

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**TO:** All Councilmembers

**FROM:** Chairman Phil Mendelson  
Committee of the Whole

**DATE:** November 15, 2022

**SUBJECT:** Report on Bill 24-666, “Soil Disclosures Modernization Amendment Act of 2022”

The Committee of the Whole, to which Bill 24-666, the “Soil Disclosure Repeal Amendment Act of 2022” was sequentially referred, reports favorably thereon with amendments, and recommends approval by the Council.

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**I. BACKGROUND AND NEED**

On February 16, 2022, Bill 24-666, the “Soil Disclosures Modernization Amendment Act of 2022” was introduced by Councilmember Mary Cheh. As introduced and marked up by the Committee on Transportation and the Environment, Bill 24-666 would require disclosure of the characteristics of the soil on a property in any contract to convey real estate in the District but would update the source of this information to a more current and user-friendly soil survey map.

***Real Estate Contracts and Soil Disclosure Requirement in the District***

In 1977, the D.C. Council approved D.C. Law 2-23, the “Soil Erosion and Sedimentation Control Act of 1977.” When the law was considered and approved, D.C.’s health and building codes did little to prevent or protect against soil erosion. The regulations did not require a soil erosion prevention plan for demolition, land clearing, tilling, or grading projects. A soil erosion prevention plan was only required when a structure was built on the land.<sup>1</sup> As a result, landslides

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<sup>1</sup> Lee A. Daniels, “Severe Soil Erosion Found at 13 Locations in S.E. D.C.,” *The Washington Post*, March 31, 1975, pg. C3.

and soil erosion were common problems in the District.<sup>2</sup> But one instance of significant soil erosion in Southeast D.C. prompted action from the Mayor and D.C. Council. Residents along the 3200 Block Highwood Drive, the 2900 to 3200 Blocks of O Street, and the 1300 Block of Branch Avenue, in southeast D.C., had been plagued by soil erosion for nearly two decades before the passage of D.C. Law 2-23. D.C. The erosion started, in part, due to the construction of O Street itself. The District's Department of Highways and Transportation had not built a retaining wall to prevent the leftover soil, which slopes anywhere from 15% to 40%, from further erosion or sliding.<sup>3</sup> This allowed soil in residents' yards to slide, sometimes bad enough to block O Street entirely.<sup>4</sup> Tropical Storm Agnes further exacerbated the erosion in 1972, which produced 8-15 inches of rain in the D.C. Metro area.<sup>5</sup> The circumstances presented a clear danger to residents, and in the late 1970s, the District finally decided to build a retaining wall between Highwood Drive and O Street. This also coincided with the release of a report from graduate students at George Washington University that called for stronger regulations on construction activities to prevent soil erosion.<sup>6</sup> The confluence of these factors led to the introduction, consideration, and approval of D.C. Law 2-23, which updated the District's health regulations and building code to "regulate land disturbing activities, to prevent accelerated soil erosion..."<sup>7</sup> Among the many provisions contained in the law was Sec. 3, which established a requirement for real estate contracts to include information on the characteristics of the soil on the property.

Since the passage of the law, real estate agents in the District must consult a soil survey map of the District published by the U.S. Department of Agriculture in 1976 and provide information on the characteristics of the soil on the property being purchased in a contract.<sup>8</sup> As introduced and marked up by the Committee on Transportation and the Environment, Bill 24-666 would continue to require disclosure of soil characteristics in all real estate contracts but would update the source for soil information to a more current and web-based soil survey published by the United States Department of Agriculture's Natural Resources Conservation Service in 2019.<sup>9</sup> While the web-based application makes it much easier for real estate agents and others in the industry to provide characteristics of soil in real estate contracts, the Committee is not convinced that this disclosure is necessary or useful.

First, the Committee could not find another jurisdiction with a similar requirement in the country.<sup>10</sup> Even jurisdictions that abut or are near the District in Maryland and Virginia, which

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<sup>2</sup> See, for instance, comments from a former District-employed geologist in: Julie Goodman, "Sliding Land Imperils District Neighborhood," *The Washington Post*, March 13, 1997, pg. DC-1.

