ENROLLED ORIGINAL

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Sustainable DC Omnibus Amendment Act of 2014 to require covered employers that offer parking benefits to any employees to offer those employees a Clean-air Transportation Fringe Benefit, pay a Clean Air Compliance fee, or successfully implement a transportation demand management plan, and to require covered employers and the Mayor to submit reports.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Transportation Benefits Equity Amendment Act of 2020".

Sec. 2. Title III of the Sustainable DC Omnibus Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-142; D.C. Official Code § 32-151 *et seq.*), is amended as follows:

(a) Section 301 (D.C. Official Code § 32-151) is amended as follows:

(1) Paragraph (1) is redesignated as paragraph (1A).

(2) A new paragraph (1) is added to read as follows:

"(1) "Clean-air Transportation Fringe Benefit" means the following benefits that are provided in addition to compensation:

"(A) Transportation in a commuter highway vehicle, as that term is defined in Section 132(f)(5)(B), if such transportation is in connection with travel between the employee's residence and place of employment;

"(B) Any transit pass, as that term is defined in Section 132(f)(5)(A); and

"(C) Any qualified bicycle commuting reimbursement, as that term is defined in Section 132(f)(5)(F)(i).".

(3) A new paragraph (1B) is added to read as follows:

"(1B) "Department" means the District Department of Transportation.".

(4) New paragraphs (3A) and (3B) are added to read as follows:

"(3A) "Parking benefit" means personal motor vehicle parking, on or within 0.5 miles of the business premises and located in the District, offered to an employee, in addition to compensation, either directly by the employer or through an employer subsidy, for which the employee pays nothing or less than market value. The term "parking benefit" does not include

parking that is offered to an employee who is required to use a personal motor vehicle in the regular performance of their work.

"(3B) "Section 132" means section 132 of the Internal Revenue Code, approved July 18, 1984 (98 Stat. 877; 26 U.S.C. § 132).".

(5) Paragraph (4) is amended by striking the phrase "section 132(f)(5)(A) of the Internal Revenue Code, approved July 18, 1984 (98 Stat. 877; 26 U.S.C. § 132(f)(5)(A)) ("Internal Revenue Code")," and inserting the phrase "Section 132(f)(5)(A)" in its place.

(b) A new section 302a is added to read as follows:

"Sec. 302a. Parking benefit equivalent.

"(a) The requirements of this section shall only apply to covered employers offering a parking benefit.

"(b) If a covered employer offers a parking benefit to an employee, the covered employer shall:

"(1) Offer the employee a Clean-air Transportation Fringe Benefit in an amount equal to or greater than the monthly market value of the parking benefit offered to the employee, pursuant to subsection (c) of this section;

"(2) Pay to the Department a Clean Air Compliance fee of $100 per month for each employee who is offered a parking benefit; or

"(3) Implement a transportation demand management plan, pursuant to subsection (d) of this section.

"(c)(1) An employee shall not accept the Clean-air Transportation Fringe Benefit offered pursuant to subsection (b)(1) of this section unless the employee has declined the parking benefit offered by the covered employer.

"(2)(A) An employee who accepts a Clean-air Transportation Fringe Benefit shall, in a form determined by the Department, estimate the amount of the Clean-air Transportation Fringe Benefit that the employee will use each month.

"(B) An employee may, from time to time, amend the estimate provided pursuant to subparagraph (A) of this paragraph; except, that the employee shall not amend the estimate provided pursuant to subparagraph (A) of this paragraph more than once every 12 months.

"(3) If the estimate provided pursuant to paragraph (2)(A) of this subsection is less than the Clean-air Transportation Fringe Benefit offered to the employee pursuant to paragraph (1) of this subsection, the covered employer shall provide the employee with additional compensation, an increase contribution to the employee's health coverage, or both, in an amount that, when combined with the estimate provided pursuant to paragraph (2)(A) of this subsection, is equal to the Clean-air Transportation Fringe Benefit offered to the employee pursuant to paragraph (1) of this subsection.

"(d)(1) To comply with subsection (b)(3) of this section, a covered employer shall submit a proposed transportation demand management plan to the Department, which shall include:

"(A) A plan, in a form prescribed by the Department through rulemaking or publication on the Department's website, that would reduce by at least 10% from the previous year the number of commuter trips employees of the covered employer made by car, including for-hire vehicles, until 25% or less of employees' commuter trips are made by car, including for-hire vehicles; and

"(B) Any other information required by the Department.

"(2)(A)(i) If the Department determines that the proposed transportation demand management plan is likely to meet the requirements of this subsection, the Department shall approve the proposed transportation demand management plan.

"(ii) If the Department determines that the proposed transportation demand management plan is not likely to meet the requirements of paragraph (1) of this subsection, the Department shall provide the covered employer a brief description of the deficiencies in the plan and an opportunity to amend and resubmit the proposed transportation demand management plan.

"(B) If, after a covered employer resubmits an amended proposed transportation demand management plan, the Department again determines that the proposed transportation demand management plan is not likely to meet the requirements of paragraph (1) of this subsection, the covered employer shall begin offering a Clean-air Transportation Fringe Benefit, pursuant to subsection (b)(1) of this section, or begin paying the Clean Air Compliance fee, pursuant to subsection (b)(2) of this section.

"(3)(A) A covered employer whose proposed transportation demand management plan has been approved, pursuant to paragraph (2)(A)(i) of this subsection, shall submit to the Department annual data reports on the actual commute mode share of its employees.

"(B)(i) Each year, the Department shall determine whether the covered employer is complying with the transportation demand management plan.

