

Community Use of School Facilities Task Force Establishment Act of 2017

Bill 22-39

Before the Committee on Transportation and the Environment

The Honorable Mary M. Cheh, Chairperson



**Comments by
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Treasurer of the District of Columbia**

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Chairperson Cheh and members of the Committee on Transportation and the Environment, thank you for the opportunity to submit written comments on Bill 22-39, the “Community Use of School Facilities Task Force Establishment Act of 2017” (“Bill”).

The Bill would require the Department of General Services (“DGS”) to establish a task force to identify existing barriers to community use of public school facilities; develop recommendations to address those barriers; determine projected costs for community use and develop recommendations for how to address those costs; develop recommendations for allowable types of community use; develop recommendations for a District-wide policy to allow for community use; develop a model agreement for community use by organized groups; and identify any regulatory or statutory changes necessary to implement community use. The Task Force would be composed of the Director of DGS; the Chancellor of District of Columbia Public Schools; the Director of the Department of Parks and Recreation; two representatives from parent teachers associations; two representatives from community-based recreational programs serving high-need communities; and two representatives from organizations that provide recreational programming for children. The bill also requires the Task Force to submit a report to the Council that includes the results of its assessments and recommendations.

It is important to note that because a majority of the District of Columbia's (the "District") public school facilities are financed through tax-exempt bond proceeds issued by the District, the use of these facilities must comply with very complex and strict Internal Revenue Service ("IRS") rules and regulations. The IRS rules define a private business use to be any third-party use other than the permitted governmental use by the governmental issuer or generally available use by the general public (with very limited exceptions, such as short-term qualified management contracts). A private business use violation occurs when a private business uses a tax-exempt financed property, the government receives a payment(s) from a private business related to the property (at any time over the life of the bonds and whether directly or indirectly related to the original private use), and the cumulative total of private payment(s) received exceeds 10% of the debt service on the bonds (the percentage is reduced to 5% if the private use is unrelated to the governmental use). Such a violation could cause the entire issue of the applicable tax-exempt bonds to lose their tax exemption, subjecting the District to higher interest rates (taxable versus tax-exempt), force the District to advance refund/defeasance the affected bonds at substantial cost, and even subject the District to IRS penalties. For example, the District is still in adjudication with the IRS over alleged improper private business use at the Oyster School.

To better monitor and administer the uses of tax-exempt bond financed property, the Office of the Chief Financial Officer (the “OCFO”), together with the DGS established the Property Use Tracking System (“PUTS”) to ensure compliance with the IRS rules and to timely identify and resolve outstanding issues arising from the proposed or existing private business uses. It is imperative that the Task Force, in advance of any actions to be taken or even committed to be taken, work with the OCFO’s PUTS staff to identify whether the subject school facility has been or will be financed with tax-exempt bond proceeds, whether the proposed use would violate IRS rules, how to steer clear of the violations, or how to revise the proposed use in accordance with the IRS rules and other applicable laws. Depending on the complexity of the issue or the specificity of the proposed use of a school facility, outside bond counsel services may be required to resolve the issues. The Task Force must make sure that any recommendations for the use of the school facilities, as well as the Bill’s required “model agreement” developed by the Task Force, will comply with the IRS rules and not jeopardize the tax-exempt status of the District’s bonds.

In addition, the Task Force’s composition of six non-District organization members and three District executive branch representatives may be problematic. Although communities’ input must be valued and considered, the school facilities are the District’s public property. Under the current proposal, the community

members may outvote the District representatives and could provide a recommendation that may be detrimental to the tax-exempt bond status of the District's debt portfolio. Even though the Council may reject such a recommendation, it is advisable to address this imbalance through the composition of the Task Force or to include in the legislation a requirement for a bond opinion so that there is assurance that the executive branch that will be administering the program will not be forced to veto recommendations well into the process.

Thank you for the opportunity to present comments on Bill 22-39.