<sup>3</sup> Corrie M. Anders, "After 20 Years, D.C. May Halt SE Yard Slides," *The Washington Star*, February 23, 1973, pg. B-2.

<sup>4</sup> *Id.*

<sup>5</sup> Topper Shutt, "It has been 50 years since Tropical Storm Agnes badly damaged the DMV," June 21, 2022, WUSA9. (<https://www.wusa9.com/article/weather/50-years-since-tropical-storm-agnes-flooding/65-a5295c3d-4af1-44a4-b7a5-ffdc3b7fdc83>).

<sup>6</sup> See *supra* note 1.

<sup>7</sup> D.C. Law 2-23, Sec. 2(a).

<sup>8</sup> See, Smith, H. (1976). Soil survey of District of Columbia. US Department of Agriculture, Soil Conservation Service. ([https://books.google.com/books?hl=en&lr=&id=2Sf8tpMa8eUC&oi=fnd&pg=PP17&ots=wTJ7HwKapf&sig=iQU0U\\_6who\\_0hy8BkI5YUexla6Y#v=onepage&q&f=false](https://books.google.com/books?hl=en&lr=&id=2Sf8tpMa8eUC&oi=fnd&pg=PP17&ots=wTJ7HwKapf&sig=iQU0U_6who_0hy8BkI5YUexla6Y#v=onepage&q&f=false)).

<sup>9</sup> See: <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>.

<sup>10</sup> The Committee conducted a wide-ranging search of real estate contracts, municipal codes, and state laws, none of which contained a soil disclosure provision like this.

have similar soil profiles to that of the District,<sup>11</sup> do not require real estate contracts to contain any information on the characteristics of the soil on the property.<sup>12</sup>

Second, the disclosure provisions in a typical real estate contract provide only the most basic information on the soil. Figure 1 shows an example from a property sold in Georgetown in 2020. The disclosure only lists the type of soil on the property. In this case, the soil is classified as “Urban Land Sassafras – Chillum.” What does this mean for a homebuyer? Nothing of significance. It tells the homebuyer nothing about the risk of soil erosion, the risk of flooding or ponding on the property, or any other information about risks posed by the soil on the property. And even if the home buyer wanted to find out more, they would need to consult the web-based application and likely hire a specialist to determine whether a risk of erosion exists unless they already possess significant knowledge of geology and soil orders, suborders, etc.

*Figure 1. Soil Disclosure Provision from D.C. Real Estate Contract*

2. **DC SOIL DISCLOSURE REQUIREMENTS:** The characteristic of the soil on the Property as described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey of the District of Columbia published in 1976 and as shown on the Soil Maps of the District of Columbia at the back of that publication is Urban Land Sassafras - Chillum

For further information, Buyer can contact a soil testing laboratory, the District of Columbia Department of Environmental Services, or the Soil Conservation Service of the Department of Agriculture.

Finally, the District’s code contains provisions that reduce the likelihood of soil erosion during or after construction occurs. For instance, our code requires a soil erosion and sediment control (ESC) plan for any “land-disturbing” construction activity, which includes stripping, grading, trenching, excavating, or filling that disturbs more than 50 square feet of land.<sup>13</sup> An ESC plan must describe the condition of the soil, existing topography, and what specific steps builders will take to reduce the likelihood of soil erosion.<sup>14</sup>

Given these facts, the Committee Print repeals this disclosure requirement altogether.

## **Conclusion**

While the District has required real estate contracts to provide information on the characteristics of the soil on the property for over four decades, the Committee finds that such a disclosure provision provides no useful information to home buyers. As such, the Print strikes this soil disclosure provision from our code. The Committee recommends Council approval of the Committee Print.

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<sup>11</sup> For example, ultisols, the order of soil that makes up a significant percentage of soils in the District (which includes subgroups like Christiana, Sassafras, and Chillum) are found throughout the east coast and Southern United States. See, for instance, University of Idaho – Department of Soil and Water Systems, The 12 Soil Orders (<https://www.uidaho.edu/cals/soil-orders/ultisols>).

