Federal departments, independent establishments, or agencies, an estimate of the cost of service for the fiscal year commencing October 1st of the following calendar year. The estimate shall provide the total estimated annual cost of such service and an itemized estimate of such costs by Federal department, independent establishment, or agency. The District's estimates on a yearly basis shall reflect such adjustments as are necessary to

(A) account for actual usage variances from the estimated amounts for the fiscal year ending on September 30th of the calendar year preceding April 15th, and

(B) reflect changes in rates charged for water and sewer services resulting from public laws or rate covenants pursuant to water and sewer revenue bond sales.

(3) Each Federal department, independent establishment, or agency receiving water services in buildings, establishments, or other places shall pay from funds specifically appropriated or otherwise available to it, quarterly and on the first day of each such fiscal quarter, to an account in the United States Treasury entitled "Federal Payment for Water and Sewer Services" an amount equal to one-fourth (25 percent) of the annual estimate for said services as provided for in paragraph (2) of this subsection.

(4) The amount or time period for late payment of water charges involving a building, establishment, or other place owned by the Government of the United States imposed by the District of Columbia shall not be different from those imposed by the District of Columbia on its most favored customer.

(5) Repealed.

(c) Nothing in this section may be construed to require the District of Columbia to seek payment for water services directly from any Federal entity which is under the jurisdiction of a department, independent establishment, or agency which is required to make a payment for such services under this section, or to allocate any amounts charged for such services among the entities which are under the jurisdiction of any such department, independent establishment, or agency. Each Federal department, independent establishment, and agency receiving water from the District of Columbia shall be responsible for allocating billings for such services among entities under the jurisdiction of the department, establishment, or agency, and shall be responsible for collecting amounts from such entities for any payments made to the District of Columbia under this section.

(d) In the case of water services provided to a department, independent establishment, or agency in Virginia through the Federally owned water main system, if the total of the metered amounts billed for all individual users of the system (as measured by the meters for each individual user) is less than the total amount as measured by the meters at the delivery points into the system at the Francis Scott Key Bridge, the District government shall collect, and the Secretary of Defense shall pay, the difference to the District

government in accordance with the requirements for collecting and making payments under this section.

([May 18, 1954, 68 Stat. 102, ch. 218, title I, § 106](#); [Sept. 30, 1966, 80 Stat. 857, Pub. L. 89-610, title V, § 503](#); [Oct. 6, 1977, 91 Stat. 1093, Pub. L. 95-122, § 1\(1\)](#); [Nov. 21, 1989, 103 Stat. 1280, Pub. L. 101-168, § 133\(b\)](#); [Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, § 1\(a\)\(4\), H.R. 5666, Div. A., Ch. 4, § 401\(a\)](#); [Dec. 21, 2001, 115 Stat. 942, 943, 944, Pub. L. 107-96, par. 52\(a\)\(2\), \(b\)\(1\), \(c\)\(2\)](#); [Oct. 18, 2004, 118 Stat. 1348, Pub. L. 108-335, § 337\(a\).](#))

Prior Codifications

1981 Ed., § 43-1552.

1973 Ed., § 43-1541.

Section References

This section is referenced in [§ 34-2401.25a](#) and [§ 47-131](#).

Effect of Amendments

Pub. L. 107-96, in subsec. (a), inserted the second to the last sentence relating to access to meters; in subsec. (b), par. (2), inserted “the Secretary of the Treasury, and the head of each of the respective Federal departments, independent establishments, and agencies,”; added subsec. (c) relating to payment for sanitary sewer services; and added subsec. (d) relating to water services.

Pub. L. 108-335, in subsec. (b), repealed par. (5) which had read as follows: “(5) Not later than the 15th day of the month following each quarter (beginning with the first quarter of fiscal year 2001), the inspector general of each Federal department, establishment, or agency receiving water services from the District of Columbia shall submit a report to the Committees on Appropriations of the House of Representatives and Senate analyzing the promptness of payment with respect to the services furnished to such department, establishment, or agency.”

Effective Dates

Pub. L. 107-96, 115 Stat. 944, the District of Columbia Appropriations Act, 2002, provided in part:

“This section and the amendments made by this section shall apply with respect to fiscal year 2002 and each succeeding fiscal year.”

Section 337(c) of Pub. L. 108-335 provided: “(c) The amendments made by this section shall apply with respect to quarters occurring during fiscal year 2005 and each succeeding fiscal year.”

