


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



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

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

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: November 30, 2016

SUBJECT: Fiscal Impact Statement – Collaborative Reproduction Amendment Act of 2016

REFERENCE: Bill 21-16, Committee Print as shared with the Office of Revenue Analysis on November 18, 2016

Conclusion

Funds are sufficient in the fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the bill.

Background

The bill authorizes¹ District of Columbia residents to enter into surrogacy agreements² for the purpose of facilitating collaborative reproduction.³ Children born by gestational surrogates⁴ and traditional surrogates⁵ must be the children of an intended parent,⁶ regardless of whether the

¹ By amending Chapter 4 of Title 16 of the District of Columbia Official Code.

² A surrogacy agreement is a written contract between a surrogate, the surrogate's spouse or domestic partner, if any, and the intended parent or parents, pursuant to which the intended parent or parents shall be the parent or parents of the child.

³ Collaborative reproduction is assisted reproduction that involves a surrogate or a donor and an intended parent or parents. The term does not include the birth of a child conceived by means of sexual intercourse, or the birth of a child conceived through assisted reproduction by an individual or couple who use their own gametes and intend to gestate and parent the child themselves.

⁴ A gestational surrogate is an individual who is not the intended parent or donor and who agrees to become pregnant, gestate, and deliver, through collaborative reproduction, the intended parent's child on behalf of the intended parent.

⁵ A traditional surrogate is an individual who is not the intended parent and who agrees to serve as a donor of their own egg to become pregnant, gestate, and deliver, through collaborative reproduction, the intended parent's child on behalf of the intended parent.

intended parent has a genetic relationship to a child. Both gestational and traditional surrogates and their spouse or domestic partner will not have corollary rights or obligations with respect to the child and will not be the child's parent or parents.

Petitions for parentage for an intended parent to a gestational or traditional surrogacy agreement may be filed with the Superior Court of the District of Columbia (Court) as long as the intended parent and surrogate have been legal residents of the District for at least one year and the child is born in the District. The petition for parentage must include:

- An affidavit by the medical professional who performed the embryo transfer⁷ or the intrauterine or intracervical insemination⁸ attesting to the facts pertaining to the creation of an embryo or insemination;
- A copy of the executed surrogacy agreement; and
- An affidavit for each attorney representing a party that includes the party's identities and terms of the agreement.

The Court must issue a sealed court order within 48 hours of a child's birth. The order must declare that the intended parents are the sole legal parents of the child. The Court must require the Registrar of Vital Records to issue a birth certificate naming the intended parents as the sole parents.

In order to enter into surrogacy agreements, surrogates must be 21 years of age, must have given birth to at least one live child, must undergo a medical evaluation, must complete a mental health evaluation, and must complete a joint mental health consultation with the intended parent. Intended parents must be 21 years of age, must guarantee payment of all reasonable medical expenses, and must complete a joint mental health consultation with the surrogate.

Surrogacy agreements must:

- Be in writing and executed by the surrogate and the surrogate's spouse or domestic partner, and the intended parent or parents;
- Be executed prior to the embryo transfer or insemination;
- Include an affirmation by all parties that they have read the agreement;
- Include an affirmation that a surrogate and the surrogate's spouse or domestic partner:
 - Acknowledge and agree that the surrogate and the surrogate's spouse or domestic partner are not the parents of the child;
 - Agree to surrender physical custody of the child to the intended parent or parents immediately after the child's birth;
 - Agree that at all times during the pregnancy and until delivery, regardless of whether the court has issued an order of parentage, the surrogate shall maintain control over her body;
 - Agree to cooperate in any necessary legal proceedings to recognize the intended parent or parents as the legal parent or parents; and,

⁶ Intended parent is an individual, married or unmarried, who manifests the intent to be legally bound as the parent of a child.

⁷ Embryo transfer is a medical procedure of transferring an embryo to a uterus.

⁸ Intracervical insemination is a fertility treatment that involves the placing of sperm inside a vagina to facilitate fertilization. Intrauterine insemination means the fertility treatment that involves the placing of sperm inside a uterus to facilitate fertilization.

- Agree to all terms mutually negotiated and agreed upon by the surrogate, the surrogate's spouse or domestic partner, and the intended parent or parents;
- Include an affirmation that an intended parent or parents:
 - Accept physical custody of the child immediately after the child's birth, regardless of number of children, gender, or mental or physical condition; and
 - Assume sole responsibility for the support of the child immediately upon the child's birth;
- Provide that the intended parent or parents shall assume the costs of all agreed upon reasonable medical and ancillary expenses;
- Allocate responsibility for the assumption of costs in the event of termination of the pregnancy, termination of the contract, or breach of the contract by any party;
- Provide procedures for dispute resolution; and
- Be notarized before a minimum of two witnesses.

The bill specifies that if a surrogate or the intended parent wishes to withdraw consent, the withdrawal must be prior to successful insemination or embryo transfer, must be in writing, and must be delivered to all parties involved included the court that approved the agreement.

Financial Plan Impact

Funds are sufficient in the fiscal year 2017 through fiscal year 2020 budget and financial plan to implement the bill. Surrogacy agreements are executed between private parties so no additional resources are required to implement the bill.