<sup>12</sup> See, for instance, disclosure forms from [Maryland](#), [Virginia](#), and [West Virginia](#).

<sup>13</sup> 21 DCMR § 542.

<sup>14</sup> Erosion and Sediment Control Manual, Department of Energy and Environment, September 2017, pg. 33 ([https://doee.dc.gov/sites/default/files/dc/sites/ddoe/service\\_content/attachments/2017%20DC%20ESC%20Manual\\_FINAL.pdf](https://doee.dc.gov/sites/default/files/dc/sites/ddoe/service_content/attachments/2017%20DC%20ESC%20Manual_FINAL.pdf)).

## II. LEGISLATIVE CHRONOLOGY (ABBREVIATED)

- February 16, 2022 Bill 24-666, the “Soil Disclosures Modernization Amendment Act of 2022” is introduced by Councilmember Mary Cheh.
- May 19, 2022 The Committee on Transportation and the Environment holds a public hearing on Bill 24-666.
- October 20, 2022 The Committee on Transportation and the Environment marks up Bill 24-666.
- November 15, 2022 The Committee of the Whole marks up Bill 24-666.

## III. SUMMARY OF TESTIMONY

Richard Jackson, Senior Deputy Director of the Department of Energy and Environment, testified on behalf of the Executive in support of Bill 24-666. Other witnesses testified in support of the bill. For instance, Michael Arias, CEO of Capital Brokers Group, testified that the updated, web-based map would be much easier to consult and provide more up-to-date information on the composition of soil on a property.

## IV. IMPACT ON EXISTING LAW

Bill 24-666 repeals D.C. Official Code § 42-608(b)(1), which requires real estate contracts to contain information on the characteristics of the soil on the property.

## V. FISCAL IMPACT

The attached November 14, 2022 fiscal impact statement from the District’s Chief Financial Officer states that funds are sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan.

## VI. RACIAL EQUITY IMPACT

## VII. SECTION-BY-SECTION ANALYSIS

- Section 2 Repeals D.C. Official Code § 42-608(b)(1).
- Section 3 Fiscal impact statement.
- Section 4 Effective date.

## VIII. COMMITTEE ACTION

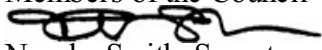
## IX. ATTACHMENTS

1. Bill 24-666 as introduced.
2. Committee on Transportation and Environment report on Bill 24-666.
3. Fiscal Impact Statement for Bill 24-666.
4. Legal Sufficiency Determination for Bill 24-666.
5. Racial Equity Impact Assessment for Bill 24-666.
6. Comparative Print for Bill 24-666.
7. Committee Print for Bill 24-666.

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**1350 Pennsylvania Avenue, N.W.**  
**Washington D.C. 20004**

Memorandum

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To : Members of the Council  
  
From : Nyasha Smith, Secretary to the Council  
Date : Thursday, February 24, 2022  
Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Wednesday, February 16, 2022. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Soil Disclosures Modernization Amendment Act of 2022", B24-0666

INTRODUCED BY: Councilmember Cheh

The Chairman is referring this legislation to the Committee on Transportation and the Environment.


Attachment  
cc: General Counsel  
Budget Director  
Legislative Services

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**1350 Pennsylvania Avenue, N.W.**  
**Washington, D.C. 20004**

**Memorandum**

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March 21, 2022

TO: Nyasha Smith, Secretary to the Council  
FR: Phil Mendelson, Chairman   
RE: Re-Referral of Legislation: Bill 24-666

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By this memo I am re-referring Bill 24-666, the *Soil Disclosure Modernization Amendment Act of 2022*. The bill was introduced by Councilmember Cheh on February 16, 2022 and at that time referred to the Committee on Transportation and the Environment.

The bill amends D.C. Code § 42-608 concerning disclosure requirements in contracts for the sale of property in a chapter of the Code concerned with forms; covenants, and warranties – a consumer protection. This comes under the ambit of “consumer and regulatory affairs” specified in Council Rule 231.