Editor's Notes

Apportionment of appropriations: Section 133 of Pub. L. 101-518, 104 Stat. 2237, the District of Columbia Appropriations Act, 1991, amended section 133(e) of the District of Columbia Appropriations Act, 1990, as amended, by striking “December 31, 1990” and inserting “December 31, 1991.”

Section 129 of Pub. L. 102-111, 105 Stat. 570, the District of Columbia Appropriations Act, 1992, amended section 133(e) of the District of Columbia Appropriations Act, 1990, as amended, by striking “December 31, 1991” and inserting “December 31, 1992.”

Section 130 of Pub. L. 102-382, 106 Stat. 1434, the District of Columbia Appropriations Act, 1993, amended section 133(e) of the District of Columbia Appropriations Act, 1990, as amended, by striking “December 31, 1992” and inserting “December 31, 1993.”

Public Law 102-382, 106 Stat. 1429, the District of Columbia Appropriations Act, 1993, provided for the Water and Sewer Enterprise Fund, \$251,630,000, of which \$39,602,000 shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects.

Section 134 of § 1(c) of Pub. L. 100-202, the District of Columbia Appropriations Act, 1988, provided that none of the funds available to the District of Columbia government shall be used for any purpose involved in billing individual agencies or establishments for water and water services and sanitary sewer services traditionally funded under the account “Federal Payment for Water and Sewer Services” unless and until existing statutes (sections 106 and 212 of the District of Columbia Public Works Act of 1954, as amended, Public Law 364, approved May 18, 1954) are amended to specifically provide for such billing.

Section 128 of Pub. L. 103-127, 107 Stat. 1347, the District of Columbia Appropriations Act, 1994, amended section 133(e) of the District of Columbia Appropriations Act, 1990, as amended, by substituting “December 31, 1994” for “December 31,

Change in Government

This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, [§ 1-207.11](#)), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the

District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, [§ 1-207.14\(a\)](#)), appropriate changes in terminology were made in this section.

PUBLICATION INFORMATION

Current through Sept. 4, 2024	Last codified D.C. Law: Law 25-207 effective Sept. 4, 2024
Last codified Emergency Law: Act 25-549 effective July 26, 2024	Last codified Federal Law: Public Law 115-334 approved Dec. 20, 2018

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Council of the **DISTRICT OF COLUMBIA**

Code of the District of Columbia

§ 34-2112. Sanitary sewer service charges for United States government.

(a) The sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services furnished by the sanitary sewage works of the District through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof, and such charges shall be predicated on the value of water and water services received by such facilities of the government of the United States or any department, independent establishment, or agency thereof from the District water supply system. Payment of the said sanitary sewer service charge shall be made as provided in subsection (b) of this section.

(b)(1) Beginning in the second quarter of fiscal year 1990, the government of the District of Columbia shall receive payment for sanitary sewer services from funds appropriated or otherwise available to the Federal departments, independent establishments, or agencies. In accordance with the provisions of paragraphs (2) and (3) of this subsection, one-fourth (25 percent) of the annual estimate prepared by the District government shall be paid, not later than the second day of each fiscal quarter, to the District government by the Secretary of the Treasury from funds deposited by said departments, establishments, or agencies in a United States Treasury account entitled "Federal Payment for Water and Sewer Services". In the absence of sufficient funds in said account, payment shall be made by the Secretary of the Treasury from funds available to the respective user agencies. Payments shall be made to the District government by the Secretary of the Treasury without further justification, and shall be equal to one-fourth (25 percent) of the annual estimate prepared by the District government pursuant to paragraph (2) of this subsection.

(2) By April 15 of each calendar year the District shall provide the Office of Management and Budget, the Secretary of the Treasury, and the head of each of the respective Federal departments, independent establishments, and agencies, for inclusion in the President's budget of the respective Federal departments, independent

establishments, or agencies, an estimate of the cost of service for the fiscal year commencing October 1st of the following calendar year. The estimate shall provide the total estimated annual cost of such service and an itemized estimate of such costs by Federal department, independent establishment, or agency. The District's estimates on a yearly basis shall reflect such adjustments as are necessary to (A) account for actual usage variances from the estimated amounts for the fiscal year ending on September 30th of the calendar year preceding April 15th, and (B) reflect changes in rates charged for water and sewer services resulting from public laws or rate covenants pursuant to water and sewer revenue bond sales.