"(ii) If the Department determines that the covered employer is not complying with the transportation demand management plan, the covered employer shall have 180 additional days to comply with the requirements of the transportation demand management plan for the previous year.

"(C) If, after the 180-day period described in subparagraph (B)(ii) of this paragraph, the Department determines that the covered employer is still not in compliance with the transportation demand management plan for the previous year, the covered employer shall begin offering a Clean-air Transportation Fringe Benefit, pursuant to subsection (b)(1) of this section, or begin paying the Clean Air Compliance fee, pursuant to subsection (b)(2) of this section.

"(4) A covered employer who submits a proposed transportation demand management plan pursuant to paragraph (1) of this subsection need not comply with subsection (b)(1) of this section or subsection (b)(2) of this section until the Department informs the covered employer that:

"(A) The Department again determined that the proposed transportation demand management plan is not likely to meet the requirements of paragraph (1) of this subsection; or

"(B) After the 180-day period described in paragraph (3)(B)(ii) of this subsection, the Department determined that the covered employer is still not in compliance with the requirements of the transportation demand management plan for the previous year.

"(e) For the purposes of this section, the market value of a parking benefit shall be:

"(1) The publicly-advertised price of parking available for rent to the public at a privately-owned parking facility within one-quarter mile of the business premises; or

"(2) If there is no privately-owned parking facility within one-quarter mile of the employee's place of work that rents parking to the public, an amount determined pursuant to rules issued by the Department.

"(f) Each covered employer shall within 90 days after the applicability date of the Transportation Benefits Equity Amendment Act of 2020, passed on 2nd reading on April 7, 2020 (Enrolled version of Bill 23-148), and every 2 years thereafter, submit to the Mayor a report that includes:

"(1) The total number of employees;

"(2) The number of employees:

"(A) Offered a parking benefit;

"(B) Using a parking benefit;

"(C) Offered a Clean-air Transportation Fringe Benefit; and

"(D) Using a Clean-air Transportation Fringe Benefit; and

"(3) Any other information required by the Mayor by rulemaking.

"(g) Beginning October 1, 2022, and every 2 years thereafter, the Mayor shall provide a report to the Council containing the following:

"(1) Aggregate data from the reports required by subsection (f) of this section;

"(2) An assessment of how many covered employers have not filed the report required by subsection (f) of this section; and

"(3) A description of actions that will be taken to achieve full compliance with this section.

"(h) The Mayor may impose civil fines or penalties as sanctions for a violation of subsection (a) or subsection (f) of this section, or any rule issued pursuant to section 303(b), pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq*.) ("Civil Infractions Act"). Enforcement and adjudication of an infraction shall be pursuant to the Civil Infractions Act.

"(i)(1) This section shall not apply to a parking benefit offered by a covered employer who, before the applicability date of the Transportation Benefits Equity Amendment Act of 2020, passed on 2nd reading on April 7, 2020 (Enrolled version of Bill 23-148), owned, and continues to own, the parking spots used by the employees who are offered a parking benefit.

"(2) If, before the applicability date of the Transportation Benefits Equity Amendment Act of 2020, passed on 2nd reading on April 7, 2020 (Enrolled version of Bill 23-148), a covered employer leases the parking spot used by the employee who is offered a parking benefit, this section shall apply to the to the parking benefit at the end of the current lease term, regardless of whether the lease agreement contemplated extensions beyond the current lease term.

"(3) If, before the applicability date of the Transportation Benefits Equity Amendment Act of 2020, passed on 2nd reading on April 7, 2020 (Enrolled version of Bill 23-148), a covered employer is party to a transportation demand management plan that was reviewed by the Department this section shall apply to the covered employer at the end of the current term of the transportation demand management plan, regardless of whether the transportation demand management plan contemplated extension beyond the current term, or 5 years after the applicability date of the Transportation Benefits Equity Amendment Act of 2020, passed on 2nd reading on April 7, 2020 (Enrolled version of Bill 23-148), whichever is earlier.

"(4) If, before the applicability date of the Transportation Benefits Equity Amendment Act of 2020, passed on 2nd reading on April 7, 2020 (Enrolled version of Bill 23-148), a covered employer is party to a Campus Plan approved pursuant to section X101 of Title 11 of the District of Columbia Municipal Regulations (11 DCMR § X101), this section shall apply to the covered employer at the end of the current term of the Campus Plan, regardless of whether the Campus Plan contemplated extension beyond the current term, if the Campus Plan requires annual reporting to the Department of:

"(A) The current percentage, and year-over-year change in the percentage, of trips to campus that are made by car, including for-hire vehicles;

"(B) Performance standards in the Campus Plan related to reducing the percentage of trips to campus that are made by car, including for-hire vehicles; and

"(C) Policies that the covered employer will adopt to meet the performance standards in the Campus Plan related to reducing the percentage of trips to campus that are made by car, including for-hire vehicles.".

(c) Section 303 (D.C. Official Code § 32-153) is amended as follows:

(1) Designate the existing text as subsection (a).

(2) A new subsection (b) is added to read as follows:

"(b) Within 90 days after the applicability date of the Transportation Benefits Equity Amendment Act of 2020, passed on 2nd reading on April 7, 2020 (Enrolled version of Bill 23-148), the Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of section 302a.".

Sec. 3. Applicability

(a) This act shall apply upon the date of inclusion if its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council for certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 4. 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. 5. Effective date.

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

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Chairman
Council of the District of Columbia

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Mayor
District of Columbia