I am re-referring Bill 24-666: first to the Committee on Transportation and the Environment and then to the Committee of the Whole.

cc: Councilmember Cheh



COUNCIL OF THE DISTRICT OF COLUMBIA  
1350 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004

MARY M. CHEH  
COUNCILMEMBER, WARD 3  
CHAIR, COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

OFFICE: (202) 724-8062  
FAX: (202) 724-8118  
MCHEH@DCCOUNCIL.US  
WWW.MARYCHEH.COM

February 16, 2022

Nyasha Smith, Secretary  
Council of the District of Columbia  
1350 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Dear Secretary Smith,

Today, I am introducing the “Soil Disclosures Modernization Amendment Act of 2022.” Please find enclosed a signed copy of the legislation.

District law requires that all real estate contracts contain information regarding the characteristic of the soil on the property.<sup>1</sup> Currently, the statute requires this disclosure to be done using a 1976 soil survey publication from the Soil Conservation Service of the United States Department of Agriculture (now the Natural Resources Conservation Service). However, this publication is outdated and cumbersome: realtors must refer to a nearly 50-year old color-coded map of the District, using a key showing the different soil types in the District by geographic area.<sup>2</sup> The map is imprecise: it does not provide detailed information for every address in the District, so some properties may fall on or near the border of two soil-type areas on the map, making it impossible for realtors to be sure that they are correctly identifying the soil characteristics on the property in question.

Fortunately, these issues have mostly been resolved. The Natural Resources Conservation Service has published an updated soil survey for the District and has made the data available online through the “Web Soil Survey.”<sup>3</sup> Moreover, the Office of the Chief Technology Officer (OCTO) has made the Web Soil Survey data easily accessible with a detailed online map that is, for the most part, searchable by address.<sup>4</sup>

The problem is that under the existing soil disclosure statute, realtors are still required to use the outdated and outmoded 1976 soil map. This legislation would fix that by requiring realtors to instead use the most up-to-date soil survey from the Natural Resources Conservation Service. This would allow realtors to rely on the searchable map from OCTO (or any other

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<sup>1</sup> D.C. Official Code § 42-608(b).

<sup>2</sup> The map is available at <https://www.loc.gov/item/76697809/>.

<sup>3</sup> See Natural Resources Conservation Service, *Web Soil Survey*, <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>.

<sup>4</sup> The map is available at <https://dcgis.maps.arcgis.com/apps/instant/minimalist/index.html?appid=b915693dbad84839ac3ea5f4a3c1aa9b>.



presentation of the same data) to make the required disclosures. It would also provide buyers with more detailed and accurate information about the soil underlying a given property.

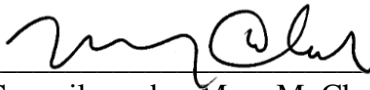
Should you have any questions about this legislation, please contact my Legislative Director, Michael Porcello, at [mporcello@dccouncil.us](mailto:mporcello@dccouncil.us) or (202) 724-8062.

Thank you.

Best,

A handwritten signature in black ink, appearing to read 'Mary M. Cheh', with a stylized flourish at the end.

Mary M. Cheh

  
Councilmember Mary M. Cheh

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend An Act To establish a code of law for the District of Columbia to update the publication relied on to report a property's soil characteristics as required in real estate transactions.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Soil Disclosures Modernization Amendment Act of 2022".

Sec. 2. Section 510(b)(1) of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1269; D.C. Official Code § 42-608(b)(1)), is amended to read as follows:

"(1) The characteristic of the soil on the property in question as described in the most recent soil survey published by the Natural Resources Conservation Service of the United States Department of Agriculture; and"

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by Council to override the veto), a 30-day period of congressional review as

33 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
34 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
35 Columbia Register.

**Council of the District of Columbia  
Committee on Transportation and the Environment**

**Committee Report**

1350 Pennsylvania Avenue, N.W., Washington, DC 20004

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**TO:** Members of the Council of the District of Columbia

**FROM:** Mary M. Cheh, Chairperson  
Committee on the Transportation and the Environment



**DATE:** October 20, 2022

**SUBJECT:** B24-666, the “Soil Disclosures Modernization Amendment Act of 2022”

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The Committee on Transportation and the Environment, to which B24-666, the “Soil Disclosures Modernization Amendment Act of 2022” was referred, reports favorably on the legislation and recommends approval by the Council of the District of Columbia.