(3) Each Federal department, independent establishment, or agency receiving sanitary sewer services in buildings, establishments, or other places shall pay from funds specifically appropriated or otherwise available to it, quarterly and on the first day of each such fiscal quarter, to an account in the United States Treasury entitled "Federal Payment for Water and Sewer Services" an amount equal to one-fourth (25 percent) of the annual estimate for said services as provided for in paragraph (2) of this subsection.

(4) The amount or time period for late payment of charges for sanitary sewer services involving a building, establishment, or other place owned by the Government of the United States imposed by the District of Columbia shall not be different from those imposed by the District of Columbia on its most favored customer.

(5) Repealed.

(c) Nothing in this section may be construed to require the District of Columbia to seek payment for sanitary sewer services directly from any Federal entity which is under the jurisdiction of a department, independent establishment, or agency which is required to make a payment for such services under this section, or to allocate any amounts charged for such services among the entities which are under the jurisdiction of any such department, independent establishment, or agency. Each Federal department, independent establishment, and agency receiving sanitary sewer services from the District of Columbia shall be responsible for allocating billings for such services among entities under the jurisdiction of the department, establishment, or agency, and shall be

responsible for collecting amounts from such entities for any payments made to the District of Columbia under this section.

([May 18, 1954, 68 Stat. 108, ch. 218, title II, § 212](#); [Oct. 6, 1977, 91 Stat. 1093, Pub. L. 95-122, § 1\(2\)](#); [Nov. 21, 1989, 103 Stat. 1280, Pub. L. 101-168, § 133\(c\)](#); [Dec. 21, 2000, 114 Stat. 2763, Pub. L. 106-554, § 1\(a\)\(4\), H.R. 5666, Div. A., Ch. 4, § 401\(b\)](#); [Dec. 21, 2001, 115 Stat. 942, 943, Pub. L. 107-96, par. 52\(a\)\(1\), \(c\)\(1\)](#); [Oct. 18, 2004, 118 Stat. 1348, Pub. L. 108-335, § 337\(b\).](#))

Prior Codifications

1981 Ed., § 43-1612.

1973 Ed., § 43-1611.

Section References

This section is referenced in [§ 47-131](#).

Effect of Amendments

Pub. L. 107-96, in subsec. (b), par. (2), inserted “the Secretary of the Treasury, and the head of each of the respective Federal departments, independent establishments, and agencies,”; and added subsec. (c) relating to payment for sanitary sewer services.

Pub. L. 108-335, in subsec. (b), repealed par. (5) which had read as follows: “(5) Not later than the 15th day of the month following each quarter (beginning with the first quarter of fiscal year 2001), the inspector general of each Federal department, establishment, or agency receiving sanitary sewer services from the District of Columbia shall submit a report to the Committees on Appropriations of the House of Representatives and Senate analyzing the promptness of payment with respect to the services furnished to such department, establishment, or agency.”

Effective Dates

Pub. L. 107-96, 115 Stat. 944, the District of Columbia Appropriations Act, 2002, provided in part:

“This section and the amendments made by this section shall apply with respect to fiscal year 2002 and each succeeding fiscal year.”

Section 337(c) of Pub. L. 108-335 provided: “(c) The amendments made by this section shall apply with respect to quarters occurring during fiscal year 2005 and each succeeding fiscal year.”

Editor's Notes

Apportionment of appropriations: Public Law 102-382, 106 Stat. 1429, the District of Columbia Appropriations Act, 1993, provided for the Water and Sewer Enterprise Fund, \$251,630,000, of which \$39,602,000 shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects. Restrictions on use of Federal payment: Section 134 of § 1(c) of Pub. L. 100-202, the District of Columbia Appropriations Act, 1988, provided that none of the funds available to the District of Columbia government shall be used for any purpose involved in billing individual agencies or establishments for water and water services and sanitary sewer services traditionally funded under the account "Federal Payment for Water and Sewer Services" unless and until existing statutes (sections 106 and 212 of the District of Columbia Public Works Act of 1954, as amended, Public Law 364, approved May 18, 1954) are amended to specifically provide for such billing. Apportionment of appropriations: For construction projects, \$45,908,000, as authorized by § 43-1512 et seq.: Provided, That the requirements and restrictions that are applicable to general fund capital improvement projects and set forth in this Act under the Capital Outlay appropriation title shall apply to projects approved under this appropriation title: Provided further, That \$22,705,000 in water and sewer enterprise fund operating revenues shall be available for pay-as-you-go capital projects. Section 128 of Pub. L. 103-334, 108 Stat. 2576, the District of Columbia Appropriations Act, 1995, amended section 133(e) of the District of Columbia Appropriations Act, 1990, by striking "shall take effect" and all that follows and inserting "shall apply with respect to water and sanitary sewer services furnished on or after January 1, 1990." Thus, as of September 30, 1994, section 133(e) of the District of Columbia Appropriations Act, 1990, has read as follows: "The amendments made by this section shall apply with respect to water and sanitary sewer services furnished on or after January 1, 1990." Section 133(e) controls the effectiveness of this section. Section 401(c) of Chapter 4 of Division A of H.R. 5666, as enacted by reference by section 1(a)(4) of Pub. L. 106-554, stated that "The amendments made by this section shall take effect as if included in the enactment of section 133 of the District of Columbia Appropriations Act, 1990."