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## STATEMENT OF PURPOSE AND EFFECT

Bill 24-666, the “Soil Disclosures Modernization Amendment Act of 2022,” was introduced by Councilmember Cheh on February 16, 2022 and referred sequentially to the Committee on Transportation and the Environment and the Committee of the Whole. The Committee on Transportation and the Environment held a public hearing on the bill on May 19, 2022.

The purpose of this legislation is narrow and simple: it updates an obsolete reference in a provision requiring certain disclosures in real estate sales contracts. D.C. Official Code § 42-608 requires that all real estate sales contracts in the District contain information about the characteristic of the soil on the property.<sup>1</sup> Currently, the statute—enacted in 1977—requires this disclosure to rely on information from a soil survey published in 1976 by the Soil Conservation Service of the United States Department of Agriculture (later renamed the Natural Resources Conservation Service). The publication is outdated and cumbersome. Realtors must refer to a nearly 50-year old color-coded map of the District, using a key detailing the different soil types in the District by geographic area.<sup>2</sup> The map is also imprecise: it doesn’t provide detailed information for every address in the District, so some properties may fall on or near the border of two soil-type areas on the map, making it impossible for sellers and realtors to be sure that they are correctly identifying the soil characteristics on the property in question.

Fortunately, these technical issues have mostly been resolved. The Natural Resources Conservation Service has published an updated soil survey for the District and has made the data available online through its “Web Soil Survey” publication.<sup>3</sup> Even better, the District’s Office of the Chief Technology Officer (OCTO) has made the Web Soil Survey data easily accessible with a detailed online map that is, for the most part, searchable by address.<sup>4</sup>

The problem is that the law has not kept up. Section 42-608 still requires realtors to use the outdated and outmoded 1976 soil survey. This legislation would fix that, by eliminating the reference to the 1976 soil survey and replacing it with a requirement that realtors use the most up-to-date soil survey from the Natural Resources Conservation Service. This will allow realtors to rely on the searchable map from OCTO (or any other presentation of the same data) to make the required disclosures.

Notably, at the hearing on the bill, some witnesses argued in favor of going a step further than the introduced bill and eliminating the soil disclosure requirement entirely. Witnesses suggested that the requirement was put in place for a very limited purpose. One witness postulated that it was a response to a minor landslide on District government property that caused damage to a congressman’s property.<sup>5</sup> Representatives from the District Department of Energy & the

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<sup>1</sup> D.C. Official Code § 42-608(b).

<sup>2</sup> The map is available at <https://www.loc.gov/item/76697809/>.

<sup>3</sup> See United States Department of Agriculture Natural Resources Conservation Service, *Web Soil Survey* (last mod. July 31, 2019), <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>.

<sup>4</sup> The map is available at

<https://dcgis.maps.arcgis.com/apps/instant/minimalist/index.html?appid=b915693dbad84839ac3ea5f4a3c1aa9b>.

<sup>5</sup> Testimony of Amy Fisher, Realty Group, Inc.

Environment (DOEE) suggested the purpose was to inform prospective real estate buyers of whether a property contains a certain type of clay that can cause cracks in building walls.<sup>6</sup>

Whatever the reason behind the requirement, witnesses suggested that the requirement is not particularly useful. Ms. Fisher testified that buyers rarely, if ever, even look at the soil disclosure. And DOEE testified that they “would not rely on” the USDA’s soil data “for doing any type of structural design.”<sup>7</sup> Moreover, witnesses suggested that, while there may be situations where it is important to know the quality of the soil on a property, those situations don’t justify maintaining the soil disclosure requirement. As one witness noted, the Web Soil Survey and OCTO’s searchable map are available to anyone.<sup>8</sup> This means that if a prospective buyer wanted to determine the quality of a property’s soil, they would be able to do so relatively easily on their own.