Change in Government

This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, [§ 1-207.11](#)), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly,

and also pursuant to § 714(a) of such Act (D.C. Code, [§ 1-207.14\(a\)](#)), appropriate changes in terminology were made in this section.

PUBLICATION INFORMATION

Current through	Last codified D.C. Law:
Sept. 4, 2024	Law 25-207 effective Sept. 4, 2024
Last codified Emergency Law:	Last codified Federal Law:
Act 25-549 effective July 26, 2024	Public Law 115-334 approved Dec. 20, 2018

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Council of the **DISTRICT OF COLUMBIA**

Code of the District of Columbia

§ 34-2107. Methods of determination of sanitary sewer service charges.

NOTE: This section includes amendments by emergency legislation that will expire on March 19, 2025. To view the text of this section after the expiration of all temporary and emergency legislation affecting this section, click this link: [Permanent Version](#).

(a) The sanitary sewer service charges established under the authority of this subchapter shall be based on the following:

(1) A billing methodology that takes into account both the water consumption of, and water service to, a property where water is supplied from the District water supply system.

(2) Repealed.

(3)(A) For any unimproved real property under construction that discharges groundwater into a District-owned sanitary sewer, or combined sewer, or for any real property using water, part of which is from a source or sources other than the District water supply system, the real property owner shall pay a sanitary sewer service charge separate from and in addition to any sanitary sewer service charge levied in paragraphs (1) or (2) of this subsection. For any improved real property that discharges groundwater into a District-owned sanitary or combined sewer, the real property owner shall not be subject to payment of a separate and additional charge for discharges of groundwater, but shall pay for discharges of cooling water into a District-owned sanitary or combined sewer that are derived from a source or sources other than the District water supply system.

(B)(i) For unimproved real property under construction the separate and additional sanitary sewer service charge shall apply to and be measured by the quantity of water

that is derived from the groundwater and is discharged into the District sanitary or combined sewer system.

(ii) For improved real property, the separate and additional sanitary sewer service charge shall apply to and be measured by the quantity of water that is derived from the cooling water and is discharged into the District sanitary or combined sewer system.

(iii) For real property using water from a source or sources other than the District water supply system, such separate and additional charge shall be measured by the quantity of water from the source or sources other than the District water supply system discharged into the District sanitary or combined sewer system from the property.

(C) Unless the Mayor determines that it is not practicable, the owner of the real property shall install and maintain, at a location approved by the Mayor and without cost to the District, any sanitary meter or device necessary to measure the quantity of groundwater, cooling water, or water from other than the District water supply system that is discharged into the District's sanitary sewers.

(D) For purposes of this section, the determination made by the Mayor pursuant to [Chapter 8 of Title 47](#) as to whether property is improved or unimproved shall apply.

(4) Wherever a property upon which a sanitary sewer service charge is imposed uses water from the water supply system of the District for an industrial or commercial purpose in such manner that the water so used is not discharged into the sanitary sewage works of the District, the quantity of water so used and not discharged into the sanitary sewage works of the District may be excluded in determining the sanitary sewer service charge on such property, if such exclusion is previously requested in writing by the owner or occupant thereof. Upon such request, the quantity of water so used and not discharged into the sanitary sewage works of the District shall be measured by a device or devices approved by the Mayor, installed and maintained without cost to the District, and the sanitary sewer service charge to be imposed on such property shall be the amount which would have been charged such property if the amount of water so used and not discharged into the sanitary sewage works of the District had not been included in the amount of water used by such property; provided, that all water from the water supply system of the District used by such property shall be paid for at established rates, whether or not such water is discharged into the sanitary sewage works of the District. Where in the opinion of the Mayor, it is not practicable to install a measuring device to determine continuously the quantity of water used for such industrial or commercial purposes and not discharged into the sanitary sewage works of the District, the Mayor