Witnesses also suggested that while the soil disclosure requirement has limited value, it creates potential (unwarranted) legal problems for home sellers and realtors. As Amy Fisher of the D.C. Association of Realtors noted, if a real estate sales contract does not comply with the requirement, the contract is voidable until closing.<sup>9</sup> Since it seems unlikely that many prospective buyers would actually care about a property’s soil, this right is perhaps more likely to be exercised as a pretextual tool by buyers seeking to get out of a contract they regret entering. (On the other hand, no witnesses pointed to an instance of this actually happening in the past.)

Because of the concerns raised at the hearing and the ostensibly limited value of the soil disclosure requirement, the Committee considered two more substantial changes to the requirement: first, as some witnesses at the hearing suggested, the Committee considered eliminating the soil disclosure requirement altogether. Second, as a slightly more limited option, the D.C. Association of Realtors recommended that the Committee amend § 42-608 to state that a real estate sales contract is not voidable based on the contents of the soil disclosure. The Committee believes either of these options may be warranted. Indeed, the Committee would consider striking the soil disclosure requirement in its entirety. However, given that the introduced bill was much more limited, there was not necessarily an opportunity for testimony that might have provided good reasons for maintaining the status quo. Moreover, one public witness did suggest that disclosures may be helpful at least in the commercial real estate context.<sup>10</sup> Thus, the Committee would defer the question of striking the soil disclosure requirement to future legislation focused specifically on that proposal.

Therefore, the Committee Print retains the very limited scope of the introduced bill. It simply updates § 42-608(b) to allow realtors to use the most up-to-date soil survey from the Natural Resources Conservation Service.

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<sup>6</sup> Testimony of Richard Jackson, Senior Deputy Director, Department of Energy & Environment (DOEE).

<sup>7</sup> DOEE did note that it might still be helpful for buyers to be aware of a property’s soil characteristics.

<sup>8</sup> Testimony of Michael Arias, Capital Brokers Group.

<sup>9</sup> Testimony of Amy Fisher, Realty Group, Inc.

<sup>10</sup> Testimony of Michael Arias (explaining that DDOT often asks developers to provide information about the soil type underlying their property before building even a small structure in the right of way). On the other hand, Ms. Fisher acknowledged that the information might be useful, but argued that it isn’t so significant as to be a required disclosure in sales contracts. She suggested that a simpler approach might be to require a disclosure directing buyers to the website where the soil type information is available.

The Committee Print does include one minor addition to the bill. Section 42-608(b)(2) currently requires real estate sales contracts to include a notation explaining that a buyer can obtain more information about the characteristics of the property’s soil by contacting, among other entities, DOEE. However, at the hearing on the bill, DOEE’s representative, Deputy Director Richard Jackson, testified that DOEE in fact *does not* provide soil testing services. Deputy Director Jackson therefore recommended removing the reference to DOEE in the provision. The Committee Print incorporates this proposed change.<sup>11</sup>

### **CHRONOLOGY OF ACTION**

February 16, 2022	B24-666 is introduced by Councilmember Cheh
February 16, 2022	B24-666 is referred to the Committee on Transportation and the Environment
March 21, 2022	Notice of Public Hearing on B24-666 is filed in the Office of Secretary
March 25, 2022	Notice of Intent to Act on B24-666 is published in the <i>District of Columbia Register</i>
March 25, 2022	Notice of Public Hearing on B24-666 is published in the <i>District of Columbia Register</i>
March 25, 2022	B24-666 is re-referred, to the Committee on Transportation and the Environment and to the Committee of the Whole, sequentially
April 8, 2022	Notice of Public Hearing on B24-666 is published in the <i>District of Columbia Register</i>
May 19, 2022	Public Hearing on B24-666 is held by the Committee on Transportation and the Environment
October 20, 2022	Consideration and vote on B24-666 by the Committee on Transportation and the Environment

### **POSITION OF THE EXECUTIVE**

On May 19, 2022, Richard Jackson, Senior Deputy Director, Department of Energy & Environment (DOEE), testified in support of the legislation. Deputy Director Jackson suggested an additional amendment to the soil disclosure statute: D.C. Official Code § 42-608 currently requires contracts conveying real property in the District to include a notation explaining that a buyer can obtain more information about the characteristics of the property’s soil by contacting, among others, DOEE. Deputy Director Jackson explained that DOEE does not, in fact, provide such services, and recommended removing the reference to DOEE in the provision.