shall determine periodically, in such manner and by such methods as the Mayor may prescribe, the quantity of water from the water supply system of the District discharged into the sanitary sewage works of the District, and the sanitary sewer service charge shall be based on such estimated quantity of water at the percentage authorized by this paragraph. Any dispute as to such estimated amount shall be decided by the Mayor and such decision shall be final; and in the event the owner or occupant fails to furnish and maintain such measuring devices or to facilitate the periodic determinations by the Mayor as prescribed herein, then the privilege of excluding some portion of the water used from the District water supply system from the charges for sanitary sewer service shall be forfeited and the charges for sanitary sewer service shall be based on the full amount of the water used from the District water supply system.

(b) Notwithstanding the provisions of subsection (a), the Council of the District of Columbia is authorized, in its discretion, from time to time to establish 1 or more sanitary sewer service charges at such amount as the Council, on the basis of a recommendation made by the Mayor, finds it necessary to meet the expense to the District of furnishing sanitary sewer services, including debt retirement.

(c) Repealed.

([May 18, 1954, 68 Stat. 106, ch. 218, title II, § 207](#); [Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 502](#); [Jan. 5, 1971, 84 Stat. 1931, Pub. L. 91-650, title I, § 105\(b\)](#); [June 13, 1990, D.C. Law 8-136, § 2\(d\), 37 DCR 2620](#); [Oct. 1, 2002, D.C. Law 14-190, § 3902, 49 DCR 6968](#); [Mar. 25, 2009, D.C. Law 17-370, § 2, 56 DCR 1350](#); [Dec. 19, 2024, D.C. Act 25-668, § 2\(a\), 71 DCR 16308](#).)

Prior Codifications

1981 Ed., § 43-1607.

1973 Ed., § 43-1606.

Effect of Amendments

[D.C. Law 14-190](#) rewrote subsec. (a)(3) which had read as follows: “(a)(3) For any real property that discharges waste water into a District-owned sanitary sewer that derives from groundwater or cooling water, the real property owner shall pay a sanitary sewer service charge separate from any sanitary sewer service charge levied in paragraphs (1) and (2) of this subsection. The separate and additional sanitary sewer service charge shall apply to and be measured by the quantity of water that is derived from the groundwater or cooling water and is discharged into the District sanitary or combined sewer system. Unless the Mayor determines that it is not practicable, the owner of the real property shall install and maintain, at a location approved by the Mayor and without cost to the District, any sanitary meter or device necessary to measure the quantity of groundwater or cooling water discharged into the District’s sanitary sewage works. The amount of the sanitary sewer service charge shall be set at the same rate as the rate paid by the owner of a metered building that receives water from the District water supply system.”

[D.C. Law 17-370](#), in subsec. (a), rewrote the lead-in language and par. (1) and repealed par. (2); and added subsec. (c).

Emergency Legislation

For temporary (90 days) amendment of this section, see [§ 2\(a\) of CRIAC Clarification Congressional Review Emergency Amendment Act of 2024 \(D.C. Act 25-668, Dec. 19, 2024, 71 DCR 16308\)](#).

For temporary (90 days) amendment of this section, see [§ 2\(a\) of CRIAC Clarification Emergency Amendment Act of 2024 \(D.C. Act 25-602, Oct. 25, 2024, 71 DCR 13489\)](#).

For temporary (90 day) amendment of section, see [§ 8 of Technical Amendments Emergency Act of 2001 \(D.C. Act 14-108, August 3, 2001, 48 DCR 7622\)](#).

For temporary (90 day) amendment of section, see § 3802 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Short Title

Short title of title XXXIX of Law 14-190: Section 3901 of [D.C. Law 14-190](#) provided that title XXXIV of the act may be cited as the Water and Sewer Operations Amendment Act of 2002.

Change in Government

This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (326) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, [§ 1-207.11](#)), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, [§ 1-207.14\(a\)](#)), appropriate changes in terminology were made in this section.

PUBLICATION INFORMATION

Current through

Feb. 13, 2025

Last codified Emergency Law:

[Act 26-7 effective Feb. 13, 2025](#)

Last codified D.C. Law:

[Law 25-259 effective Dec. 26, 2024](#)

Last codified Federal Law:

[Public Law 115-334 approved Dec. 20, 2018](#)

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