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<sup>11</sup> The Committee is not aware of any statutory requirement that DOEE provide soil testing services. Thus, this change *would not* eliminate a service currently provided to the public; it would simply eliminate from real estate sales contracts an incorrect statement that DOEE provides such services.

Deputy Director Jackson also offered a postulation on the reasoning for the soil disclosure requirement. He testified that the main purpose of the disclosure requirement is to inform real property buyers if the property in question contains a certain type of clay that has a high tendency to shrink and swell—which can result in cracks in building walls or retaining walls.

### **RESOLUTIONS BY ADVISORY NEIGHBORHOOD COMMISSIONS**

No Advisory Neighborhood Commission adopted a resolution concerning B24-666.

### **LIST OF WITNESSES AND HEARING RECORD**

On May 19, 2022, the Committee on Transportation and the Environment held a public hearing on B24-666. The following witnesses testified on the legislation:

**Amy Fisher**, Vice President of Realty Group, Inc., testified in support of the bill. Ms. Fisher explained that she was working in the real estate industry in the District when the soil disclosure law was enacted. She provided an account of the reasoning for the passage of the soil disclosure law: According to Ms. Fisher, a landslide in the Hillcrest neighborhood (presumably sometime in the 1970s) caused damage to the property of a sitting Congressman; the District government was forced to build a retaining wall to remedy the problem. Ms. Fisher postulated that the soil disclosure requirement was enacted to avoid similar incidents resulting in legal or financial liability for the District government. She said that she was not aware of another incident in the 45 years since the law’s passage requiring the District government to build a retaining wall due to soil conditions.

Ms. Fisher also noted that neither Maryland nor Virginia require soil disclosures. She suggested that the requirement may simply be unnecessary.

**Michael Arias**, CEO, Capital Brokers Group, testified in support of the bill. Mr. Arias testified that soil disclosures in real estate contracts often “prompt confusion and uncertainty.” He said that the 1976 soil map is “wildly inefficient” and often inaccurate. Mr. Arias did note that with regard to commercial real estate, it is common for District agencies to ask building developers to determine the type of soil on a property; he said that having an accessible map with that information would be helpful. Mr. Arias also praised the interactive soil map feature currently provided by the District government.

**Evan Loukadakis**, District of Columbia Association of Realtors, testified in favor of the bill. Mr. Loukadakis said that bringing the statute up to date, in line with currently available interactive online soil maps, would be sensible. He also noted that the most recent USDA map has much more detail than the 1976 map.

### **ANALYSIS OF IMPACT ON EXISTING LAW**

The legislation would amend An Act To establish a code of law for the District of Columbia by eliminating the reference to the USDA’s 1976 soil survey of the District and replacing it with a reference to the most recent available soil maps.



## **SUMMARY OF FISCAL IMPACT**

A fiscal impact statement issued by the Chief Financial Officer on October 20, 2022 is attached to this report. The Chief Financial Officer concluded that funds are sufficient in Fiscal Year 2023 and over the four-year financial period to implement B24-666.

## **SECTION-BY-SECTION ANALYSIS**

**Section 1** states the short title of the legislation.

**Section 2** amends An Act To establish a code of law for the District of Columbia to require real estate sale contracts to disclose the characteristic of the soil on the property as described in the most recent soil survey published by the USDA's Natural Resources Conservation Service.

**Section 3** contains the fiscal impact statement.

**Section 4** contains the effective date.

## **COMMITTEE ACTION**

On October 20, 2022, the Committee on Transportation the Environment convened a mark-up on B24-666, the "Soil Disclosures Modernization Amendment Act of 2022." Present and voting were Chairperson Cheh and Councilmembers Allen, Henderson, and Lewis George. Chairperson Cheh gave a brief description of the bill. Councilmember Henderson and Chairperson Cheh engaged in a brief discussion about the question of why the real estate industry had not sought this change sooner.

Chairperson Cheh then moved for approval of the Committee Print of B24-666 and the Committee Report on B24-666. The Committee voted 4-0 to approve the Committee Print and the Committee Report with the members voting as follows:

YES: Cheh, Allen, Henderson, Lewis George

NO: None

The meeting was adjourned.

## **ATTACHMENTS**

- (A) Bill 24-666, as introduced, with referral memoranda
- (B) Fiscal Impact Statement
- (C) Legal Sufficiency Determination
- (D) Committee Print of Bill 24-666

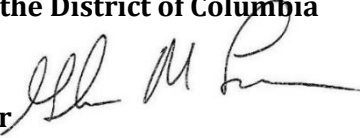
Government of the District of Columbia  
Office of the Chief Financial Officer



**Glen Lee**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Glen Lee  
Chief Financial Officer 

**DATE:** November 14, 2022

**SUBJECT:** Fiscal Impact Statement – Soil Disclosure Repeal Amendment Act of 2022

**REFERENCE:** Bill 24-666, Draft Committee Print as provided to the Office of Revenue Analysis on October 31, 2022

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**Conclusion**

Funds are sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill.

**Background**

The District requires any contract for the transfer of property to include the characteristics of the soil located on the subject property based on a United States Department of Agriculture standard. The bill repeals this requirement for property transfers.

**Financial Plan Impact**

Funds are sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill. There are no costs associated with repealing the requirement that the seller of a property provide information to the buyer of the property about the property's soil characteristics.

**COMMITTEE OF THE WHOLE  
COMPARATIVE PRINT  
BILL 24-666**

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**D.C. OFFICIAL CODE § 42-608. COVENANT FOR FURTHER ASSURANCES;  
CONTRACTS TO CONTAIN SOIL CHARACTERISTICS INFORMATION.**

(a) A covenant by a grantor, in a deed of land, “that he will execute such further assurances of said land as may be requisite,” shall have the same effect as if he had covenanted that he, his heirs or devisees, will, at any time, upon any reasonable request, at the charge of the grantee, his heirs or assigns, do, execute, or cause to be done and executed, all such further acts, deeds, and things, for the better, more perfectly and absolutely conveying and assuring the lands and premises conveyed unto the grantee, his heirs and assigns, as intended to be conveyed, as by the grantee, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised, or required.

(b) All contracts drawn for the purpose of conveying real property in the District of Columbia shall contain the following information:

~~(1) The characteristic of the soil on the property in question as described by the Soil Conservation Service of the United States Department of Agriculture in the Soil Survey of the District of Columbia published in 1976 and as shown on the Soil Maps of the District of Columbia at the back of that publication; [Repealed]~~

(2) A notation that for further information the buyer can contact a soil testing laboratory, the District of Columbia Department of Environmental Services or the Soil Conservation Service of the Department of Agriculture; and

(3) If there is a Heritage Tree, as that term is defined in § 8-651.02(3A), on the property, a notation that the Heritage Tree is located on the property and that there are restrictions on the ability of property owners to remove Heritage Trees.

8 A BILL  
9

10 \_\_\_\_\_  
11  
12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
13  
14 \_\_\_\_\_  
15

16 To amend An Act To establish a code of law for the District of Columbia to repeal a provision  
17 requiring disclosure of the characteristics of soil in all contracts drawn for the purpose of  
18 conveying real property in the District.  
19

20 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
21 act may be cited as the “Soil Disclosure Repeal Amendment Act of 2022”.

22 Sec. 2. Section 510(b) of An Act To establish a code of law for the District of Columbia,  
23 approved March 3, 1901 (31 Stat. 1269; D.C. Official Code § 42-608(b)), is amended by  
24 repealing paragraph (1).

25 Sec. 3. Fiscal impact statement.

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

29 Sec. 4. Effective date.

30 This act shall take effect after approval by the Mayor (or in the event of veto by the  
31 Mayor, action by the Council to override the veto), a 30-day period of congressional review as  
32 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

- 33 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
34 Columbia Register.